



1. Background

On-the-job training (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 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. This policy discusses the requirements for providing OJT to participants and employers.

2. Definitions

- **Brokering agency:** an entity designated by the Spokane Workforce Council (SWC) to be responsible for authorizing OJT contracts and providing OJT reimbursements.
- **Career Planning:** The term “career planning” means the provision of a client-centered approach in the delivery of services, designed to:
 - Prepare and coordinate comprehensive employment plans (such as service strategies, individual employment plans, training plans, etc.) for individuals to ensure access to necessary workforce investment activities, using, where feasible, computer-based technologies; and
 - Provide job, education, and career counseling, as appropriate, during program participation and after job placement.
- **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.

- **Service provider:** a provider of workforce development services in Spokane County, such as the local one-stop center or other entity designated by the Spokane Workforce Council (SWC), that is responsible for providing services to WIOA title I adult, dislocated worker, and youth participants.
- **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

Providing on-the-job training services must comply with each of the criteria listed below:

- a. **Types of OJT training services** – On-the-job training described in [SWC Policy WS816 R3 – Attachment C – WorkSource Spokane Services Catalog](#) may be funded through contract for adult, dislocated worker, national dislocated worker grant, and statewide activity grant participants. On-the-job training described under program element #3 in [SWC Policy WS816 R3 – Attachment C – Spokane Next Generation Zone Services Catalog](#) may be funded through contract for in-school and out-of-school youth.
- b. **Eligibility to receive WIOA title I training services** – OJTs may only be provided to an individual who is determined eligible for training services as defined in [Section 1.3 – Training Services](#) or [Section 1.5 – Youth Services in SWC Policy WS816 R3 – Attachment A – Services and Program Eligibility Handbook](#).

- c. 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 employed workers given the following considerations:
- i. The employee is not earning a self-sufficient wage or wages comparable to or higher than wages from previous employment, as defined in [SWC Policy W406 R1 – Measure of Economic Self-Sufficiency](#); and;
 - ii. 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.
- d. Pre-contract review** – In order to contract with an employer for OJT, the service provider must review the potential OJT employer's eligibility. A pre-contract review must include:
- i. Verification that the employer has not relocated in the last 120 days resulting in a loss of employment at the prior location and assurance that the establishment is not seeking WIOA assistance 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. Verification that the employer has not previously exhibited a pattern of failing to complete OJTs or to provide OJT participants with continued long-term employment with 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.
 - iii. Verification that the employer is not debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.
 - iv. Verification that the employer does not have a history of, or is currently in violation of, local, state, or federal laws.
 - v. The names under which the establishment does business, including predecessors and successors in interest.
 - vi. The name, title, and address of the establishment official certifying any of the above information.
 - vii. Any of the requirements above that are not certified by an establishment official can be documented using 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 with other WorkSource staff.
 6. Checking with Dunn & Bradstreet to verify the financial position of the establishment.
 7. Checking [SAM.gov exclusion records](#) to verify that the employer is not debarred or suspended from receiving Federally funded contracts.
- e. OJT requirements** – the following requirements apply to on-the-job training activities:
- i. The individual to be employed under the OJT contract must be hired as an employee of the business as defined under the FLSA (see definitions above).
 - ii. An OJT must be limited to the period of time required for an individual to become proficient in the occupation for which the training is being provided. In determining the appropriate length of the contract, consideration should be given to the skill requirements of the occupation, the academic and occupational skill level of the individual, prior work experience, and, if applicable, the individual employment plan.
 - iii. Individuals in an OJT must be compensated 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.
 - iv. Individuals in an OJT must be provided with 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.

- v. Health and safety standards established under Federal and State law otherwise applicable to working conditions of employees are equally applicable to working conditions of participants engaged in OJT.
- vi. To the extent that a state workers' compensation law applies, workers' compensation must be provided to individuals participating in OJT activities.
- vii. An OJT may not include activities that include foreign travel.
- viii. An OJT may not employ participants to carry out the construction, operation, or maintenance of any part of any facility used for sectarian instruction or as a place for religious worship with the exception of maintenance of facilities that are not primarily used for instruction or worship and are operated by organizations providing services to WIOA participants.
- ix. An OJT is not allowed where any individual is on layoff from the same or any substantially equivalent job.
- x. An OJT is not allowed where the employer has terminated the employment of any regular, unsubsidized employee or otherwise caused an involuntary reduction in its workforce with the intention of filling the vacancy so created with the WIOA participant.
- xi. An OJT is not allowed when a job is created in a promotional line that infringes in any way on the promotional opportunities of currently employed workers as of the date of the participation.
- xii. An OJT must not impair existing contracts for services or collective bargaining agreements. When an OJT would be inconsistent with a collective bargaining agreement, the appropriate labor organization and employer must provide written concurrence before the OJT begins.
- xiii. An OJT may not be used to directly or indirectly assist, promote, or deter union organizing.
- xiv. An OJT may not be used to directly or indirectly aid in the filling of a job opening which is vacant because the former occupant is on strike, 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.

f. Contract modifications – There are times when it is necessary to modify an OJT under certain circumstances. There are no limits to when an OJT may be modified or how often. An OJT should be modified when the original scope of the training, such as hours, job requirements, or wage has changed. An OJT should not be modified if the individual's employment goal changes or if a different employer is needed. These situations may impact the requirements of the OJT, so a new OJT should be written.

g. OJT authorization – After an OJT is developed with an approved employer and eligibility to receive the OJT has been determined, authorization and obligation of the OJT contract is to be completed. OJT authorization is provided as follows:

- i. The SWC has chosen to contract all OJTs and reimbursement payments through a brokering agency as identified through a competitive WIOA services RFP process and subsequently by subrecipient agreement. This brokering agency is responsible for authorizing and obligating all OJT contracts. The brokering agency may not deny an OJT contract to an individual who has been determined eligible for an OJT by an authorized service provider unless funding is limited.
- ii. An OJT may not begin until authorized by the brokering agency.
- iii. Payments by this agency for OJTs may be made in a variety of ways, including electronic funds transfer, vouchers, or other appropriate methods.
- iv. Reimbursement cannot be paid until a proper invoice certifying the eligible hours of training and pay rate has been approved.

h. Satisfactory progress – Individuals must demonstrate satisfactory progress to continue to receive training in an OJT. The minimum amount of time an individual needs to participate to demonstrate satisfactory progress is two weeks and should be repeated based on the length of the OJT and the circumstances of the individual. If an individual does not demonstrate satisfactory progress as determined by the service provider, the OJT must be terminated, and the employer reimbursed for the hours of training provided prior to termination. For WIOA adult and dislocated worker funded OJTs, the first measurable skills gain earned must be entered during the course of the OJT. Subsequent gains do not need to be entered. WIOA youth-funded OJTs are not subject to measurable skills gains.

i. Reimbursement – An employer participating in an OJT is to be reimbursed up to 50 percent of the wage rate of the participant for the extraordinary costs of providing the training and additional supervision related to the training. OJT reimbursement is to be provided according to the following guidelines:

- i. Overtime rates cannot be included in the reimbursement.
- ii. Commission payments and tips cannot be included in the reimbursement.
- iii. Raises may not be included in the wage rate unless a contract modification is completed.

- iv. Reimbursement for sick leave, vacation, or any other form of paid time off is prohibited.
 - v. Fringe benefits may not be included in reimbursement.
 - vi. Reimbursement cannot exceed 50 percent of wage.
 - vii. Costs associated with activities that are not considered work-based learning, such as classroom training costs, cannot be reimbursed. These costs require a separate training contract or an individual training account (ITA).
- j. **Post-contract review:** Once an OJT is completed, a post-contract review must be conducted to ensure continued eligibility for the employer to receive future OJTs. This review must document compliance or non-compliance with each of the requirements described above in section e – OJT requirements.

4. Documentation and Data Entry Requirements

- a. **Full WIOA registration** – Full WIOA eligibility determination and registration is required to receive any WIOA-funded training service. If an individual is determined eligible for one or more title I programs, all relevant registration elements must be collected and entered into WST. Additionally, a training services assessment and any other relevant documentation must be collected and stored physically or electronically in the individual's file. Refer to [SWC Policy WS816 R3 – Attachment A – Program and Services Eligibility Policy Handbook](#), for more information on documenting eligibility and the need for training services.
- b. **Career planning** – Documentation of career planning (see definitions above) linked to the OJT must be present in the individual's physical or electronic file.
- c. **Pre-contract and post-contract reviews** – All pre- and post-contract reviews must be maintained in a central location accessible to staff doing career planning to document initial and future employer eligibility.
- d. **OJT contract** – A contract satisfying the documentation requirements of the OJT must contain the following and be stored physically or electronically in the individual's file:
 - i. The employer's contact information.
 - ii. Job title.
 - iii. Wage rate and working hours.
 - iv. A copy of the job description.
 - v. The amount obligated for the OJT using title I funding. If funding comes from more than one title I program, such as WIOA adult and WIOA dislocated worker, each program and the funding provided should be identified separately.
 - vi. The start date and estimated duration of the OJT.
 - vii. A termination clause for non-performance citing the types of and conditions surrounding termination of an OJT agreement.
 - viii. Assurances, including:
 - 1. A requirement that employers are to keep track of participant attendance and a description of the payroll records, and time and attendance records.
 - 2. An agreement that the employer will provide continued employment after training of no less than 6 months.
 - 3. A requirement that 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, political affiliation or belief, or for participation in programs and activities or receiving funds under title I of WIOA.
 - 4. A requirement that each entity shall ensure applicable workplace health and safety standards established under Federal and State law are adhered to.
 - 5. A requirement that each entity will ensure participants, regular employees, and other interested parties are provided information about filing a grievance and/or discrimination complaint and that any grievances or complaints are referred to the appropriate entity for resolution.

Note: Each entity must make reasonable efforts to assure that grievance and/or discrimination complaint procedures will be understood by affected participants and other individuals, including youth and those who are limited-English speaking individuals.
- e. **OJT progress and completion** – information showing the progress of the OJT and the outcome of the training once completed must be documented physically or electronically in the individual's file. Documentation of progress and completion must include:

- i. Documentation demonstrating satisfactory progress, including:
 1. Virtual or on-site visitations with the participant and/or supervisor that includes a review of attendance and training progress.
 2. **Adult & dislocated worker funded OJTs only:** measurable skills gain earned, if applicable.
 - ii. Any OJT modifications, if applicable.
 - iii. Once the OJT has completed, documentation for the end date of the OJT, the outcome, and reimbursement. To ensure proper reimbursement, documentation must demonstrate compliance with the reimbursement requirements through a review of hours worked and wages paid.
- f. Service requirements** – information regarding the OJT must be entered into WST as follows:
- i. An appropriate qualifying service must be entered into WST to represent the OJT. OJT services are described in [SWC Policy WS816 R3 – Attachment C](#). If funding is being provided by more than one title I funding source, a service must be entered for each funding source as appropriate.
 - ii. This service (or services) must document the start date, end date, and outcome of the OJT as appropriate in WST.
 - iii. Case notes must be entered detailing the start of the OJT, progress during the OJT at least once every two weeks, and the outcome of the training.

5. Action Required

Agencies responsible for managing OJT services, either as a brokering agency, a service provider, or both, are defined by subrecipient agreement with the SWC. Minimum requirements for these agencies are below:

- a. Brokering Agencies** – brokering agencies, as identified by subrecipient agreement, are required to:
 - i. Maintain policies and procedures for the authorization and obligation of OJT contracts and reimbursements;
 - ii. Develop a method or methods with which OJT reimbursements will be made, such as through electronic funds transfer or a voucher system; and
 - iii. Coordinate OJT modifications and de-obligations with service providers.
- b. Service Providers** – service providers who determine eligibility for training services and OJTs, and refer to a brokering agency, as identified by subrecipient agreement, are required to:
 - i. Maintain policies and procedures for determining training services eligibility and how the eligibility and requirements for OJTs will be documented;
 - ii. Develop guidelines for staff doing career planning to monitor progress in a training program. At a minimum, progress must be documented every two weeks to ensure satisfactory progression (defined above) or if necessary, to de-obligate an OJT award if the individual has left training prior to completion;
 - iii. Coordinate OJT modifications and de-obligations with brokering agencies; and
 - iv. Track all OJT expenditures in each individual’s physical or electronic file.

6. References

- [SWC Policy WS816, R3 – Eligibility Policy & Handbook](#)
- [SWC Policy W406, R1 – Measure of Economic Self-Sufficiency](#)
- [Federal Register – 2 CFR 200 Subpart A](#)
- [Federal Register – 2 CFR 200.214](#)
- [Federal Register – 20 CFR 680 Subpart B & F](#)
- [Federal Register – 20 CFR 681.460\(a\)\(3\)\(iv\)](#)
- [Federal Register – 20 CFR 683.260 – 683.285](#)
- [Federal Register – 20 CFR 663.700](#)
- [Federal Register – 20 CFR 667.270\(b\)](#)
- [US DOL Wage and Hour Division Fact Sheet #13](#)
- [Fair Labor Standards Act of 1938, as amended](#)

7. Supersedes

- SWC Policy W410 R1

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