



## **INCUMBENT WORKER TRAINING**

Workforce Innovation and Opportunity Act Policies and Procedures  
**POLICY #W414**

**Effective Date: July 2017**

### **1. Purpose**

This policy addresses eligibility criteria for incumbent workers and employers, requirements for incumbent worker training programs, and cost sharing requirements for incumbent worker training projects when utilizing Workforce Innovation and Opportunity Act (WIOA) Title I funding.

### **2. Background**

Incumbent worker training is designed to meet the workforce needs of an employer or group of employers by assisting workers who have an established work history with the business. Incumbent worker training is intended for workers who have experienced a change in the necessary skills required to remain in their position, who wish to advance in the company, or to avoid layoff.

### **3. 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.

- **Incumbent worker:** An individual who is employed with their employer for six months or more and meets the Fair Labor Standards Act requirements for an employer-employee relationship.
- **Incumbent worker training:** A training program that is designed to meet the special requirements of an employer or group of employers to train or retain a skilled workforce or avert layoffs. This training must be conducted with a commitment by the employer to retain or avert laying off the incumbent workers who are trained.
- **In-demand industry sector:** An industry sector that has a substantial current or potential impact, including through jobs that lead to economic self-sufficiency and opportunities for advancement, on the local economy and that contributes to the growth or stability of other supporting businesses, or the growth of other industry sectors. The determination of whether an industry sector is in-demand shall be made by the local workforce board using state and regional business and labor market projections and other labor market information. State and regional labor market information for Washington State is available at <https://esd.wa.gov/labormarketinfo/>.
- **In-demand occupation:** An occupation that currently has or is projected to have a number of positions, including positions that lead to economic self-sufficiency and opportunities for advancement, in an industry sector so as to have a significant impact on the local economy. The determination of whether an occupation is in-demand shall be made by the local board using state and regional business and labor market projections and other labor market information. State and regional labor market information for Washington State is available at <https://esd.wa.gov/labormarketinfo/>.
- **Individuals with barrier(s) to employment:** Individuals who are included in one or more of the following categories:
  - Displaced homemakers
  - Low-income individuals
  - Indians, Alaska Natives, and Native Hawaiians
  - Individuals with disabilities
  - Older individuals

- Ex-offenders
- Homeless individuals
- Youth who are in or have aged out of the foster care system
- Individuals who are English language learners, have low levels of literacy, and/or facing substantial cultural barriers
- Eligible migrant and seasonal farmworkers
- Individuals within two years of exhausting lifetime eligibility under TANF
- Single-parents, including single pregnant women
- Long-term unemployed individuals
- Any other group determined by State policy not listed above
- **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 refer to appropriate training vendors to deliver incumbent worker training services.
- **Training vendor:** An institution of higher education, career and technical education school, or other entity who provides training services allowable under State and Federal law.
- **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.

#### 4. Policy

Procuring incumbent worker training services funded partially or wholly by WIOA Title I funds must meet the criteria listed below. The SAWDC is responsible for ensuring that the criteria below is met except when a service provider is specifically designated for this task by the SAWDC.

- a. **Purpose** – The SAWDC or designated service provider will consider the following factors when developing an agreement for incumbent worker training. While these factors do not represent specific eligibility requirements, they are used collectively to determine if the training will reasonably allow workers to remain in their positions, to advance in the company, or to avoid layoff.
  - i. The extent to which the employer’s incumbent workers represent individuals with barriers to employment;
  - ii. How the incumbent workers will benefit from retention or advancement;
  - iii. The quality and outcome of the training, such as earning an industry-recognized credential or providing an advancement opportunity;
  - iv. The number of participants the employer plans to train or retrain; and
  - v. The wage and benefit levels of the incumbent workers before and after training.
- b. **Employer Eligibility** – The following factors are specific eligibility requirements the employer must meet to participate in incumbent worker training.
  - i. The employer must be:
    - 1. In an in-demand industry as defined by WIOA Section 3(23) and determined by Employment Security Department (ESD) labor market information; or
    - 2. In a balanced industry as determined by ESD labor market information; or
    - 3. In a not in-demand industry as determined by ESD labor market information, but there are compelling reasons justifying investment in incumbent worker training.
  - ii. The employer must not have laid off workers within 120 days of relocating to Washington State, if applicable;
  - iii. The employer must be current in unemployment insurance and workers’ compensation taxes, penalties, and/or interest or related payment plan; and
  - iv. The employer must commit to retain or avert laying off the incumbent workers that are to be trained.
- c. **Demand priority** - The occupation(s) for which incumbent worker training is being provided must be in demand as defined by WIOA Section 3(23) and as determined by workforce development area-specific labor market information produced by the Employment Security Department (ESD).
- d. **Procurement** – The SAWDC will utilize procurement rules for contracts with training vendors for the purposes of incumbent worker training, as defined in SAWDC Policy G101 – Purchasing and Procurement. This criterion cannot be designated to a service provider.

- e. **Employer Share of Training Costs** – Employers who wish to participate in incumbent worker training are required to pay a portion of the cost of the training being provided to their incumbent workers. The employer share is based on the total size of the employer. When incumbent worker training is being provided for a group of employers, each employer’s size and share of the training costs is determined separately.
  - i. Each employer’s share is determined as follows:
    1. At least 10 percent of the cost for employers with 50 or fewer employees.
    2. At least 25 percent of the cost for employers with 51 – 100 employees.
    3. At least 50 percent of the cost for employers with more than 100 employees.
  - ii. Wages paid to incumbent workers by their employer while in training can be included as part of their share and their share can be provided as cash or in-kind contribution that is fairly evaluated based on the rules for matching funds in the Uniform Guidance regulations at 2 CFR 200.306 and 2 CFR 2900.8.
- f. **Incumbent Worker Eligibility** – Unlike with other training services, incumbent workers do not have to meet the eligibility criteria for adults or dislocated workers to receive incumbent worker training. The following are eligibility criteria an employee must meet to be considered an incumbent worker and receive incumbent worker training services:
  - i. Currently employed with an established employment history with their employer of six months\* or more; and
  - ii. Meet the Fair Labor Standards Act requirements for an employer-employee relationship.

\* If incumbent worker training is being provided to a cohort of employees, not every employee in the cohort must have an established employment history with their employer for six months or more as long as a majority (at least 51%) of the employees being trained meet the employment history requirement.

## 5. Documentation and Data Entry Requirements

The SAWDC is responsible for ensuring that the data entry and documentation requirements below are met except when a service provider is specifically designated for this task by the SAWDC.

- a. **Incumbent worker training agreement** – Incumbent worker training requires an agreement between the SAWDC (or designated service provider) and the employer. Incumbent worker training funds may not be expended and incumbent worker training may not start until a completed agreement is in place and signed by all relevant parties. The training agreement must document the following information:
  - i. The date the agreement is entered into and names and signatures of authorized representatives from the SAWDC, each employer, and each service provider (when designated);
  - ii. Contact information for the SAWDC, each training provider, each employer, and each service provider (when designated);
  - iii. Information regarding the type of training, total training hours, start date, estimated completion date, and outcome;
  - iv. All incumbent worker eligibility requirements described above;
  - v. All employer considerations and eligibility requirements described above;
  - vi. Summary of costs associated with the training, including but not limited to: tuition, registration fees, books, and educational supplies;
  - vii. Summary of funding sources to be used to fund the training and each employer’s share of the training costs, including any fairly evaluated in-kind contributions;
  - viii. Assurances for the SAWDC, each employer, and each service provider (when designated), which must include at a minimum:
    1. Each entity shall ensure its agents and employees and any members of its governing body 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.
- b. **Assessment** – The SAWDC or designated service provider must determine a need for incumbent worker training services through an assessment with the employer (see Employer Considerations above):
  - i. This determination must be documented and stored physically or electronically in the employer’s file.

- ii. Accompanying labor market information demonstrating that the employer or group of employers represent in-demand industry sectors or occupations in the local area is required.

**c. WIOA registration** – The SAWDC or designated service provider must ensure:

- i. Basic WIOA registration in WST is completed for an individual to receive incumbent worker training services. Additionally, any relevant documentation must be collected and stored physically or electronically in the individual's file.
- ii. Basic WIOA registration in WST is completed for an employer to receive incumbent worker training services; any relevant documentation must be collected and stored physically or electronically in the employer's file.

**d. Additional Data Entry Requirements** – The SAWDC or designated service provider must ensure:

- i. The employer and the start date of the incumbent worker training is entered into WST. This is entered in place of the employer of dislocation and the date of dislocation.
- ii. Each incumbent worker is enrolled in the program representing the fund source of the training.
- iii. An incumbent worker training service is entered into WST to represent the training for each incumbent worker and the employer. For incumbent workers, this service will not begin or extend participation unless the seeker is also enrolled in a program subject to participation requirements. As a stand-alone service, incumbent worker training is exempt from participation and performance.
- iv. This service documents the start and estimated end date of the training as appropriate. When the training ends and a credential is obtained (if applicable), this is to be used as the end date of this service.
- v. Case notes are entered detailing the start of the training, progress during training, and the outcome of the training for each incumbent worker and each employer.

## **6. Action Required**

Service providers who are designated as responsible for carrying out portions of this policy, when defined in a contract with the SAWDC, must develop local policies and/or processes addressing the relevant regulations and responsibilities defined in said contract.

## **7. References**

- State ESD WIOA Policy 5607, Rev 3
- Federal Register - 20 CFR 680.200, 680.780, 680.790, 680.800, 680.810, and 680.820
- Federal Register – 29 CFR Part 38 et al
- Federal Register – 2 CFR 200 et al
- WIOA Sections 134(c)(3) and 134(d)(4)
- WIOA Sections 3(23) and 3(24)
- Fair Labor Standards Act of 1938, as amended
- American's with Disabilities Act of 1990

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