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
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November 14, 2023

To: All WIOA Subrecipients of the Orange County
Workforce Development Board

From: Nancy Cook 
Director of Workforce and Economic Development

Subject: Incumbent Worker Training Policy
Information Notice No. 23-OCWDB-06
Supersedes Information Notice No. 20-OCWDB-05

PURPOSE:

This policy provides guidance to all Orange County Workforce Development Board (OCWDB) One Stop Service Providers on the requirements for the provision of the Workforce Innovation and Opportunity Act (WIOA) Incumbent Worker Training services.

EFFECTIVE DATE:

This notice is effective on the date of issuance.

REFERENCES:

Workforce Innovation and Opportunity Act (WIOA) (Public Law) Sections, 122(h)(i), 134(d)(4), 134(G)(ii), 134(c)(3)(H), and 194(4)

Title 20 Code of Federal Regulations (CFR) Sections 680.780 – 680.820

Training and Employment Guidance Letter (TEGL) [10-16](#), Change 1, Subject: Performance Accountability Guidance for Workforce Innovation and Opportunity Act (WIOA) Title I, Title II, Title III and Title IV Core Programs (August 23, 2017)

TEGL [19-16](#): Guidance on Services provided through the Adult and Dislocated Worker Programs under the Workforce Innovation and Opportunity Act (WIOA) and the Wagner- Peysner Act Employment Services (ES) as amended by title III of WIOA, and for Implementation of the WIOA Final Rules (March 1, 2017)

California Unemployment Insurance Code (CUIC) Section 14000-14530

Workforce Services Directive (WSD) [WSD18-10](#), Subject: WIOA Training Expenditure Requirement (January 31, 2019)

[WSD18-03](#), Subject: Pathway to Services, Referral, and Enrollment (August 29, 2018)



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[WSD17-08](#), Subject: Procurement of Equipment and Related Services (March 14, 2018)

[WSD16-18](#), Subject: Selective Service Registration (April 10, 2017)

[WSD16-16](#), Subject: Allowable Costs and Prior Written Approval (February 21, 2017)

[WSD16-15](#), Subject: Dislocated Worker Additional Assistance Projects (December 28, 2016)

[WSD16-04](#), Subject: Rapid Response and Layoff Aversion Activities (July 22, 2016)

[WSD 22-09](#), Subject: Transfer of Funds – WIOA Adult/Dislocated Worker Programs (January 30, 2023)

Background

Work-based training is employer-driven with the goal of unsubsidized employment after participation. Generally, work-based training involves a commitment by an employer or employers to fully employ successful participants after they have completed the program. It can be an effective training strategy that can provide additional opportunities for participants and employers in both finding high quality work and in developing a high-quality workforce. Work-based models can be effectively used to target different job seekers and employer needs.

Incumbent Worker Training (IWT) is one type of work-based training model and is designed to either assist workers in obtaining the skills necessary to retain employment or to avert layoffs and must increase both a participant's and a company's competitiveness. Local workforce development areas may use up to 20 percent of their local adult and dislocated worker formula funds for Incumbent Worker Training. The training should, wherever possible, allow the participant to gain industry-recognized training experience.

Definitions

Business and Employer- A private sector, local government, for profit or not-for-profit place of business.

California Employer Account Number – An eight-digit payroll tax number issued to a registered Employer by the Employment Development Department, also known as the Employer Payroll Tax Number, State Identification Number, or state ID.

Eligible Employer – For an employer to be eligible for IWT services, the Local Board must consider the following:

1. Whether the employer can provide a valid California Employer Account Number.
2. The characteristics of the individuals in the program (see the IWT definition below).
3. The relationship of the training to the competitiveness of an individual and the employer.
4. Other factors the Local Board determines appropriate, such as the number of employees trained, wages and benefits, including post training increases, and existence of other training opportunities provided by the employers.

Employer Share – Employers are required to pay for a significant cost of the training for those individuals in IWT. The minimum amount of employer share in IWT depends on the size of the

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employer.

Follow-up – Shall be performed six months after reported completion of IWT to determine outcomes (retained employment, advancement, and increased wages).

Incumbent Worker – To qualify as an incumbent worker, the employee must meet the following:

1. Be a current employee of an eligible employer and have an established employment history with the employer for six months or more. An individual is not held to the six-month employment requirement if the IWT is being provided to a cohort of employees. In this instance, not every employee must meet the employment history requirement as long as a majority of the employees being trained do meet the requirement.
2. Meet the Fair Labor Standards Act requirements for an employer-employee.
3. Meet the Selective Service requirements.

IWT – The following characteristics define IWT:

1. Designed to meet the special requirements of an employer (including a group of employers) to retain a skilled workforce, avert the need to lay-off employees by assisting the workers in obtaining the skills necessary to retain employment, and/or provide training that will result in progression on a career pathway and income mobility.
2. Conducted with a commitment by the employer to retain employees, avert the layoff(s) of the incumbent worker(s) trained for a period of six months following completion of the training, or promote incumbent workers to higher paying positions.
3. Increases the competitiveness of the employer or employee.
4. Gives employees the opportunity to progress on their career pathway by providing opportunities to obtain certificates or credentials based on the employers need.

IWT Allowable Costs – The share of the cost of training (teacher, books, and materials) for the delivery of IWT. The amount excludes the cost of the individual wages paid by the employer while the employee is attending/participating in training.

Layoff Aversion - a continuum of strategies targeted to specific employers or industries that are experiencing a decline and have the potential to undergo layoffs, or are experiencing a serious skills gap that impacts their ability to compete and retain workers. A layoff is considered to be averted when:

1. A worker's job is saved at an existing employer facing a risk of downsizing or closing;
or
2. A worker at risk of dislocation faces a brief gap of unemployment when transitioning to a different job with the same employer or is hired at a new job with a different employer.

Qualified Trainer – Qualified training can be delivered in-house, by a training agency, or by a third party. Training should be California based unless the training is so unique that a training

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provider cannot be found in California. The choice and method of training is determined by the employer.

Training Method – The following are types of training methods allowable in IWT:

1. Classroom training
2. Laboratory training
3. Computer based training
4. Video Conference training
5. E-Learning

Policies and Procedures

IWT is a business service designed to develop a highly skilled workforce which will result in increased business financial viability, stability, competitiveness, and productivity. To avert the risk of closing, IWT may be developed with a business or business association to maintain their competitive status, incorporate new technology, or prevent downsizing.

Workers participating in IWT will benefit by enhancing existing skills, learning new skills, and earning employer or industry recognized credentials, in addition to retaining employment, maintaining their careers, and/or increasing their earnings potential. IWT will also allow the opportunity for backfilling vacated positions resulting from the promotion of newly trained workers.

Types of Incumbent Worker Training

IWT is restricted to skill attainment activities. The training should benefit workers by making them more qualified in their line of business and/or by providing them with skills for new products or processes. It is desired that the training results in credentials or industry recognizable skills that promote the worker's career and increases the overall employability.

Allowable types of training for incumbent workers:

1. Skills upgrading and retraining: Short-term training that enhances occupation-specific skills or basic skills that lead to a credential/certificate.
2. Customized training: Customized training is conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of training. The OCWDB Customized Training Policy contains further details on customized training.
3. Occupational skills training (individual training accounts): Training that leads to an industry recognized credential or a certificate. OCWDB Individual Training Account (ITA) Policy provides additional requirements for ITAs.

Employers have several options to determine how best to provide the training needed as described below:

1. Employers may enter into contracts with training providers without any additional procurement requirements. Employers may utilize training providers listed on the State of California's Eligible Training Provider List (ETPL); however, the utilization of the list is for universally applicable off-the-shelf employer training and is not intended to include unique, specialized, or employer-specific training.

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2. Employers may provide Incumbent Worker Training in-house so long as the following guidelines are followed:
 - a. Employers may receive reimbursement for their actual training costs incurred under this program, on a reimbursement basis, as outlined in this policy.
 - b. The Director of Workforce and Economic Development or designee must approve the training plan which is required before reimbursement may be provided to an employer.
 - i. The training plan must identify all of the following:
 - The provider(s) of training;
 - Type of training;
 - Type of certification/credential to be received;
 - Planned start and end dates;
 - Number of individuals to be trained;
 - Wage and benefits levels of participants (before and after training)
 - The projected cost of training; and
 - Any other information required by the Director of Workforce and Development.
 - c. All training costs must be allowable as defined in this policy. Training plans must be approved by the local Director of Workforce and Economic Development prior to the start date of training. Employer must agree to provide all documentation required by the local workforce development board (WDB) in order to be reimbursed for the training.
 - d. Training providers are not required to be listed on the state's eligible training provider list for the purpose of providing IWT in-house. WDBs may assist the business in identifying potential providers of training; however, the selection of a training provider is not subject to state or federal procurement requirements.
3. For businesses not following the guidelines in paragraph 2 of this section and have training needs that cannot be provided by California's eligible training providers, local WDBs will need to follow proper procurement procedures by federal and state law and policies, or local procurement policies if more restrictive.

Eligibility for Participating Businesses

IWT is one of many business services offered through the local WDBs. The criteria which the WDB must take into account for an employer to be eligible to receive local incumbent worker funds include:

1. Employer must provide a valid California Employer Account Number;
2. The characteristics of the participants in the program;
3. The relationship of the training to the competitiveness of a participant and the employer (e.g., industry-recognized credentials, advancement opportunities); and
4. Other factors, including:

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- Number of employees trained;
- Wage and benefits levels of those employees, both pre- and post-training earnings;
- Employees' employment advancement opportunities;
- The existence of other training opportunities provided by the employer;
- Credentials and skills gained as a result of training;
- Layoffs averted as a result of training;
- Utilization as part of larger sector and/or other career pathway strategy; and
- Employer Size.

There are also businesses that should not participate in this activity due to past or current violations of local, state, or federal law; unfair labor practices; and other conditions identified during the course of conducting initial employer assessments and reviewing contract requirements, assurances, and certifications with the local WDB Director or staff. Businesses that fail to meet any of the following qualifying criteria are not eligible to receive funds for Incumbent Worker Training:

1. Businesses must not be presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from participation in transactions by USDOL or the State of California. Below are two websites that may be helpful in checking tax, environmental compliance, and debarment status.
 - Federal Debarment Site: <http://www.sam.gov>
 - California Department of Tax and Fee Administration: <https://www.cdtfa.ca.gov/>
2. Businesses must not have any outstanding tax liability for over six months to the State of California. Local providers will require the businesses to disclose any known outstanding tax liabilities with other states prior to entering into contract. The local provider may consider existing out-of-state violations when determining eligibility to receive customized training funds. The local provider must document any resolution of outstanding tax liability, which may include letters from the business to or from the state from which the tax liability occurred.
3. Businesses must ensure that they do not have more than one unfair labor practice contempt of court finding and that they are not identified as such on the most recent list established by the Secretary of State.
4. California businesses must have all of the approvals, licenses, or other qualifications needed to conduct business in the state and all must be current. Should this status change during the course of the local customized training program activities and the business be disqualified from conducting business in California, all training under the customized training program must cease.
5. Governmental entities, including the city, county and state, may not participate in the local customized training program. Health care providers that are operating as not-for-profit entities are the only allowable exceptions to this prohibition.
6. Businesses that have employees in a lay-off status should not be considered for customized training unless the training would avert additional layoffs.

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7. Businesses that have relocated to California and have laid-off workers at their former location in the United States may not be considered for this program until they have been in operation at the new location for 120 days.

To verify that a business is not relocating employment from another area, a pre-award review must be undertaken and documented by the local provider. The review must include the names under which the establishment conducts business, including predecessors and successors in interest; the name, title, and address of the company official certifying the information, and whether WIOA assistance is being sought in connection with past or impending job losses at other facilities of their company. The pre-award review should also include a review of whether appropriate notices have been filed, as required by the Worker Adjustment Retraining Notification (WARN) Act. The review may also include consultations with labor organizations and others in the affected local area(s).

8. Businesses must not have any outstanding civil, criminal or administrative fines or penalties owed to or pending in the state of California.

Incumbent Worker Eligibility

To qualify as an incumbent worker, the incumbent worker must meet the following requirements:

- 18 years old or older
- Needs to be employed
- Meet the Fair Labor Standards Act requirements for an employer-employee relationship
- Have established employment history with the employer for six months or more. It should be noted that an individual is not held to the six-month employment requirement if the IWT is being provided to a cohort of employees. In this instance, not every employee must meet the employment history as long as a majority of the employees being trained do meet the requirements. An incumbent worker does not necessarily have to meet the eligibility requirements for career and training services for adults and dislocated workers under WIOA.
- Meet the Selective Service requirements

Funding

IWT is part of a comprehensive business engagement strategy designed to meet the special requirements of an employer (or a group of employers) to upskill current employees. To implement this strategy, up to 20 percent of the local area Adult and Dislocated Worker formula allocations can be used for IWT activities. This 20 percent can only be used for programmatic activities and cannot be used for administrative functions.

Generally, IWT should be provided to private sector employers, but there may be instances where non-profit and local government entities may receive IWT funds. For example, IWT can be used in the health care industry where nursing upskilling opportunities are available in a hospital operated by a non-profit organization.

Under WIOA, layoff aversion is now a Rapid Response Activity. Rapid Response funds can be leveraged by including IWT as part of a robust layoff aversion strategy for the whole area. The Orange County Workforce Development Board, or their designee, have the flexibility to

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determine which strategies and activities are applicable in a given situation, based on the specific needs of the area.

The WIOA defines IWT as a business service, therefore, the delivery of IWT does not require the use of an Individual Training Account or that the training program be listed on the Eligible Training Provider List.

Cost Sharing Requirements for Incumbent Worker Training

Employers participating in IWT shall be required to pay for the non-Federal share of the cost of providing the training to incumbent workers of the employers. This can be done through cash payments and fairly evaluated in-kind contributions. The wages paid to individuals while in training may include the wages the employer pays to the individual while they are attending training. The minimum amount of employer share in IWT depends on the size of the employer and are 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 50 to 100 employees; and
3. At least 50 percent of the cost for employers with more than 100 employees.

IWT Performance and Reporting Requirements

Since IWT eligibility is determined at the employer level (not the individual level), the Department of Labor (DOL) does not consider individuals in IWT to be a participant in the WIOA Adult and/or Dislocated Worker programs. Individuals who only receive IWT services are not included in performance calculations. However, DOL does require the reporting of certain participant and performance data on all individuals participating in IWT. The required information is limited to demographic information and information necessary to calculate employment in the 2nd and 4th quarters after exit, median earnings in the 2nd quarter after exit, measurable skills gain, and credential outcomes. For the purpose of calculating these metrics for IWT only individuals, the exit date is the last day of training, as indicated in the training contract.

To reduce the reporting burden on the employer and local area, DOL encourages the collection of the Social Security Numbers (SSNs) as part of the training contract with the employer. For all individuals where an SSN is collected, the state will conduct a wage match to obtain employment and earnings. For those individuals who do not provide an SSN, it is the provider's responsibility to provide supplemental data. Additionally, it is the provider's responsibility to capture and enter credential information into CALJOBS for each IWT individual.

The Orange County Workforce Development Board will maintain a separate file for each employer under IWT. The files must encompass the documentation mentioned in the attached list, serving as verification of employer and trainee eligibility, alongside additional documents such as certifications, completion of training verification, pay stubs, etc. These files must be made accessible to federal, state and local monitors to ensure compliance.

Note – If the individual in IWT becomes a participant in WIOA Adult and/or Dislocated Worker program at any point, they are included in performance measures for the program they are enrolled in.

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CALJOBS

All participants in IWT must be reported to DOL, regardless of whether they become a participant in any other WIOA programs. Individuals who participate in IWT must be registered in CALJOBS, and do the following:

1. Title I – Workforce Development application with an incumbent worker eligibility date entered. The application and eligibility requirements for the IWT eligibility is truncated and requires minimal information.
2. On the Eligibility Summary tab of the Title I Application:
 - Set the "Incumbent Worker" to yes
 - Add the appropriate IWT code and then select "Finish" to save the application
3. CALJOBS Activity Code 308 – IWT should be added to the application and associated to the appropriate funding stream for the duration of the IWT. If utilizing WIOA formula funds, staff must associate grant code 2284 – Incumbent Worker Training formula to 308 – IWT activity code.

Employers – Local area staff must ensure that the employer participating in IWT is registered as a preferred employer (recruiting employer) in CALJOBS and the CALJOBS Activity Code E68-IWT is added to the employer's account.

Allowable and Unallowable Costs for Incumbent Worker Training Program

Allowable costs may include only costs directly related to training such as:

1. Instructor/trainer salaries;
2. Curriculum development, textbooks, manuals, training software, materials and non-consumables; and
3. Other necessary and reasonable costs directly related to training.

Unallowable costs include, but are not limited to:

1. Foreign travel;
2. Purchase or lease of capital equipment;
3. Encouragement or inducement of a business or part of a business to relocate from any location in the United States;
4. Use of IWT funds to pay for a worker's training wages;
5. Use of IWT funds to train management employees in management skills such as Six Sigma and LEAN.

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: Incumbent Worker Training Application

ATTACHMENT II: Incumbent Worker Training Plan Components

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ATTACHMENT III: Previous Incumbent Worker Training Grant Awardee Notification

ATTACHMENT IV: Multiple Business Collaborative Form

ATTACHMENT V: Incumbent Worker Training Program Agreement

ATTACHMENT VI: Incumbent Worker Training Trainee Tracking Spreadsheet

ATTACHMENT VII: Incumbent Worker Training Program Agreement Modification