

# Area 14 Workforce Development Board

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On-the-Job Training Policy

Area 14 Policy 16-03

Effective August 4, 2016



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## I. Purpose

To establish guidance for entering into On-the-Job Training, hereinafter “OJT”, contracts with employers to provide occupational skill training to eligible WIOA participants, across all funding streams and programs. All OJT contracts must primarily benefit the WIOA participant in the acquisition of skills and abilities for performance in the specified occupation.

## II. Effective

Immediately

## III. Requirements

Through OJT activities provided under the Workforce Innovation and Opportunity Act (WIOA), adult, dislocated worker, and youth participants have the opportunity to obtain skill sets necessary to fill jobs that are locally available, as well as new positions being created. With an OJT contract, the employer is the training provider. During the training, the participant is engaged in productive work in a job for which he or she is paid, and the training provides knowledge or skills necessary to the full and adequate performance of the job. Employers must commit to hire and retain the participant at the end of a successful training period.

### A. **Participant Eligibility for an OJT**

WIOA-funded On-the-Job Training is available for eligible WIOA youth and unemployed or under-employed adult and dislocated workers. Employed workers may be eligible for WIOA-funded OJTs when the employee is not earning a self-sufficient wage as determined by the Area 14 Workforce Development Board policy. Participants who have completed occupational skills training via an individual training account (ITA) may be considered for OJT if it creates an opportunity for the participant to become employed.

As outlined in Workforce Innovation and Opportunity Act Policy Letter (WIOAPL) No. 15-09, Training Services for Adults and Dislocated Worker, and WIOAPL No. 15-10, Youth Program Services, training services may be provided to adults and dislocated workers, and youth participants if, after an interview, evaluation, or assessment and career planning, the participant has been determined to have the skills and qualifications to successfully participate in an OJT. WIOA in-school youth aged 14-21 years may qualify for OJT, although such training may not be an appropriate activity for in-school youth whose individual service

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strategy (ISS) may be geared toward completion of secondary or postsecondary education instead of employment.

OJT participants must receive wages, benefits, and 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. Appropriate workers compensation insurance protection must also be provided to all OJT participants by the employer. OJT participants are not eligible to receive Needs Related Payments (NRPs) and cannot be immediate family members of the business owner or direct supervisor. Refer to the On-The-Job Training Guidance Manual for the different situations in which OJT-related conflict of interest may arise.

## **B. Employer Eligibility for an OJT**

### Disqualifying Factors

Employers will be disqualified from participating in the OJT program in the following situations:

1. Businesses must not be presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from participation in transactions by USDOL or the State of Ohio. Below are three websites that may be helpful in checking tax, environmental compliance, and debarment status.

Federal Debarment Site: <http://www.sam.gov>

Ohio Department of Taxation: <http://www.tax.ohio.gov>

Business Filing Search: <http://www.sos.state.oh.us>

2. Businesses must not have any outstanding tax liability for over six months to the state of Ohio. Business are required to disclose any known outstanding tax liabilities with Ohio and other states prior to entering into contract. Existing out-of-state violations may be considered by the WIOA Program Operator when determining eligibility to receive OJT funds. The WIOA Program Operator must document any resolution of outstanding tax liability, which may include letters from the business or from the State from which the tax liability occurred.

3. Businesses must not have any outstanding civil, criminal or administrative fines or penalties owed to or pending in the state of Ohio.

4. The WIOA Program Operator must not enter into an agreement with an employer who has previously exhibited a pattern of failing to provide OJT participants with continued long-term employment.

5. The employer must comply with all applicable federal, state, local laws and regulations related to providing reasonable working conditions. OJT participants are not permitted to train or work in buildings or surroundings under working conditions that are unsanitary, hazardous, or dangerous to the trainee's health or safety.

6. If during completion of the employer information form, it is determined that a business has relocated from one U.S. labor market to another and caused dislocation at the original location, OJTs may be available at the new location only after the business has conducted work at the new location for more than 120 days. Refer to the On-The-Job Training Guidance Manual for factors to be considered in determining whether business relocation has occurred.

To verify that a business is not relocating employment from another area, a pre-award review must be undertaken and documented by the WIOA Program Operator. The review must include the names under which the establishment conducts business, including predecessors and successors in interest; the name, title, and address of the company official certifying the information, and whether WIOA assistance is being sought in connection with past or impending job losses at other facilities of their company. The pre-award review should also include a review of whether appropriate notices have been filed, as required by the Worker Adjustment Retraining Notification (WARN) Act. The review may also include consultations with labor organizations and others in the affected local area(s).

7. Absent a clear and applicable layoff definition within a collective bargaining agreement or personnel policy governing a local operation, a layoff is defined as termination with the intent to recall. A laid off

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employee who refuses a recall request is no longer considered to be in layoff status. Layoff recall rights will last six months from the last day of work prior to the layoff.

If the employer has laid off someone from a similar or "substantially equivalent" work at the same local operation, no OJT or other subsidized employment is permitted. The work is considered substantially equivalent if the overlap between the work (duties and job titles) is 80% or greater. If more than one person is laid off from a substantially equivalent job, and all these persons worked their last day more than six months before the training plan begins, the OJT may proceed and the employer may be reimbursed regardless of the previous layoffs.

8. Training positions covered may not have been created by the displacement of an unsubsidized employee by a WIOA subsidized employee. This includes partial displacement such as reduction in the hours of non-overtime work, wages, or employment benefits. There is no requirement for the job to be similar or substantially equivalent. The key is employer intent: if an unsubsidized employee's earnings are reduced by hiring a WIOA subsidized participant to offset the lost productivity, it is considered displacement.

## Prohibited OJT Activities

The following types of activities are prohibited from OJTs:

Sectarian activities: Funds provided to employers for OJT may not be used to employ the participant/trainee in a position involving political or sectarian activities. Furthermore, OJT participants may not assist, promote or deter union organizing, or engage in political activities during work hours.

Religious activities: OJT participants are prohibited from being employed in the construction, operation, or maintenance of any facility which is used for religious instruction or worship.

## C. Employer Contracting and Reimbursement

OJT training payments to employers are deemed to be compensation for the extraordinary costs associated with training participant and potentially lower productivity. Employers are to be reimbursed up to 50 percent of the wage rate of an OJT participant.

The *OJT Agreement* must state the agreed upon maximum amount that WIOA will reimburse an employer per trainee during the contract period, not to exceed **\$8,000 and/or 13 weeks per OJT contract, and payments can be no more than 50% of each trainee's straight worked compensation**. This does not include: holiday, sick, personal, vacation or other unworked compensation. All worked hours can be reimbursed at the trainee's normal rate of pay at the time worked (Extra employer payments for overtime, shift deferential, piece incentive, etc. are not reimbursed).

The minimum hours that can be set in the *OJT Agreement* are 160 total hours. The maximum hours that can be set in the *OJT Agreement* are 520 total hours.

The hours set in the *OJT Agreement* are the maximum hours reimbursed and are determined by an evaluation of the trainee's skills/aptitudes at date of hire and the tasks identified in the training outline.

Evaluations must be completed at approximately the midpoint of contract and contract completion and contained in the trainee's WIOA file.

The participant must receive a wage of **at least \$9.00 per hour from the employer, and this wage must be aligned with other employees performing the same duties**.

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For a currently employed trainee not currently earning locally defined self-sufficient wages, there must be an expectation that at successful completion of the OJT there will be a **wage gain of at least \$1.00/hour**.

## IV. Signatory Authority / Monitoring

The Area 14 Workforce Development Board is committed to utilizing OJT contracts as a means for individuals to build their skills, reestablish themselves in new fields and increase employment retention and self-sufficiency. Our board also recognizes the importance in OJT's to provide an incentive to employers to hire using the public workforce system and to invest in employee skill development. In an attempt at streamlining and expediting the process to award OJT contacts, local forms may be created to allow the supervisor/administrator of the WIOA Program Operators to act as signatory authority.

Although the local workforce board is not required to sign off on OJT contracts, awards, invoices, etc., to ensure the board is engaged and providing oversight to the OJT process, each WIOA Program Operator shall make available at the Executive Director of the Workforce Development Board's discretion, all contracts, forms, files, etc. to be reviewed and monitored to ensure compliance with this policy and all applicable federal/state policies.

## V. References

Workforce Innovation and Opportunity Act Policy Letter (WIOAPL) No. 15-22, On the Job Training (OJT) Policy

Workforce Innovation and Opportunity Act Policy Letter (WIOAPL) No. 15-09, Training Services for Adults and Dislocated Worker

Workforce Innovation and Opportunity Act Policy Letter (WIOAPL) No. 15-10, Youth Program Services

Workforce Innovation and Opportunity Act, §§ 134, 188, Public Law 113-128.

NPRM § 680.700; .710; .720; .730; 740; .750 found at 80 Fed. Reg. 20860 (April 16, 2015) (to be codified at 20 C.F.R. § 678.700).

NPRM § 683.275 found at 80 Fed. Reg. 20882 (April 16, 2015) (to be codified at 20 C.F.R. § 683.275).

2 CFR Part 200, Appendix II

State On-the-Job Training Guidance Manual (August 2014). Copies are available online at <http://jfs.ohio.gov/owd/wia/Docs/OJT-Procedures-Manual.pdf>