



## **ON-THE-JOB TRAINING POLICY**

Workforce Investment Act Policies and Procedures

### **POLICY #W410**

Effective Date: December 21, 2011

#### **BACKGROUND:**

On-the-Job Training (OJT) is an effective component in meeting the needs of both the employer and the participants in Workforce Investment Act (WIA) Title 1-B programs. It has been an effective tool in placing participants into long-term employment with opportunities for wage progression in public, private, and private non-profit sectors.

OJT is training by an employer, provided to a paid participant while engaged in productive work that provides knowledge or skills essential to the full and adequate performance of the job. 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.

On-the-Job Training is defined in the Workforce Investment Act section 101 (31). Further definition is provided in the Federal Register 20 CFR§663.700.

#### **POLICY:**

The Spokane Area Workforce Development Council's (SAWDC) 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, WIA 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 Workforce Investment Act (WIA) Funds are used for workforce development activities in support of economic development which may be in a Governor's discretionary projects. On the Job training activities for these agreements will define within the terms of the contract.

OJT is limited in duration as necessary to be trained in the specific occupation. The following factors should be considered when determining timeframes:

- employer practices,
- content of training,
- training requirements for the occupation,
- participant's prior work experience,
- the difference between the required skill level and the participant's current skill level, and
- the Individual Employment Plan (IEP).

The OJT program provides reimbursement to the employer of up to 50% of the wage rate for the participant for the extraordinary cost of providing training and the additional supervision related to training. OJT opportunities are part of a comprehensive array of activities and services that leads to employment with wage progression. Other services include outreach, recruitment, eligibility determination, counseling, placement, monitoring and

follow-up. OJT may be sequenced with or accompanied by other types of services such as occupational, pre-vocational and/or literacy training.

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

### OJT Development

The following general steps are necessary in fulfillment of the On-the-Job Training program:

- A. Determination of participant eligibility:
  1. Assessment to determine need for training, identify barriers, and determine what type of training the applicant would most likely benefit from. Assessments may include testing, and a review of past experience, work history, current skills, etc.
  2. Completion of Individual Employment Plan.
  
- B. Job Development – OJT negotiation:
  1. Determine employer eligibility and conduct pre-contract review;
  2. analyze job proposed for OJT;
  3. develop training outline and new skills to be acquired;
  4. determine the scope of the training to be covered under the agreement;
  5. agree on reimbursement rate; and
  6. specify other contract requirements.
  
- C. Justification for training – need / benefit analysis & documentation:
  1. training chosen is the appropriate to meet employment goals;
  2. training is necessary to obtain employment;
  3. participant does not already possess the skills; and
  4. job available could not be secured by the individual without training.
  
- D. Follow-up/monitoring

### Eligibility

#### **A. Participant Eligibility:**

Participant eligibility is based upon the progression of services from Core to Intensive to Training levels. OJT is defined as a training-level activity, but is an exception to Individual Training Account (ITA) policies. Participants must have been eligible for and received Core and Intensive services in order to be eligible for OJT opportunities. An Individual Employment Plan must be completed and includes a careful assessment of previous experience in jobs similar to or substantially equivalent to the proposed OJT job. Relevant barriers to employment must be verified and the standard training time reduced to reflect any related experience.

#### **B. Employed Workers Eligibility:**

OJT contracts may be written for eligible, employed workers given the following considerations:

1. The employee is not earning a self-sufficient wage as determined by policy;
2. According to the requirements in WIA regulations section 663.700:
  - a. The contract must be limited to the period of time required for a participant to become proficient in the occupation for which the training is provided; and
  - 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.
3. An OJT may not be contracted with a participant's previous or current employer in the same or similar job.
4. An individual referred to WIA by an employer may not be enrolled in an OJT program with that employer unless there is an objective assessment and IEP where it is documented as an appropriate activity and the employer has not already hired the individual for the OJT position.

### C. Employer Eligibility:

In considering employers for OJT contracts, the WIA 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 workforce;
3. the employer has the necessary equipment, materials, and supervision to perform the training;
2. the employer has, or forecasts, sufficient work to provide long term, regular employment for the participant;
3. OJT does not result in the replacement of any workers currently on layoff;
4. the employer has not been seriously deficient in its conduct of or participation in any DOL program;
5. 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 [Reference: 20 CFR 627.215]; and
6. the necessary Pre-Award Review paperwork is completed for companies having gone through workforce adjustments to verify company expansion and eliminate relocations causing employee layoffs [State Policy 3645].

The same standards that apply to the selection and eligibility of OJT employers in the private sector apply to public sector OJT employers. SAWDC policy establishes private sector employers as the primary sites to be targeted.

In addition, WIA providers should assure that contracts are not approved with employers who have a history of not retaining previous OJT participants or have experienced other problems, including:

1. Any employer known to be in violation of local, state or federal laws is not eligible to participate in OJT programs.
2. Any employer who has experienced serious problems in participating in OJT program previously will not be used.
3. Public and private non-profit agencies must be able to demonstrate budgetary ability to retain the employee after the OJT period.
4. A decision to contract or re-contract with a specific employer 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.
5. A pattern of failing by employers (20 CFR 663.700) is to be reviewed in light of the overall track record of the employer and the reason the employer did not retain the OJT participant. WIA providers are to keep a log on each employer 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. Mitigating circumstances may be present and considered in failed OJTs. Participants who voluntarily leave an employer or are terminated for cause will not be counted against the employer's record. General budgetary circumstances, such as layoffs, would also be considered mitigating. WIA providers should report employers who exhibit a "pattern of failure." Whether or not sufficient mitigating circumstances are present to waive the 12 month prohibition, WIA providers must apply the comprehensive criteria established for any OJT in determining whether repeat or continued OJT is appropriate with an employer.
6. The maximum number of OJT employees provided to an employer at any time will depend on the employer's total workforce size; as a general guideline, OJT employees should not exceed 25 percent of an employer's workforce (exceptions must be noted in contract/participant file).

WIA 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.

**D. 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. 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.
2. 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,
  - d. in companies who have relocated within 120 days where the relocation resulted in lost jobs at previous location, and
  - e. in companies who are in the midst of layoffs.
3. 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.
4. Occupations which are part-time may be eligible for OJT if the training is for the benefit and desire of the participant (re: older workers) and provides adequate earnings.
5. OJT contract can be written for minimum wage only after a detailed assessment and documentation of justification for the individual to be assigned.

**Pre-Contract Review:**

Caution should be used when approaching an employer with whom WIA-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. Third party information checks on a potential employer can be made by:

- A. asking to see the employer's IRS tax number certificate or other official document containing the employer's ID number;
- B. telephoning the State Department of Revenue to verify status, provide number, name of business, name of owner, business address, and registration with the State;
- C. checking with City/County Department of Taxes and Licenses for valid business license;
- D. checking yellow pages of telephone directory;
- E. checking with other WorkSource Specialists;
- F. checking with Dunn & Bradstreet to verify financial position of company; and
- G. completing formal Pre-Award Review (State Policy 3645) if circumstances warrant.

**OJT Contract Details:**

**A. 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, not a trainee.
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.

**B. 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. – no pay 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 or contracted training can be used to directly or indirectly assist, promote or deter union organizing (663.730).

**C. Length of OJT:**

The following procedure shall be followed in determining the allowable length for an OJT contract: OJT shall be limited in duration to a period not in excess of that generally required for acquisition of skills needed for the position within a particular occupation, but in no event shall exceed 6 months. In determining the period generally required for acquisition of skills, consideration shall be given to recognized reference materials, industry & employer practices, the content of the participant training, the participant's prior work experience and IEP. Allowable training time may range between 4 and 26 weeks, 160 and 1040 hours, unless otherwise justified by the WIA provider.

All OJT contracts must comply with the training provisions outlined above. Where training exceeds the normal range, the WorkSource Specialist must maintain documentation in the participant's file which supports the need for additional training.

**D. D. Required Forms:**

1. OJT Agreement: The standard OJT Agreement to be used for all OJTs. Employers will be held responsible with respect to WIA costs in accordance with the provisions of their OJT agreement. The contract must contain the following minimum training-related and administrative provisions.

In describing the training, each OJT agreement shall, at a minimum, specify the occupation(s) for which training is to be provided, the duration of the training, the number of participants to be trained in each occupations, wage rates to be paid, the rate of reimbursement, the maximum amount of reimbursement, a job description or training outline that reflects what the participant will learn, and any other separate classroom training that may be provided.

For contract administrative purposes, the contract also must include:

- a. 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;
  - b. 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;
  - c. The OJT Provisions and Assurances statement of SAWDC policy;
  - d. A termination clause for non-performance citing the types of and conditions surrounding termination of an OJT agreement; and
  - e. An assurance that the employer will comply with the Act and regulations.
2. Agreement Modification: When any of the terms of the agreement change, the agreement must be modified before the effective date of the change. The WIA provider should follow the same review and approval process as used for the original agreement. Once approved, the modification form becomes part of the agreement and must be kept with the original agreement.
  3. Pre-Award Review: See State Policy 3645.
  4. 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 federal 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.

5. A Central OJT File or Log: Should be maintained within the agency to record OJT activity and results for staff reference.

#### **E. Monitoring & Reporting:**

WIA 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 a(n):

1. determination of whether the delivery of training is in accordance with the training outline/statement of work;
2. assurance that the participant was certified eligible;
3. comparison of time and attendance with invoices;
4. comparison of contracted wage rate vs. wages paid;
5. comparison of the start date of employment vs. agreement start date;
6. progress review to determine whether planned skills are being acquired as outline 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.

WIA 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.

#### **F. End of Agreement:**

Before the final reimbursement is issued to the employer, a final agency review of previous reimbursement and hours paid must be made to assure that the proper amount is paid to the employer.

An end of agreement evaluation of the site should be done evaluating the conduct of the agreement 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 WIA and OJT. It should guide decisions about re-contracting with a previous OJT employer. Job retention is a prime factor in judging past performance.

### Internal Operating Procedures

Each WIA provider must have as part of its WIA 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:

- A. how the OJTs are to be developed;
- B. who is responsible for developing the OJT contract;
- C. who is responsible for approving the contract;
- D. who is responsible for monitoring the contract; and
- E. 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.

### **REFERENCE:**

- WIA Section 101(31), 134
- 20 CFR 663.700 - .730
- Spokane Area Workforce Development Council Policy #W412 – Individual Employment Plan & Individual Service Strategy
- Spokane Area Workforce Development Council Policy #W408 – Classroom Training: Individual Training Account & Pre-Vocational Training
- Spokane Area Workforce Development Council Sample On-the-Job Training (OJT) Agreement
- Training & Employment Guidance Letter 13-07 – Use of WIA funds for Workforce Development Activities in Support of Economic Development