



ON-THE-JOB TRAINING

Workforce Investment Act Policies and Procedures
POLICY #W410 R1

Effective Date: August 2017

1. Background

On-the-Job Training (OJT) is an effective component in meeting the needs of both employers and individuals participating in Workforce Innovation and Opportunity Act (WIOA) Title 1 programs. It is an effective tool in placing participants into long-term employment with opportunities for wage progression in public, private, and private non-profit sectors.

Participants who successfully complete the OJT period are subsequently retained by the OJT employer. OJT opportunities should be used for occupations in higher skills categories; and are not subsidized employment of low-skill occupations, which require very little training time.

2. Definitions

- **Employer-employee relationship:** A relationship determined by various factors establishing an individual as an employee of a business, rather than an independent contractor, as provided through the Fair Labor Standards Act (FLSA). The factors considered can vary, but in general an individual is considered an employee when:
 - The extent of the work performed is an integral part of the business;
 - There is an open-ended working relationship with the business; and
 - The business controls who sets pay amounts, work hours, how work is performed, and whether the worker is free to work for others and hire helpers.

Refer to the FLSA for additional factors and information regarding an employer-employee relationship.

- **On-the-Job Training (OJT):** training by an employer or registered apprenticeship program sponsor 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;
 - Provides reimbursement to the employer of up to 50% of the wage rate of the participant for the extraordinary costs of providing the training and additional supervision related to the training; 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, the prior work experience of the participant, and the service strategy of the participant as appropriate.
- **Service provider:** A provider of workforce development services in Spokane County such as local one-stop partners or any other entity designated by the Spokane Area Workforce Development Council (SAWDC) to determine eligibility, maintain documentation, provide career planning, and establish and maintain OJT contracts with employers.
- **WorkSource System Tools (WST):** A management information system that workforce development organizations in Washington State use to collect data and manage themselves efficiently and effectively.

3. Policy

OJT is provided under a contract with an employer or registered apprenticeship program sponsor in the public, private non-profit, or private sector. Through the OJT contract, occupational training is provided for a WIOA participant in exchange for a reimbursement of up to 50% of the wage rate of the participant. This reimbursement is for the extraordinary costs of providing the training and the supervision related to the training.

The SAWDC's goal is to match participants and OJT employers according to growth potential, abilities needed to succeed, experience required and quality of training and supervision to lead to long term, unsubsidized employment. In the selection of jobs for which training will be offered, service providers must consider those which offer opportunities not otherwise available, lead to economic self-sufficiency and provide upward mobility.

The exception to this policy is the occasion where WIOA funds are used for workforce development activities in support of economic development which may be in statewide discretionary grant or National Dislocated Worker Grant (NDWG) projects. On-the-Job training activities for these projects will be defined within the terms of the contract.

Service providers have the responsibility of assuring employer compliance with the terms and conditions of the OJT contract. Progress must be monitored to reach the desired outcome. The following are detailed guidelines pertaining to OJT development, eligibility, contract requirements, and internal operating procedures.

a. **OJT Development** – The following general steps are necessary in fulfillment of the On-the-Job Training program:

- i. **Employer / Registered Apprenticeship Program Eligibility** – In considering an employer or registered apprenticeship program for an OJT contract, the service provider should be able to demonstrate that:
 1. Presently employed workers are not adversely affected;
 2. OJT does not represent a disproportionate share of the employer's or apprenticeship program's workforce;
 3. The employer or apprenticeship program has the necessary equipment, materials, and supervision to perform the training;
 4. The employer or apprenticeship program has, or forecasts, sufficient work to provide long term, regular employment for the participant;
 5. OJT does not result in the replacement of any workers currently on layoff;
 6. The employer or apprenticeship program has not been seriously deficient in its conduct of or participation in any DOL program;
 7. OJT contracts are not entered into with employers who have relocated within the last 120 days, where relocation resulted in the loss of employment at the prior location; and
 8. The employer or apprenticeship program must be able to demonstrate budgetary ability to retain the employee after the OJT period.
 9. A decision to contract or re-contract with a specific employer or registered apprenticeship program is to be based on the employer's ability to meet the objectives of the program; the employer's success in training and retaining OJT employees will be considered in determining whether future OJT contracts will be awarded.
 10. The maximum number of OJT employees provided to an employer or registered apprenticeship program at any time will depend on the employer's or program's total workforce size; as a general guideline, OJT employees should not exceed 25 percent of a workforce (exceptions must be noted in OJT contract).
 11. Service providers must also enforce the OJT Nepotism guidelines. No person participating in the OJT program shall be hired by and/or supervised by a relative of that person. For the purpose of this policy, relative is defined to include: mother, father, son, daughter, grandfather, grandmother, grandson, granddaughter, sister, brother, uncle, aunt, niece, nephew, cousin, step-parent, step-child, foster parent, foster-child, parent-in-law, and sibling-in-law. An individual who hires and supervises is someone who exercises authority to hire for the position, provides day-to-day training or direction, or keeps time and attendance records. In addition, owners are included as in this definition since they have general authority to supervise, hire and dismiss. Individual owners of organizations, cooperatives and corporations with more than 20 owners shall not be considered an owner in regard to this policy directive.
 12. In addition, service providers must ensure that contracts are not approved with employers or apprenticeship programs who have a history of not retaining previous OJT participants or have experienced other problems, including:
 - a. **Pattern of Failure:** OJT contracts cannot be entered into with an employer or registered apprenticeship who has exhibited a pattern of failing to provide OJT participants with continued long-term employment as regular employees with wages and employment benefits (including health benefits) and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work. An employer's or apprenticeship's OJT history must be reviewed prior to establishment of an OJT contract to determine if a pattern of failure is present. Service providers are to keep a log on each employer and registered apprenticeship program detailing the number and outcome of all OJTs. The number of successful and failed OJTs over two years must be reviewed to determine a pattern. An employer or registered apprenticeship program is considered to have a pattern of failure if more than 50% of OJTs do not lead to continued long-term employment as described at the

beginning of this paragraph. An employer or registered apprenticeship program who exhibits a pattern of failure will be ineligible for WIOA OJT funding for not less than 12 months from the end date of the last OJT provided. Mitigating circumstances may be present and considered in failed OJTs. Participants who voluntarily leave or are terminated for cause will not be counted against the employer's or apprenticeship program's record. General budgetary circumstances, such as layoffs, would also be considered mitigating circumstances. Service providers should report employers and apprenticeship programs who exhibit a pattern of failure to the SAWDC and whether or not sufficient mitigating circumstances are present to waive the 12 month prohibition.

- b. Any employer or registered apprenticeship program known to be in violation of local, state or federal laws is not eligible to participate in OJT programs.
 - c. Any employer or registered apprenticeship program who has experienced serious problems in participating in OJT program previously will not be used.
- ii. **Occupational Eligibility** – OJT should be provided only for occupations in which there is a reasonable expectation of continued, regular employment. While training should be specific to the needs of the OJT employer, it should not be so unique that the skills are not transferable to other work settings. The following occupational eligibility criteria will be applied:
1. An OJT may not be contracted with a participant's previous or current employer in the same or similar occupation.
 2. Compensation for the occupation must be at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills. Such rates must be in accordance with applicable law, but may not be less than the state's minimum wage where the OJT takes place.
 3. The occupation must provide 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.
 4. Occupations that have not traditionally required specific occupational training are not eligible as training occupations. No occupation requiring less than 4 weeks (160 hours) of training shall be authorized unless justification can be provided.
 5. The following occupations are also not eligible for OJT contracts:
 - a. Those with above average turnover,
 - b. Seasonal or intermittent work,
 - c. Those where the primary income is tips, commissions or piecework,
 6. Training shall be considered only in those occupations in which there is a reasonable expectation of continued employment in the occupation for which training occurred.
 7. Occupations which are part-time may be eligible for OJT if the training is for the benefit and desire of the participant and provides adequate earnings.
 8. OJT contract can be written for minimum wage only after a detailed assessment and documentation of justification for the individual to be assigned.
- iii. **Participant Eligibility** – in considering a WIOA participant for an OJT, the service provider must ensure the following:
1. **Eligibility to Receive WIOA Title I Training Services** – An OJT may only be provided to an individual who is determined eligible for a WIOA adult program with established priority or a WIOA dislocated worker program, including OJTs funded with WIOA statewide discretionary grants and National Dislocated Worker Grants (NDWG's). Individuals must also be determined to be in need of training services through an assessment. Refer to SAWDC Policy W401 R3, Attachment A – Eligibility Policy Handbook, for more information on determining eligibility and need for training services.
 2. **Individual Employment Plan (IEP)** – an IEP documenting OJT as an appropriate activity has been completed.
 3. **Employed Workers Eligibility** – If a participant is employed at the time an OJT is developed, additional eligibility criteria must be considered. OJT contracts may be written for eligible, employed workers given the following considerations:

- a. The employee is not earning a self-sufficient wage, as determined by the Washington State Self-Sufficiency Calculator, or earning wages comparable to or higher than wages from previous employment;
 - b. The OJT relates to the introduction of new technologies, introduction to new production or service procedures, upgrading to new jobs that require additional skills, workplace literacy, or other appropriate purposes as identified by the service provider; and
 - c. The individual is not already employed in the OJT position defined in the contract.
- b. Pre-Contract Review** – Caution should be used when approaching an employer with whom WIOA-funded contractors have had no previous experience, has been in existence less than one year, or has had previous unsuccessful contracts. In order to contract with an employer, the WorkSource Specialist must evaluate the potential OJT employer as a recipient of federal funds who is able to meet program requirements and provide adequate training, supervision, and regular unsubsidized employment continuing after the OJT period.
- i. The pre-contract review must include:
 - 1. The names under which the employer or registered apprenticeship program does business, including predecessors and successors in interest;
 - 2. The name, title, and address of the company official certifying the information, and whether WIOA assistance is sought in connection with past or impending job losses at other facilities, including a review of whether WARN notices relating to the employer have been filed.
 - ii. In addition to the requirements above, the pre-contract review may include third party information checks such as:
 - 1. Consultations with labor organizations and others in Spokane County or surrounding counties (including Kootenai County of Idaho)
 - 2. Asking to see the employer's IRS tax number certificate or other official document containing the employer's ID number;
 - 3. Telephoning the State Department of Revenue to verify status, provide number, name of business, name of owner, business address, and registration with the State;
 - 4. Checking with City/County Department of Taxes and Licenses for valid business license;
 - 5. Checking yellow pages of telephone directory;
 - 6. Checking with other WorkSource Specialists; and
 - 7. Checking with Dunn & Bradstreet to verify financial position of company.
- c. OJT Contract Details**
- i. **Program Requirements:**
 - 1. The employer "hires" the participant as of the entry date into the OJT program.
 - 2. The participant is considered to be an employee of the employer according to the FLSA (see employer-employee relationship under section 2 – Definitions above)
 - 3. The participant is entitled to all the rights and benefits of all regular employees.
 - 4. The employer has made a commitment to provide continued employment after training.
 - 5. To the extent that a Washington or Idaho state worker's compensation law applies, workers' compensation must be provided to participants of the OJT program.
 - ii. **Reimbursement** – Compensation is for extraordinary costs of training a less-skilled and less-experienced, lower productive worker during the training period. OJT employers are not required to maintain separate records to document the extraordinary costs actually incurred, but must maintain adequate time, attendance, payroll and other records to support amounts reimbursed under this contract. OJT reimbursement is to be used according to the following guidelines:
 - 1. No overtime rates – reimbursement for overtime hours is prohibited;
 - 2. No raises, unless modification is completed;
 - 3. No pay for holidays, sick leave, vacation, etc. – reimbursement is prohibited for time not spent in training;
 - 4. No fringe benefits;
 - 5. Cannot exceed 50 percent of wage;
 - 6. Cannot be paid until a proper invoice certifying the hours of training, pay rate, etc. has been approved;

7. No funds provided to employers for OJT may be used to directly or indirectly assist, promote or deter union organizing; and
 8. No funds provided to employers for OJT may be used to directly or indirectly aid in the filling of a job opening which is vacant because the former occupant is on strike, or is being locked out in the course of a labor dispute, or the filing of which is otherwise an issue in a labor dispute involving a work stoppage.
- iii. **Length of OJT** – An OJT contract must be limited in duration as necessary to be trained in the specific occupation. The following procedure shall be followed in determining the allowable length for an OJT contract:
1. OJT shall be limited in duration to a period not in excess of that generally required for acquisition of skills needed for a particular occupation, but in no event shall exceed 6 months. Allowable training time may range between 4 and 26 weeks, or between 160 and 1040 hours, unless otherwise justified by the service provider.
 2. In determining the period generally required for acquisition of skills, consideration shall be given to:
 - a. Recognized reference materials,
 - b. Industry & employer practices,
 - c. The content of the training,
 - d. The participant's prior education and work experience, and
 - e. The participant's Individual Employment Plan (IEP).
 3. Due to the length of some registered apprenticeship programs, OJT funds may only be available for part of the registered apprenticeship training based on the duration limitation's above.
 4. Where training exceeds the duration defined within the OJT contract, the WorkSource Specialist must maintain documentation in the participant's file which supports the need for additional training.
- iv. **Required Forms**
1. OJT contract: A standard OJT contract to be used for all OJTs. The contract must contain the following minimum training-related and administrative provisions.
 - a. In describing the training, each OJT contract shall, at a minimum
 - i. Specify the occupation(s) for which training is to be provided,
 - ii. The duration of the training,
 - iii. The number of participants to be trained in each occupation,
 - iv. Wage rates to be paid,
 - v. The rate and amount of reimbursement, and
 - vi. A job description or training outline that reflects what the participant will learn.
 - b. For contract administrative purposes, the contract also must include:
 - i. A requirement that employers are to keep track of participant attendance and a description of the payroll records, time and attendance records, and job duties statements that the employer will be required to maintain;
 - ii. Specification of any costs to be reimbursed above the OJT training costs (i.e., classroom training costs) and the documentation the employer will be required to maintain on such costs;
 - iii. A termination clause for non-performance citing the types of and conditions surrounding termination of an OJT agreement; and
 - iv. Assurances for the employer and the service provider that they will comply with the Workforce Innovation and Opportunity Act and applicable regulations, which must include at a minimum:
 1. Each entity shall ensure its agents and employees and any members of its governing body adhere to all nepotism guidelines and avoid any actual, potential, or appearance of conflict of interest with involved parties;
 2. Each entity shall ensure none of its activities discriminate against, deny benefits to, deny employment to, or exclude from participation any persons on the grounds of race, color, national origin, sex, disability, or political affiliation or belief; and
 3. Each entity will ensure grievances and/or discrimination complaints are referred to the appropriate entity for resolution.

4. Each entity shall ensure applicable workplace health and safety standards established under Federal and State law are adhered to.
 - c. **Contract Modification:** When any of the terms of the contract change, the contract must be modified before the effective date of the change. The service provider should follow the same review and approval process as used for the original contract. Once approved, the modification form becomes part of the contract and must be kept with the original agreement.
 2. **Pre-Contract Review:** The contract must include the required information from the pre-contract review and any third party information checks utilized.
 3. **Invoice Forms:** Format is optional but must contain both the signature of the employer and the employee attesting to the accuracy of the hours worked and wages paid. Compensation by the employer shall be at the same rates, including periodic increases, as similarly situated employees or trainees and in accordance with applicable law, but in no event less than the established state minimum wage. Reimbursement should not exceed rates specified in the OJT agreement. Each reimbursement request must be backed up by time and attendance documentation at the worksite sufficient to satisfy requirements.
 4. **A Central OJT File or Log:** Should be maintained within the agency to record OJT activity and results for staff reference.
- v. **Monitoring & Reporting** – Service providers are responsible for monitoring every OJT site on a regular schedule. Monitoring must include on-site visitations including supervisor/participant interviews and a review of time and attendance documentation and other reimbursement-related documentation. For new, smaller OJT sites, this on-site visitation should be done at least monthly. For larger more stable employers and those used on a recurring basis, this review would be done periodically for each separate OJT contract written with the employer.

On-site visitation should be both announced and unannounced to review typical on-site activity. Monitoring must include:

1. A determination of whether the delivery of training is in accordance with the training outline/statement of work;
2. Comparison of time and attendance with invoices;
3. Comparison of contracted wage rate vs. wages paid;
4. Comparison of the start date of employment vs. start date of the training specified in the OJT contract;
5. Progress review to determine whether planned skills are being acquired as outlined in the training outline and schedule.

Monitoring contains both compliance and qualitative aspects to: determine the quality of the training and the progress of the trainee by visiting worksites and observing the actual work being accomplished; verify that the training specified in the contract is the same as that being accomplished; monitor and review pay records to ensure the prevention of unauthorized payment; investigate fully any complaints received from participants suggesting the possibility of fraud. As part of the regular internal monitoring effort, the director or designee should sample OJTs and review the file and where possible make site visits to ensure contract compliance. If during the monitoring an issue arises, the director has authority to remove participants from the site and suspend or terminate agreements, if needed.

Service providers are responsible for reporting participant and expenditure activity to SAWDC. WorkSource Specialists should require OJT employers to report on a schedule and in the detail required so that deadlines can be met. Time and attendance documentation need not be sent to SAWDC but must be maintained to document individual invoices and total payments to an employer. WorkSource Specialists must be aware of proper incident reporting procedures and utilize if the situation warrants. Record keeping requirements are covered in the OJT agreement.

- vi. **End of Contract** – Before the final reimbursement is issued to the employer, a final agency review of previous reimbursement and hours paid must be made to ensure that the proper amount is paid to the employer.

An end of contract evaluation of the site should be done evaluating the conduct of the contract and its results with a recommendation for further use of the site. This evaluation should become part of the central OJT log/file and, along with future assessment of continuing capability of the site to meet the objectives of WIOA and OJT. It should guide decisions about re-contracting with a previous OJT employer. Job retention is a prime factor in judging past performance.

- d. **Internal Operating Procedures** – Each service provider must have as part of its WIOA policies and procedures manual, available for SAWDC review, an internal procedure for developing, awarding and monitoring of OJT contracts. Some of the areas to be addressed are:
- i. How the OJTs are to be developed;
 - ii. Who is responsible for developing the OJT contract;
 - iii. Who is responsible for approving the contract;
 - iv. Who is responsible for monitoring the contract; and
 - v. What standards are used in evaluating potential OJT employers, i.e., size, length of time in business, type of business, percent of workforce to be OJTs, previous OJT participation, adequacy of personnel/ accounting system.

4. **References**

- WIOA Section 3(44), 129(c)(2)(C)(iv), 134(c)(3)
- Federal Register – 20 CFR 680.200(b); 680.320(a)(1); 680.700 – 680.750; 680.830 – 680.840
- Federal Register – 20 CFR 681.460; 681.600
- Federal Register – 20 CFR 683.260 – 683.285
- SAWDC Policy #W412
- Fair Labor Standards Act of 1938, as amended

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