

# Area 14 Workforce Development Board

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Area 14 Workforce Development Board

Work Experience for Youth

Area 14 Policy 14.15-13

Effective: May 15, 2019



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## I. Purpose

To utilize Workforce Innovation and Opportunity Act (WIOA) and Temporary Assistance for Needy Families (TANF) funds to assist youth in obtaining paid and unpaid work experience while enrolled in WIOA/CCMEP programs. Area 14 has made the determination that the Work Experience is a training situation. Area 14 CCMEP WIOA and TANF case manager will follow rules and regulations set in WIOAPL 15-13. This policy sets requirements for youth participation in the paid and unpaid work experience activities.

## II. Effective

Immediately

## III. Background

Under the Workforce Innovation and Opportunity Act, paid and unpaid work experience is an allowable activity and one of the fourteen (14) youth program elements and should be offered throughout the program year. The goal of Work Experience is to provide youth with an opportunity to explore careers and develop skills. All work experienced should expose youth to realistic working conditions and tasks as much as possible.

## IV. Definitions

Incentive: remuneration to participants for successful participation and achievement of expected outcomes as defined in the individual opportunity plan (IOP).

Internship: a system of gaining on-the-job experience by placement in a work environment for a period of time with the goal to build technical and job awareness skills. Internships may be paid or unpaid.

Job shadowing: a short-term unpaid activity which introduces a participant to the workplace and provides exposure to occupational areas of interest to increase career awareness. Job shadowing is limited and allows youth to observe only.

On-the-job training (OJT): training by an employer that is provided to a paid participant while engaged in productive work in a job that:

- Provides knowledge or skills essential to the full and adequate performance of the job;
- Is made available through a program that provides reimbursement to the employer of a percentage of the wage rate of the participant; and
- Is limited in duration as appropriate to the occupation for which the participant is being trained, taking into account the content of the training, prior work experience of the participant, and the service strategy for the participant.

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Pre-apprenticeship programs: programs or set of strategies designed to prepare individuals to enter and succeed in Registered Apprenticeship programs and have a documented partnership with at least one, if not more, Registered Apprenticeship programs.

Stipend: a fixed and regular small payment such as an allowance.

Summer employment opportunities: an activity conducted mainly during the summer months which involves work experience as the primary strategy and must provide direct linkages to academic and occupational learning.

Work experience: a planned, structured learning activity that takes place in a workplace setting for a limited period of time.

## V. Requirements

Paid and unpaid work experience must include academic and occupational education. The types of work experiences include the following categories:

- Internship and job shadowing;
- Summer employment opportunities;
- On-the-Job training; and
- Pre-apprenticeship programs.

Work experience may be conducted in the private-for profit, private non-profit and public sectors. Although a business, public agency or non-profit (hereafter collectively referred to as "work experience provider") may also receive some benefit from work experience in the form of work being done or recruiting a potential new employee, the primary goal of work experience is to benefit the participant.

Per section 129 (c)(4) of the WIOA, not less than 20% of the youth program funds shall be used to provide youth participants with paid and unpaid work experiences.

### A. **Appropriate Employer**

Area 14 program operators will seek employers that are committed to helping participants receive the experience and training that is required for employment beyond the work experience period. Employers should be willing to work closely with program staff and be flexible in working with youth who have barriers to employment.

Work experience, including internships, in the private for-profit sector must be structured so as not to appear to be subsidizing private for-profit operations. The work of the participant should not materially impact the profit margin of a private-for-profit company.

Area 14 may encounter employers reluctant to assume responsibility for youth as employees. If an employer/employee relationship does exist, the youth provider may deem it advisable to be the employer of record and refer youth participants to host sites, so they may receive experience.

### B. **Determining "Trainee" versus "Employee"**

Work experience may be paid or unpaid. It is expected that work experience will be paid in most cases and the federal Fair Labor Standards Act (FLSA) will apply in any situation where an

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employer/employee relationship exists. WIOA participants are subject to the requirements of the FLSA to the extent that the activities performed in the work experience constitute employment.

A local area shall ensure that the youth provider makes a determination regarding whether work experience is a "training" situation or an "employment" situation. The local WDB should establish a process for making these determinations based on the definitions below:

## Trainee

Because the FLSA's definition of "employee" is broad, the excluded category of "trainee" is necessarily quite narrow. In general, the more a training program is centered around a classroom or academy as opposed to the work experience provider's actual operations, the more likely the activity is training. The more the training is providing the participants with skills that can be used in multiple employment settings, as opposed to skills particular to one work experience provider's operations, the more likely the participant is a trainee.

According to the Wage and Hour Division of the U.S. Department of Labor, Employment Standards Administration, if all of the following six (6) items exist, the work experience can be considered a "training" situation and an employment relationship does not exist under the FLSA:

1. The training, even though it includes actual operation of the facilities of the work experience provider is essentially a training experience similar to a vocational school;
2. The participant is primarily the beneficiary of the experience;
3. Regular employees are not displaced, and the experience is closely supervised/observed;
4. The work experience provider that hosts the experience derives no immediate or significant advantage (and may even be adversely impacted);
5. The participant is not guaranteed a job at the conclusion of the experience; and
6. There is mutual understanding between the participant and the host agency that the participant is not entitled to wages for this time because the activity is essentially a training experience.

As the participant is a "trainee" and an employment relationship does not exist under the FLSA, the FLSA's minimum wage and overtime provisions do not apply to the participant.

## Employee

On the other hand, if the youth participants are engaged in the primary operations of the work experience provider and are performing productive work (for example, filing, performing other clerical work, or assisting customers), then receiving some benefits in the form of a new skill or improved work habits is unlikely to make the participant a trainee, given the benefits received by the work experience provider.

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If the worksite uses the youth participants as substitutes for regular full time or part time employees, it is more likely that the participants are employees as opposed to trainees. Also, if the work experience provider would have needed to hire additional employees or require overtime had the participants not performed the work, then the participants are likely employees.

## Employer of Record

1. Employer - If the work experience provider is relying on the participant to perform real work, i.e., to be productive, then the situation should be recognized as an employer-employee relationship. In this situation, the site employer is the employer of record. Participants must receive no less than the applicable state or federal minimum wages, related benefits are required, and payroll taxes should be deducted. The employer of record will be responsible for paying all taxes and providing similar benefits as are available to other employees.
2. Youth Provider - The youth provider has the option of being the employer of record for the youth participant. The employer of record is responsible for paying the participant and negotiating with the host site the activities that will be performed by the participant. The work experience may occur at the youth service provider location or the participant may be referred to a host site to receive the work experience. The host site is the location where work experience tasks will occur.

## "Trainee" versus "Employee" when Job Shadowing

If the employer is providing job shadowing opportunities whereby the participant learns certain functions under the close and constant supervision of regular employees, but performs no or minimal work, this type of activity is more likely to be a bona fide training program. However, if the participant receives the same level of supervision as employees, this would suggest an employment, rather than training, relationship.

## **C. Child Labor Laws**

With assistance from youth contractor staff, participating employers must guarantee that:

1. The employer must comply with all applicable federal laws and with state child labor laws if the participant is less than 18 years of age. The Fair Labor Standards Act (FLSA); Ohio Revised Code (O.R.C.) Chapter 4109 Employment of Minors, and Chapter 3331 Age and Schooling Certificates; and Ohio Administrative Code (O.A.C.) Chapter 4101:9-2 Employment of Minors in Occupations Hazardous or Detrimental to Health and Well-Being, are primary legislation which governs the employment of minors at the federal and state levels
2. All applicable child labor laws are followed.
- 3.. The employer agrees to cooperate with monitoring efforts as required by WIOA legislation and adhere to all other applicable local, state and federal rules and regulations.
4. Ensure funds are not used to directly or indirectly assist, promote or deter union organizing.
5. Employers must agree to respond to workforce development system staff requests for wage and retention information of participants.
6. Employers are expected to provide a job description before the start of the work experience (Attachment 1) and complete an exit survey upon completion of the work experience (Attachment 2).

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Proof of age and parental consent must be given for both paid and unpaid work experience. Minors participating in a work experience while school is in session also require a work permit. Minors who are under 16 also must have an Age and Schooling Certificate (work permit).

## **D. Health and Safety Standards**

The local areas must apply the same health and safety standards otherwise applicable to working conditions of employees to working conditions of participants in programs and activities under Title I of the WIOA.

The state workers' compensation law may or may not apply to a participant in work experience depending on the work experience arrangements and employer's benefits. If the state workers' compensation law does not apply to a participant in work experience, the administrative entity must secure insurance coverage for injuries suffered by the participant in work experience.

## **E. Unpaid Work Experience**

Unpaid work experience is an activity exposing participants to the working environment, and an individual does not expect payment for tasks performed. An employer and employee relationship must not exist, which means that all six conditions listed in Section V.B. of this policy letter must be met. The use of unpaid work experience should be limited up to 4 weeks per participant year.

For unpaid work experience, WIOA funds may be used for incentives and/or a stipend for youth. Incentives and stipends encouraging successful completion are beneficial to youth.

The incentives or stipends are determined by the **Area 14 counties**. Stipends should be reasonable and allocable and issued through a uniform payment system. Such incentives or stipends are not considered income for WIOA eligibility purposes, are not required to meet minimum wage requirements, are not to be dispersed as payroll, and income tax is not to be withheld.

It is recommended that the youth program provider consult with other public assistance case managers where applicable to ensure that the receipt of incentives or stipends do not negatively impact the youth participant's receipt of public assistance.

### Incentives

**It is at each county's discretion if an incentive will be provided.** Unpaid work experience participants may receive remuneration in cash or non-cash incentives. The incentive should equate to an achievement, and should be tied to training and education, a work readiness skill attainment and/or an occupation skill attainment goal identified in the IOP.

Incentives for youth may include plaques, certificates, gift certificates, recognition ceremonies for participants, caps and gowns, class pictures, class rings, school supplies and/or calculators, or a check.

Area 14 and the counties agree that if an incentive is provided it will be:

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- Tied to the goals of the exit survey to be completed by the employer at the end of the work experience-the participant must meet 80% of the exit goals;
- Outlined in writing before the commencement of the program that may provide incentive payments;
- Aligned with the local program's organizational policies; and
- Accord with the requirements contained in 2 CFR 200.

## Stipends

Counties may provide a stipend for unpaid work experience based on the actual hours worked with the employer. Not to exceed the 4 weeks per participant year.

### **F. Paid Work Experience**

Paid work experience will be limited to 4 weeks per participant year and will be no less than minimum wage or not more than the wage given to equivalent employees.

The summer youth program would be the exception to this as that program limit will be set based on the State requirements.

### **G. Worksite/Job Site/Host Site Agreement**

The WDB must ensure that the youth provider has a written agreement to ensure compliance with the WIOA and applicable regulations. The agreement is a written document that details terms and conditions of paid and unpaid work experience and the expectations of the parties to the agreement. The written agreement is between the participant, the site employer or host site, and the youth provider.

The written agreement, which may be called a worksite agreement, job site agreement, or host site agreement must include at a minimum: the duration, remuneration, tasks, duties, supervision, health and safety standards and other conditions of work experience such as consequences of not adhering to the agreement and a termination clause. The worksite or host site entity, the participant and the youth provider should all be given a copy of the agreement. The agreement must be available for audit and monitoring purposes.

## **VI. Documentation to be Maintained**

Documentation of the work experience must be maintained in the participant's file. Documentation will be kept in the participant's file, which should include, at a minimum, the following items:

- The individual opportunity plan (IOP) indicating a need for work experience;
- Justification for incentive/stipend, and description of type of payment method and amount;
- A copy of the agreement between the participant, the worksite or host site and the local workforce investment board, including any attachments to the agreement, such as a training plan and job description;
- Time sheets, attendance sheets and performance records, as appropriate; and
- Documentation of receipt of incentives, stipends and supportive services received by the participant.

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- Exit survey completed by the employer.

To ensure effective and efficient record keeping practices, local procedures within each county should specify where certain documents will be placed in the file.

## **VII. Tracking Youth Work Experience**

The WIOA request that not less than 20% of funds allocated to the local area be used to provide in-school and out-of-school with paid and unpaid work experiences. In order to ensure that this requirement is met, Area 14 should track program funds spent on paid and unpaid work experiences and report such expenditures as part of the local WIOA youth financial reporting. Program expenditures on the work experience program element include wages as well as staffing costs for the development and management of work experiences. Local area administrative costs are not subject to the 20% minimum work experience expenditure requirement.

## **VIII. Monitoring**

Program Operators are required to maintain and report accurate program in OWCMS and financial information in CFIS. Pursuant to rule 5101:9-30-04 of the Ohio Administrative Code, information regarding WIOA participants and their activities and performance must be entered into Ohio Workforce Case Management System (OWCMS) accurately and within 30 days. OWCMS may be used to assist in the determination of eligibility. However, OWCMS cannot be used as verification of youth eligibility. WIOAPL No. 15-07, Source Documentation for WIOA Eligibility, lists the type of acceptable documentation to verify eligibility for programs.

The Area 14 Workforce Development Board will conduct oversight of the implementation of the WIOA youth programs to ensure that participants enrolled in the programs are eligible and that eligibility has been properly documented. Program Operators are required to make available to the board and/or contracted monitors all relevant participant files, documents and paperwork. Program files will be monitored yearly unless it is determined by the board there is a need for more frequent monitoring.

## **VIII. References**

Workforce Innovation and Opportunity Act, Pub. L. 113-128  
29 U.S.C. 3101 et seq  
2 CFR 200

Fair Labor Standards Act of 1938, 52 Stat. 1060, 29 U.S.C. 201 et seq.

USDOL, Training and Employment Guidance Letter No. 12-09, Joint Guidance for States Seeking to Implement Subsidized Work-Based Training Programs for Unemployed Workers, (January 29, 2012).

USDOL, U.S. Secretary's Commission on Achieving Necessary Skills, A SCANS Report for America 2000, (June 1991).

I.R.S. Revenue Ruling 75-246, 1975-1 C.B. 24, Scenarios distinguish between amounts paid in connection with training-excludable under general welfare exception-and amounts paid in connection with services.

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O.A.C. Ch. 4101:9-2 (2004).  
O.R.C. Ch. 3331 (2002).  
O.R.C. Ch. 4109