

MESA COUNTY WORKFORCE DEVELOPMENT BOARD

Policy and Procedure

Title: On-the-Job Training (OJT) policy
Program: Career Development Program
(WIOA)

State Policy Guidance Letter: WIOA-2016-08
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Authorized Signature(s):

I. REFERENCE(S):

- Workforce Innovation and Opportunity Act (WIOA) of 2014, Pub. L. No. 113 and 128, Sections 129, 134, 181, 194.
- WIOA Department of Labor-Only Final Rule (81 FR 56072, Aug. 19, 2016).
- Training and Employment Guidance Letter (TEGL) 23-14: WIOA Youth Program Transition
- TEGL 03-15: Guidance on Services Provided Through the WIOA Adult, Dislocated Worker, and Wagner-Peyser Programs

II. PURPOSE:

To provide guidance to the Career Development Program (WIOA) regarding policy and procedure for On-the-Job Trainings.

III. Definitions:

OJT is defined at WIOA Sec. 3(44): “On-the-Job Training” means training by an employer that is provided to a paid participant while engaged in productive work in a job that:

1. Provides knowledge or skills essential to the full and adequate performance of the job.
2. Is made available through a program that provides reimbursement to the employer of up to 50% of the wage rate of the participant (with some exceptions, see Section E.2), for the extraordinary costs of providing the training and additional supervision related to the training.
3. Is limited in duration as appropriate to the occupation for which the participant is being trained, taking into account the content of the training, the prior work experience of the participant, and the service strategy of the participant, as appropriate.

IV. Policy/Action:

A. Eligibility for Training Services for Adults and Dislocated Workers

Under WIOA, there is no sequence of service requirement for career services and training services. However, training services may be provided to adults and dislocated workers only if the case manager determines, after an interview, evaluation or assessment, and case management, that the participant:

1. Is unlikely or unable to obtain or retain employment, that leads to economic Self-sufficiency or wages comparable to or higher than wages from previous employment through career services alone;
2. Is in need of training services to obtain or retain employment that leads to economic

self-sufficiency or wages comparable to or higher than wages from previous employment; and

3. Has the skills and qualifications to successfully participate in the selected program of training services.

WIOA requires that training services are linked to in-demand employment opportunities in the local area or planning region or in a geographic area in which the adult or dislocated worker is willing to commute or relocate. Concerning OJTs, in-demand requirements will be considered met since a local employer is hiring a participant and completing a contract to that extent. The selection of training services should be conducted in a manner that maximizes customer choice, is informed by the performance of relevant training providers, and coordinated to the extent possible with other grant assistance. Once eligibility for training services has been established, the case manager must then determine that an OJT is appropriate.

Training services for WIOA Title I adults and dislocated workers, when determined appropriate, must be provided either through an Individual Training Account (ITA) or through a training contract. OJT is provided through a contract.

B. Eligibility for Training Services for Employed Worker

WIOA permits training services, including OJTs, for WIOA-eligible employed workers that are not earning a self-sufficient wage or wages comparable to or higher than wages from previous employment, please see Section F for definition of self-sufficient wages. For individuals who are employed at program entry, the case manager must determine that the individual:

1. Is not earning a self-sufficient wage or wages comparable to or higher than wages from previous employment; and
2. The OJT or other training relates to the introduction of new technologies, introduction to new production or service procedures, upgrading to new jobs that require additional skills or workplace literacy, or other appropriate purposes identified by the local board.

C. OJTs for Youth

In order to participate in OJT, a youth who has been determined eligible for the program must have an objective assessment and an individual service strategy that identifies OJT as an appropriate Youth program element.

D. Length of Training

An OJT must be limited to the period of time required for a participant to become proficient in the occupation for which the training is being provided. Considerations may include the skill requirements of the occupation, the 4 academic and occupational skill level of the participant, prior work experience, and the participant's Individual Employment Plan (IEP). The U.S. Department of Labor's O*Net Job Zone Levels and Specific Vocational Preparation (SVP) levels will be used as a starting point for the OJT training plan, but each training plan should be individualized. There may arise circumstances in which an OJT participant may be employed less than full time. These circumstances may involve employer hiring practices of beginning a participant part-time for a probationary period of time, and once participants have successfully

met probationary requirements they are moved to full-time employment. It may also include circumstances where a participant is completing the last semester of a two year or four year degree, and the employer is willing to accommodate a school schedule with part-time work until the participant graduates and can work full-time. The following table will be utilized by the Career Development Program (WIOA) as a starting point to determine the length of an OJT:

<u>JOB ZONE LEVEL</u>	<u>MAXIMUM HOURS ALLOWABLE</u>
1-2	240 hours (6 weeks)
3	320 hours (8 weeks)
4	640 hours (16 weeks)
5	800 hours (20 weeks)
6	960 hours (24 weeks)
7 or Higher	1040 hours (26 weeks)

E. Employer Reimbursement Rate

Occupational training is provided for the WIOA participant through an OJT contract in exchange for a reimbursement to the employer of up to 75% of the wage rate of the participant. The reimbursement is for the extraordinary costs associated with training participants and the potentially lower productivity of the participants while in the OJT. When reimbursing a wage up to 75% the following factors should be taken into account:

- a. The characteristics of the participants (e.g. length of unemployment, current skill level, and barriers to employment);
- b. The size of the employer, with an emphasis on small businesses (the Small Business Administration’s definition of “small business” which varies by industry may be used as a guide);
- c. The quality of employer-provided training and advancement opportunities.

F. Eligibility for Employed Workers

WIOA permits OJT contracts for WIOA-eligible employed workers that are not earning a self-sufficient wage or wages comparable to or higher than wages from previous employment. The Mesa County Workforce Development Board defines “self-sufficient wage” for Mesa County as any wage that a participant deems as sufficient in meeting their living expenses, and/or any wage that is competitive within Mesa County for entry level positions that allows a participant to start in a sector that has an established career ladder/stackable credentials. The OJT must also relate to the introduction of new technologies, introduction to new production or service procedures, upgrading to new jobs that require additional skills or workplace literacy, or other appropriate purposes.

G. Pre-Award Review

The Pre-Award form will be utilized to review employer's eligibility to participate in the OJT program. The pre-award review will include:

- a. Names under which the establishment does business, including predecessors and successors in interest;
- b. The Federal Employer Identification Number (FEIN);
- c. The name, title, and address of the company official certifying the information; and
- d. Whether WIOA assistance is sought in connection with past or impending job losses at other facilities. A review of whether WARN notices relating to the employer have been filed may be utilized in these instances.

H. Employer Requirements

1. Employer Contracts:

OJT must be provided through a contract with an employer or registered apprenticeship sponsor in the public, private non-profit, or private sector. The contract with the employer must ensure that participants are provided a structured training opportunity to gain the skills and competencies necessary to be successful in the occupation in which they receive training. The ideal OJT contract will include:

- a. the occupation, skills and competencies to be learned;
- b. the training program /curriculum for training;
- c. an outline of any separate classroom training that may be provided by the employer;
- d. the length of training time provided;
- e. the wage rate for the participant;
- f. the percentage rate used for reimbursement to the employer and the maximum amount for reimbursement;
- g. that the reimbursement is strictly for regular hours worked, and does not include paid time off (e.g. sick leave, vacation, holidays, jury duty, etc.), overtime, or benefits.
- h. the employer's agreement to maintain and make available time and attendance, payroll and other required documentation to support amounts claimed by the employer for reimbursement;
- i. assurances that training will be in accordance with WIOA Section 181 (fair and equal wages, prohibition on displacement of current employees, equal benefits and working conditions, prohibition on use of funds after relocation, collective bargaining); and

j. assurances that training will be in accordance with the Final Rule, §680.700 – 680.730.

2. Employer-Employee Relationship:

OJT trainees must be regular employees of the participating employer, not independent contractors or temporary or seasonal hires.

3. Wage Rates:

OJT participants should be compensated at the same rates, including periodic increases, as trainees or employees in similar occupations by the same employer and who have similar training, experience, and skills, and in accordance with the Fair Labor Standards Act.

4. Pattern of Failure:

An OJT contract must not be written with an employer who has previously demonstrated a “pattern of failure” as defined by the Final Rule Section 680.700. Such failure may include failing to provide participants with continued long-term employment, and wages, benefits, or working conditions that are equal to those provided to regular employees who have worked a similar length of time and are doing the same type of work. A “pattern of failure” may also include an employer who does not submit reimbursement/performance evaluation documents in a timely manner to program case managers several times, violates any Federal and/or State employment laws, knowingly claims incorrect reimbursement amounts to gain profit from the WIOA program, and does not permit program case managers to inspect worksite conditions if claims are made by program participants that the worksite is unsafe. Any of these instances will be addressed in person with the employer. An opportunity will be given to the employer to correct the “pattern of failure”. If no correction is made, then a written notice from the Career Development Program (WIOA) to the employer regarding the immediate termination of the OJT contract will be sent. Depending on the severity of the above mentioned “pattern of failure”, an immediate termination of an OJT contract may occur at any time.

5. Relocation:

An OJT contract may not be written until 120 days after the commencement of operations of any relocating establishment, if the relocation resulted in the loss of employment for any employee at the original location and the original location is in the United States. To verify that an establishment which is new or expanding has not relocated employment from another area, a standardized pre-award review will be conducted.

6. Legal Use of Federal Funds:

WIOA funds may not be used to help employers to fill positions that promote or support the use, possession or distribution of marijuana.

7. Workplace Laws:

OJT participants shall be provided benefits (including health benefits) and working conditions at the same level and to the same extent as other trainees or employees working a similar

length of time and doing the same type of work with the same employer. Health and safety standards established under Federal and State law otherwise applicable to working conditions of employees are equally applicable to OJT participants, including workers' compensation.

I. Coordination with Registered Apprenticeships

An OJT contract may be developed with a Registered Apprenticeship program for training participants. OJT contracts are made with the employer, and Registered Apprenticeship generally involves both classroom and on-the-job instruction. The OJT contract may be made to support some or all of the OJT portion of the Registered Apprenticeship program. A combination of an ITA to cover the classroom instruction along with an OJT contract to cover on-the-job portions of the Registered Apprenticeship is allowed. If an apprentice is employed at the time of program enrollment, the requirements for employed workers must be followed.

J. Coordination with Trade Adjustment Assistance (TAA)

Co-enrollment of workers certified as eligible for TAA, in partnership with WIOA, allows for the timely provision of individualized career services and improves the effectiveness of the TAA program. Co-enrollment also may assist in making additional funds available for OJT. The TAA program allows reimbursement up to 50 percent, so for a co-enrolled TAA participant, the TAA Program may reimburse employers up to 50 percent and WIOA may reimburse employers up to an additional 25 percent, to bring the total reimbursement to employers up to 75 percent to align TAA Program benefits with WIOA benefits. The duration of an OJT for a TAA participant is limited to 104 weeks.

K. Eligible Training Provider Exception

OJT providers are not required to be eligible providers on the state's Eligible Training Provider List (ETPL), and are not subject to the performance requirements for eligible providers.

L. Monitoring

Roles of the employer, participant, and program case manager are clearly defined in the OJT contract. Program case managers will monitor each party's role to ensure the validity of the OJT contract. As reimbursement and training progress documents are received, they will be initially reviewed by the program case managers to validate accuracy, and to validate skill and competency attainment of participants, as well as, any pattern of failure on the employers part. Reimbursement documents will then be monitored by the designated MIS staff member of the Career Development Program to ensure accuracy of the reimbursement documents, payroll records, payments, and data entry in Great Plains and Connecting Colorado. Monitoring of worksite conditions will be conducted at the time of OJT contract signing by program case managers, and again as any concern is voiced by program participants during the duration of the OJT contract. Once a year, the Department of Human Services Professional Standards Team will conduct a monitoring review of the Career Development Program's (subcontractor Hilltop Community Resources) OJT system to ensure accuracy and consistency with local OJT policy and State PGLs.

M. Documentation

1. Employer Selection:

Sufficient documentation will be kept to demonstrate that participating employers were selected equitably and that a variety of employers were given sufficient opportunity to participate in OJTs. Documentation should demonstrate that a variety of employer outreach strategies were utilized to ensure that area employers are aware of OJT opportunities. Employer outreach strategies may include (but are not limited to) newsletters, websites, forums, outreach materials, and other meetings or communications targeted to area employers.

N. Payments to Employers

Payment to employers is managed with a subsidized employment monthly report and invoice form, and reimbursement worksheet. Employer payroll records, such as time sheets, pay stubs, and/or payroll record from employer's payroll system may also be collected. Information from these documents will be entered into Great Plains, an invoice system, that will generate reimbursement to the employer. These documents contain the number of hours worked each day by the participant and rate of pay for the time period. All documents must be signed by both the participant and the employer or only by the employer if accompanying documentation (timesheets/time cards) is signed by the participant and reconciled to the invoice. The reimbursement is for regular hours worked, and does not include paid time off (e.g. sick leave, vacation, holidays, jury duty, etc.), overtime, or benefits. It may include time in classroom training that is part of the OJT training plan and occurs during regular work hours.

O. Participant Case Files

Case files will include a copy of the OJT contract and sufficient documentation to justify the following:

1. Demonstrated need for training to become employable, based on a detailed and comprehensive training plan to include the specific skills, databases, process, procedures and systems that the candidate will be trained on [case notes and Individual Employment Plan (IEP)];
2. Percentage of reimbursement to employer, base on factors established in this local policy;
3. Amount of reimbursement, based on hours worked and wage rate;
4. Length of the OJT, based on factors established in this local policy; and
5. Case notes documenting trainee's progress, including employer progress reports, and

any interventions needed to support trainee performance.

P. Tracking Participants in Connecting Colorado

1. OJT activities are tracked in Connecting Colorado using the OJ code.
2. The start and end dates for the training service must match the start/end dates of the OJT.