



DYLAN WRIGHT
DIRECTOR
OC COMMUNITY RESOURCES

CYMANTHA ATKINSON
ASSISTANT DIRECTOR
OC COMMUNITY RESOURCES

JOANNE VEEDOR
DIRECTOR
ADMINISTRATIVE SERVICES

MONICA SCHMIDT
INTERIM DIRECTOR
OC ANIMAL CARE

JULIA BIDWELL
DIRECTOR
OC HOUSING & COMMUNITY
DEVELOPMENT

RENEE RAMIREZ
DIRECTOR
OC COMMUNITY SERVICES

PAMELA PASSOW
DIRECTOR
OC PARKS

JULIE QUILLMAN
COUNTY LIBRARIAN
OC PUBLIC LIBRARIES

OC Community Resources

Date: November 14, 2023

To: All WIOA Subrecipients of the Orange County
Development Board

From: Nancy Cook
Director of Workforce Development 

Subject: Work Experience Policy
Information Notice No. 23-OCWDB-04
Supersedes Information No. 23-OCWDB-02, 17-OCDB-21,
20-OCWDB-10, 20-OCWDB-13

PURPOSE

This policy provides guidance on paid and unpaid Work Experience (WEX) for the Adult, Dislocated Worker and Youth programs under Title I of the Workforce Innovation and Opportunity Act (WIOA) and specialized programs.

EFFECTIVE DATE

This policy is effective on the date of issuance.

REFERENCES

- WIOA, Pub. L. 113-128, Sections 129, 134, 181 and 188
- 20 CFR 200 Parts 603, 681.590, 681.600 and 681.610
- Fair Labor Standards Act of 1938, 52 Stat. 1060, 29 U.S.C. 201 et seq.
- CA Education Code (EDC) 49100 - 49200
- CA Labor Code 1286 (c), 1294.1(b), 1299, 1391- 1392
- USDOL, Training and Employment Guidance Letter (TEGL) No. 12-09, Joint Guidance for States Seeking to Implement Subsidized Work-Based Training Programs for Unemployed Workers (January 29, 2010)
- DOL TEGL No. 23-14, WIOA Youth Program Transition (March 26, 2015)
- 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



1300 SOUTH GRAND
BLDG. B, FIRST FLOOR
SANTA ANA, CA 92705
PHONE: 714.480.6500
FAX: 714.567-7132

BACKGROUND

A Work Experience (WEX) is a planned, structured, contractual learning experience in a workplace for a limited period of time. A Work Experience is a career service that provides participants with opportunities for career exploration and skill development, must include academic and occupational education concurrently or sequentially, and is linked to a potential career choice.

Definitions

Incentive - Remuneration to participants for successful participation and achievement of expected outcomes as defined in the Individual Education/Employment Plan (IEP).

Individual Employment Plan (IEP) - An individualized career service that is developed jointly by the participant and career planner. The plan is an ongoing strategy to identify employment goals, achievement objectives, and an appropriate combination of services for the participant to achieve the employment goals.

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.

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:

1. Provides knowledge or skills essential to the full and adequate performance of the job;
2. Is made available through a program that provides reimbursement to the employer of a percentage of the wage rate of the participant; and
3. 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.

Transitional Jobs – Transitional jobs are a type of paid work-experience that are time-limited and are designed to enable an individual to establish a work history, demonstrate work success in an employee-employer relationship, and develop the skills that lead to unsubsidized employment. These jobs can be in the public, private, or nonprofit sectors.

Policy and Procedures

A Work Experience must be related to the participant's long-term employment goal. The assessment process and development of the Individual Employment Plan (IEP) helps to identify appropriate worksites for each participant. Work experience should help the participant gain the competencies and experience needed to meet local employer demands. In determining an appropriate length of time, consideration should be given to the skill requirement of the position, the academic and occupational skills level of the participant, prior work experience, and the participant's IEP. The assessment process may identify concerns or issues that should be addressed prior to, or concurrently with a Work Experience. Service Provider Case Managers must make appropriate referrals if such issues are identified.

Work Experience is designed to promote the development of good work habits and basic work skills for individuals who have never worked, have very limited occupational exposure or have been out of the labor force for an extended period of time. Work Experiences should enable

adults, dislocated workers, and youth to gain exposure to the working world and its requirements.

Work Experience is paid or unpaid and may include, but is not limited to, internship and job shadowing. It may be in the private for-profit sector, the non-profit sector or the public sector. It is not designed to replace an existing employee or position. Work Experience wages are paid directly to the Work Experience participant and not the Work Experience employer. Employers are not monetarily compensated. 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.

Participant Eligibility

All Work Experience participants must meet WIOA program eligibility requirements, be enrolled into the respective WIOA program, and have received an assessment resulting in the development of an IEP that documents the participant's need and benefit of having Work Experience. A Work Experience is not intended for long-term skill building within the occupation, but rather as an entry step for the participant to explore the occupation, develop their skills, gain work history and references. A likely candidate for work experience is a participant who is appropriate for long term employment in a particular industry or occupation but does not have all of the skills or the experience to qualify for entry-level employment in the field. The education component must be documented on the Training Plan, Individual Employment Plan (IEP) and in CalJOBS for those programs that utilize it.

Non-WIOA Funded participants must adhere to the participant eligibility standards as identified by the funding source.

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 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.

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.

If 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.

If the participant is engaged in the primary operations of the work experience provider and is performing productive work (for example, filing, performing other clerical work, or assisting customers), then the participant is receiving some benefits in the form of a new skill or improved work habits and is unlikely a trainee. If the worksite uses the participant as a substitute 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.

Unpaid Work Experience

Unpaid work experience activity exposes 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 the Determining "Trainee" versus "Employee" section of this policy letter must be met. The use of unpaid work experience should be limited.

Unpaid work experience may include job shadowing. A participant experiences the work environment to increase career awareness, observe models of behavior on the job through examples, and receives help in making career decisions. Job shadowing can reinforce the link between classroom learning and work requirements. Job shadowing is limited and allows participants to observe only.

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 relationship.

General Work Experience Requirements

1. Worksites

- OC Workforce Development Board's (OCWDB) Business Solutions are to select worksites based on Orange County's in-demand industry sectors;
- OCWDB Business Solutions shall develop and maintain a pool of worksites that provide a wide range of training opportunities to the participants and enhance their skills development;
- The list of worksites shall include the following information:
 - Name and address of employer/worksite
 - Name, position title, email address and phone number of supervisor
 - Status: Active, In Progress, or Inactive
 - For active worksites: name of participants placed, cumulative number of actual hours completed, actual start date and anticipated/actual end date
- Worksites must follow all labor standards in any Work Experience with an employee/employer relationship, as defined by the Fair Labor Standards Act or applicable State law;
- OCWDB Business Solutions will identify and evaluate worksites to determine the appropriateness of utilizing the employer for work experiences. The evaluation components should include provisions of the worksite agreement such as safety, labor law requirements, status of layoffs, etc. In addition, it should evaluate age appropriateness and level of exposure to work readiness and job skills, type of supervision available, as well as review the previous work experience placements at the same location.

Potential worksite employers should also demonstrate a commitment to helping participants receive the experience and training needed to meet their goals. As part of participation, these employers should be willing to work closely with OCWDB Business Solutions, especially since participants have barriers to employment. Proper worksite supervision should be one of the factors that are reviewed prior to placement of the participant in the activity.

Individuals who have been hired by a worksite and subsequently referred to OCWDB Business Solutions are not to be considered for the Work Experience activity. The worksite should commit to the individual training with the belief that the individual is fully capable of performing the tasks required with little or no assistance.

A Work Experience agreement must not be executed with an employer who has received payments under previous work-based services and the employer has exhibited a pattern of failing to provide a positive Work Experience. This includes those employers for On-the-Job Trainings (OJT) where a participant was not provided continued long-term employment, wages, benefits, and working conditions that are not equal to those provided to similarly situated employees.

2. Worksite Agreement & Work-Based Training Plan

- A worksite agreement shall be fully executed between worksite, Service Provider, Site Manager, OCWDB staff, Employer of Record representative and participant before a participant is allowed to start.
- A worksite agreement template (Attachment I) provided by the OCWDB shall be used.
- A copy of the signed Worksite Agreement (Attachment I), Work-Based Training Plan (Attachment II) and timesheets (See Attachment III: Model Timesheet) will be kept in the participant file (hard copy and electronically).
- At minimum, the work site agreement shall provide the following:
 - Names and contact information of all parties
 - Names and titles of all employer staff authorized to sign the participant's timesheet
 - Responsibilities and expectations of the participant, the Worksite/Employer and Provider staff
 - The job title, wage, detailed list of specific skills to be learned, timeline and benchmarks to be achieved, weekly schedule, and number of hours to be completed with the participant as outlined in the Work-Based Training Plan (See Attachment II).
 - Worksite will regularly submit timesheet of participants
 - Worksite will provide regular written evaluation of participants
 - Worksite will provide a written job description and responsibilities to participant
 - Identification of the legal requirements that must be met, including worksite safety requirements
 - Statement informing the worksite that they may be subject to worksite monitoring by both the local and State representatives, as well as regular visitations by OCWDB Business Solutions
 - Provision of termination of the agreement/contract for non-performance or failure to meet the requirements of the agreement/contract
 - Non-discrimination and equal opportunity clauses
 - Statement that the activity will not displace employees

- Statement that participants must not be engaged in sectarian activities
- Other information, relative to the specific activities
- Signatures and dates from the worksite, Service Provider, Site Manager, OCWDB staff, Employer of Record representative, and participant

3. Wages and Hour Limits

(These requirements apply to all programs except for the Youth Program and special grant programs as described in the sections below.)

- Worksite placement is limited to a timeframe of three weeks to twelve weeks. The exact duration will be based on appropriation for the participant's employment goals, background and skill level as reflected in the IEP.
- OCWDB Business Solutions shall allow for at least fifteen hours a week of work, but no more than 30 hours and not to exceed 120 hours per month. More than 120 hours in a month will require approval from the Orange County Director of Workforce Development.
- Pay an hourly rate of \$17 an hour or at the same rates as similarly situated employees or trainees, subject to the Fair Labor Standards Act
- The maximum allotment for a participant's wage is \$6,800. If it is determined necessary for a participant to receive hours or wages exceeding the maximum allotment, the OCWDB Business Solutions must request advance approval from the Orange County Director of Workforce Development.
- Service Providers may only use up to 10 percent of adult and dislocated worker formula funds for Work Experience and Transitional Jobs.
- Availability of additional funding may also be cause for changes and/or exemptions to this policy.
- Rate of pay for special programs may vary depending on contract terms and conditions

4. Worksite Monitoring

- OCWDB Business Solutions will conduct worksite monitoring with each active worksite at least twice per program year and complete WEX Desk Procedure Attachment III: Worksite Monitoring Form. Active worksites shall be monitored by OCWDB staff and the OCWDB Business Solutions to ensure compliance with the Worksite Agreement & Training Plan.
- OCWDB Business Solutions will conduct an annual on-site visit to complete the Initial Worksite Evaluation Form to ensure they remain in compliance
- Results of the monitoring review shall be documented, filed and made available to the OCWDB, state, or federal staff upon request.
- Any worksite that demonstrates a pattern of non-compliance shall not continue as a worksite.
- Where a waiver of any OCWDB policy provisions is needed, a formal waiver request must be approved by the Orange County Director of Workforce Development before any Worksite Agreement is executed.

5. Timesheets

- Participants in a work experience will be hired and compensated by the County of Orange Contracted Employer of Record and/or by Third-Party Employer of Record.
- County of Orange Contracted Employer of Record and/or Third-Party Employer of Record covers a participant's wages, Federal Insurance Contributions Act (FICA) and workers compensation. Work Experience participants do not receive

benefits such as health care, 401K, paid-time off, overtime, etc. The employer of record will be responsible for paying all taxes.

- Payroll must be strictly based on timesheets completed by the participants, reviewed and signed by the Supervisor and duly approved by designated Service Provider Staff for payment. (See Attachment III - Model Timesheet).
- All timesheets must be kept in the participant's file (hard copy and electronically).

6. Work-Based Training Plan

A Work-Based Training Plan shall be completed for every participant prior to starting any Work Experience assignment and will accompany the Worksite Agreement. All Work-Based Training Plan documents will be kept in the participants' file.

Requirements specific to WIOA youth programs

A Work Experience is one of the 14 Youth service elements that must be made available to all registered participants and should be offered throughout the program year. Work Experiences are arranged in conjunction with OCWDB Business Solutions, and businesses in the community. A Work Experience is established on an individual basis.

The primary intent of Work Experience is to help the participant(s) understand proper workplace behavior and what is necessary in order to attain and retain employment. Work Experiences should help participants(s) acquire the personal attributes, knowledge, and skills needed to obtain a job and advance in employment. Work Experience can serve as a stepping-stone to unsubsidized employment and is an important step in the process of developing a career pathway. All Work Experiences should expose participant(s) to realistic working conditions and task as much as possible. OCWDB Business Solutions are encouraged to identify a worksite mentor that the participant can meet with on a structured basis, to assist with answering questions and addressing concerns. The mentor should be someone who is comfortable offering guidance, support and encouragement to develop the competence and characteristics of the participant.

Earn and Learn opportunities

An Earn and Learn program is a specialized occupational skills training program that includes elements required in the WIOA youth program. The program may be done in-person or through a virtual platform. The participant earns a stipend when participating in the "live" classes and when completing projects required for the program. A participant is expected to have a "product" upon completion of the Earn and Learn program. In line with general youth experience guidelines, participants must not exceed thirty (30) hours per week and may not exceed \$550.00 per week paid at \$17 per hour.

Youth Work Experience Funding Requirements

Service Providers must spend at least 30% of their overall WIOA youth funding, after subtracting the administrative costs, on Work Experience (WEF) activities, including participant wages as well as staffing costs associated with the development and management of Work Experience, even if the Work Experience is unpaid. Allowable expenditures beyond wages may include the following:

1. Staff time spent identifying potential work experience opportunities.
2. Staff time working with employers to develop the work experience.
3. Staff time spent working with employers to ensure a successful work experience.
4. Staff time spent evaluating the work experience.
5. Classroom training or the required academic education component directly related to the work experience.
6. Orientation sessions for participants and employers.

WEF expenditures shall coincide with specific WEF budgeted line items and shall be tracked and reported on the monthly Service Provider invoices.

The duration of the WEX shall begin with 12 weeks. If a modification/extension is needed, OCWDB Business Solutions will review on a case-by-case basis and complete a Modification Form (Attachment V) which must be signed by all parties for proper approval. Extensions may not exceed 10 months and/or 600 hours. A tracking sheet shall be maintained by the Provider to ensure that actual WEX hours do not exceed the allowable limit.

WEX participants must be paid at a rate of \$17 an hour.

The OCWDB Business Solutions and Service Provider must ensure compliance with child labor laws and ensure that youth participants under 18 years old obtain a work permit (unless not required to have one). The employer must possess a valid Permit to Employ and Work and comply with all applicable federal and state child labor laws if the participant is less than 18 years of age. Proof of age and parental consent must be given for both paid and unpaid work experience. See Youth Employment Summary Chart (Attachment IV) for additional information.

Special projects may require an exemption to both WEX limitations on hours and wage levels for some or all participants. The Orange County Director of Workforce Development may approve WEX waivers. Waiver request must be submitted in writing. Participants may not exceed the 600 hour limit PRIOR to the date of waiver approval.

Special Grant Work Experience

Special grant programs may be implemented that require different Work Experience hours and funding levels. If staff are providing case management for a non-WIOA funded Work Experience services (ex. Social Services Agency (SSA) Employment Preparation Program (EPP), Work Experience (WEX) or Vocational Training Program (VTR) funded work experience), it is appropriate to follow the grant requirements and document in the participant case file the staff related cost and the non-WIOA funded contractual requirements.

SSA durational guidelines include:

1. EPP: Paid work experience may not exceed one year; this includes one initial 6-month term, with the option to extend for two additional 3-month terms.
2. WEX: Paid work experience may not exceed a total of 4 months; this includes one 3-month term, with the option to renew for one additional one-month term.
3. VTR: Unpaid work experience may not exceed 12 months; there is no option to renew with VTR.

Case File

Documentation will be kept in the participant's file (hard copy and electronically), which should include, at a minimum, the following items:

1. An assessment and IEP indicating a need for Work Experience;
2. A copy of the agreement between the participant, the worksite or host site and the OCWDB, including the Work-Based Training Plan, and any other attachments to the agreement;
3. Time sheets, attendance sheets and performance records, as appropriate; and
4. Documentation of supportive services received by the participant.

MIS CalJOBS Requirements

Activities must be coded in CalJOBS using the most appropriate activity codes and indicating corresponding start and end dates. Applicable Measurable Skills Gains must be recorded in CalJOBS upon successful completion of activities.

ACTION

Bring this policy to the attention of all affected staff and all relevant parties.

INQUIRIES

If you have any questions regarding this policy, please contact your Contract Administrator at (714) 480-6500.

ATTACHMENTS

- Attachment I: Worksite Agreement
- Attachment II: Work-Based Training Plan
- Attachment III: Model Timesheet
- Attachment IV: Youth Employment Summary Chart
- Attachment V: Modification Form