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Date: August 28, 2024

To: WIOA Subrecipients of the Orange County
Workforce Development Board

From: Nancy Cook
Director of Workforce and Economic Development



Subject: On-The-Job Training (OJT) Program Policy
Information Notice No. 24-OCWDB-08
Supersedes Information Notice No. 24-OCWDB-01,
20-OCWDB-17

PURPOSE

This policy provides guidance regarding On-the-Job Training (OJT) opportunities provided to eligible Adult, Dislocated Worker, Youth, and special programs that receive funding under the Workforce Innovation and Opportunity Act (WIOA) or other specialized programs.

EFFECTIVE DATE

This policy is effective on the date of the issuance.

REFERENCES

- WIOA (Public Law 113-128); Sections 3(23)(24) and (44); 134(c)(H); 188 (a)(2) and (3); 181 (a)(2)(B)
- Title 20 Code of Federal Regulations (CFR) Parts 680.700 - 680.730
- 20 CFR 683.260 - 683.280
- Fair Labor Standards Act (29 U.S.C.206(a))
- Workforce Services Directive (WSD) 24-01

BACKGROUND

On-the-Job Training (OJT) is a hire-first training program that provides employers the opportunity to train participants on the specific knowledge or skills essential to the full and adequate performance of the job. The participant begins their OJT program as an employee of the company that has agreed to provide on-site training and long-term employment upon completion. The rate of pay, fringe benefits, and working conditions offered to the participants are the same as the employer's similarly situated employees in the same positions. OJT opportunities are formed through a contract between the employer and the OJT provider. The OJT provider, or designee, provides the employer with a partial wage reimbursement, typically up to 50 percent of the wage rate of the participant, for the extraordinary costs of providing the training and supervision related to the training. In limited circumstances, as provided in WIOA sec. 134(c)(3)(h) and § 680.730, the reimbursement may be up to 90 percent of the wage rate of the participant, as eligible.



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Definitions

In-Demand Industry – An industry sector that has a substantial current, or potential impact, (including through jobs that lead to economic self-sufficiency and opportunities for advancement) on the state, regional, or local economy, and that contributes to the growth or stability of other supporting businesses, or the growth of other industry sectors.

Individual with Barriers to Employment – The term "individual with a barrier to employment" means a member of one or more of the following populations:

1. Displaced homemakers.
2. Low-income individuals.
3. Indians, Alaska Natives, and Native Hawaiians, as such terms are defined in section 166.
4. Individuals with disabilities, including youth who are individuals with disabilities.
5. Older individuals (55 years or older).
6. Justice involved individuals.
7. Homeless individuals (as defined in Section 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2(6)), or homeless children and youths (as defined in Section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a (2))).
8. Youth who are in or have aged out of the foster care system.
9. Individuals who are English language learners, individuals who have low levels of literacy, and individuals facing substantial cultural barriers.
10. Eligible migrant and seasonal farmworkers, as defined in section 167(i).
11. Individuals within 2 years of exhausting lifetime eligibility under Part A of Title IV of the Social Security Act (42 U.S.C. 601 et seq.).
12. Single parents (including single pregnant women).
13. Long-term unemployed individuals.
14. Such other groups as the Governor involved determines.

Occupational Information Network (O*NET) – An online database of standardized and occupation-specific descriptors for occupations in the U.S. economy.

Registered Apprenticeship Program – A program meeting Federal and State standards of job preparation that combines paid on-the-job training and related instruction to progressively increase workers' skill levels and wages.

Specific Vocational Preparation (SVP) – The amount of time required by a typical worker to learn techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation.

Trade Adjustment Assistance (TAA) – A federal program established under the Trade Adjustment Assistance Reauthorization Act of 2015 provides aid to workers who lose their jobs or whose hours of work and wages are reduced as a result of increased imports. *On July 1, 2022, the termination provision under Section 285(a) of the Trade Act of 1974, as amended, took effect. Until further notice, the DOL may not issue any new determinations and may not review any requests for reconsideration. Workers who were certified by a previously certified petition, and separated or threatened with separation from their job on or before June 30, 2022, may still be eligible for individual benefits and services and should contact their nearest America's Job Center of California to speak to a TAA specialist.

POLICY AND PROCEDURES

Before initiating an OJT, a contract must be established to outline a structured training for the participant. This program will provide the participant with the opportunity to acquire the necessary knowledge and skills to be proficient at their job. The contract must be finalized and signed by all parties involved before the participant may commence the OJT. OJT may be sequenced with other program services such as Work Experience, classroom training, or basic skills training. An OJT Toolkit is available from the Department of Labor at <https://ion.workforcegps.org/resources/2017/12/01/11/19/On-the-Job-Training-Toolkit>.

Participant Eligibility

To be eligible, participants must meet program eligibility requirements for the designated funding source (i.e., WIOA Adult, Dislocated Worker or Youth formula funded programs). In addition, participants must have completed a skills and/or educational functioning level assessment that results in the development of an Individual Employment Plan (IEP)/Individual Service Plan (ISP), which documents and details the participants' interest, aptitude, skills, and ability to meet the specific employer's OJT requirements. Service Providers are to use any of the following assessment tools when completing the assessment: Test of Adult Basic Education (TABE), Comprehensive Adult Student Assessment Systems (CASAS), Basic English Skills Test (BEST), or Massachusetts Adult Proficiency Test (MAPT). ACT WorkKeys will be used for enrollment requirements only and is not intended to measure Educational Functioning Levels (EFL) for performance. Service Providers may use previous basic skills assessment results if conducted within the past six months.

The rate of pay, fringe benefits, and working conditions offered to the participants must be equal to those provided to regular employees who have worked a similar length of time and are doing the same type of work; and subject to the state and/or local minimum wage laws.

Employer Eligibility

OJT contracts may be entered into with private-for-profit businesses, private non-profit organizations, and public sector employers prior to a participant starting the new job. With successful completion, the employer is expected to retain the participant after the training period for no less than one year. Careful consideration should be given when selecting a participating employer.

An OJT contract cannot be established with an employer if, under previous contracts under WIOA or the former Workforce Investment Act of 1994 (WIA), the employer exhibited a pattern of failing to provide participants with continued long-term employment as regular employees, including wages, employment benefits (including health benefits), and working conditions equivalent to those offered to other employees working a similar length of time and doing the same type of work.

An OJT training site may be located out of the OCWDB's service area. If an OJT training site is not in Orange County, but in a bordering workforce development area, the OJT training site needs to be within the commuting distance (approximately 50 miles) so the OJT Provider is able to complete the site monitoring and participant check in.

Business functions that must be researched and documented before entering into an OJT contract with an employer must include, but are not limited to:

1. Working conditions (safety and health);
2. Availability of employer-provided health benefits;
3. Wage structure;
4. Turnover rates;

5. Adequateness of staff and equipment to carry out the training;
6. Compliance with federal, state, and local laws;
7. The ability for the employer to retain the position after the OJT period, for a duration of no less than one year;
8. Must not be debarred from participating or receiving federal, state, or local funding;
9. Must be registered with the State of California;
10. Must be up to date on Unemployment Insurance (UI) taxes and be in good standing with the State of California.

The following factors must be considered prior to approving an OJT:

1. The characteristics of the participant(s) with an emphasis on barriers to employment;
2. The quality of employer-provided training (e.g., an industry recognized credential, advancement opportunity);
3. The number of participants the employer agrees to hire;
4. The wage and benefit level of the participant (both during and after completion of the OJT);
5. The OJT position is an in-demand occupation as determined by local labor market information;
6. The OJT employer is:
 - In an in-demand industry and determined by local labor market information to support economic self-sufficiency and local living wage; or
 - In a declining industry that has justification which supports reimbursement above 50 percent (e.g., evidence of long-term viability of the employer) and demonstrates compelling reasoning for OJT opportunity to support economic self-sufficiency and local cost of living wage.

Each of the above factors leading to the approval of an OJT must be documented and placed in the case file.

Employer Requirements

1. Must be registered with the Internal Revenue Service (IRS) and have an account with the California State Compensation Insurance Fund for Unemployment Insurance and carry Workers Compensation Insurance. If the OJT training site is in Orange County, they must have operated in Orange County for a minimum of 120 days and be current in unemployment insurance and workers' compensation taxes, penalties, and/or interest or related payment plan.
2. Must be financially solvent to meet the OJT contract obligations through the end of the training and for the participant's 12-month follow-up period and must have an adequate payroll record keeping systems that tracks hours worked, gross pay, deductions, and net pay.
3. Must not have relocated within the last 120 days, where relocation resulted in the loss of employment at a prior location.
4. Must not displace any currently employed worker or alter current workers promotional opportunities; nor have terminated any regular employee or otherwise reduced the workforce in order to hire participants.
5. Must not be involved in a labor dispute or have workers currently in a layoff status or have laid off workers over the past 120 days from the same or any substantially equivalent job. The period of 120 days may be waived if there are mitigating circumstances reviewed and approved by the Orange County Director of Workforce and Economic Development.

6. Must not impair existing contracts for services or pre-established collective bargaining agreements. Additionally, the employer must attest that the OJT contract would not assist, promote, or deter union organizing.
7. Must not allow participants to work on the construction, maintenance or operation of any facility that is used for sectarian activities or as a place of worship.
8. Must not illegally discriminate in training or hiring practices because of age, race, color, sex, national origin, religion, disability, political beliefs or affiliations.
9. Businesses must not have any outstanding tax liability to the state of California for over six months. Businesses must disclose any known outstanding tax liabilities with California and other states prior to entering into the contract. OJT Provider may consider existing out-of-state violations when determining eligibility to receive OJT funds. OJT Provider must document any resolution of outstanding tax liability, which may include letters from the business or from the State from which the tax liability occurred.
10. Businesses must not have any outstanding civil, criminal, or administrative fines or penalties owed to or pending in the state of California.
11. OJT Provider must not execute OJT contracts with an employer who has previously exhibited a pattern of failing to provide participants with continued long-term employment.
12. The employer must comply with all applicable federal, state, and local laws and regulations related to providing reasonable working conditions. OJT participants are not permitted to train or work in buildings or surroundings under working conditions that are unsanitary, hazardous, or dangerous to the participant's health or safety.

If all required OJT criteria are met, the employer may be eligible to establish an OJT Contract.

Employer Reimbursement Rates

The employer reimbursement rate of the regular wages earned for OJT placements is set to 50 percent. In limited circumstances, OCWDB permits the increase of the reimbursement rate for OJT contracts, up to 90 percent, when taking into account the following factors:

1. The characteristics of the participants, taking into consideration whether they are "individuals with barriers to employment," as defined in WIOA sec. 3(24);
2. The size of the employer, with an emphasis on small businesses;
3. The quality of employer-provided training and advancement opportunities. For example, if the OJT contract is for an in-demand occupation and will lead to an industry-recognized credential; and
4. Other factors the Governor or OCWDB may determine to be appropriate, which may include the number of employees participating, wage and benefit levels of the employees (both at present and after completion), and relation of the training to the competitiveness of the participant.

OJT Provider must receive prior approval from the Director of Workforce and Economic Development prior to entering into contracts with an employer when increasing the wage reimbursement level above 50 percent. Approval requests must be done formally, in writing, and must include the OJT packet. Further, the OJT Provider must document the factors considered when increasing the wage reimbursement levels above 50 percent. A copy of the approval must be placed in the employer's file and documented in CalJOBS.

The following reimbursement rates are based on the size of the employer and characteristic of the participants, taking into consideration whether they are "individuals with barriers to employment", and/or allowable under Local, State, and Federal regulations:

1. A maximum of 50 percent for standard OJT contracts.

2. A maximum of 65 percent for mid-sized businesses (51-250 employees) that meet the increase reimbursement rate criteria.
3. A maximum of 75 percent for small businesses (up to 50 employees) that meet the increase reimbursement rate criteria.
4. A maximum of 90 percent for small businesses (up to 50 employees) that meet the reimbursement eligibility criteria set forth by WSD 24-01.

Registered Apprenticeship Programs

OJT contracts may be in partnership with registered apprenticeship programs and/or participating employers in registered apprenticeship programs for OJT trainings.

Coordination with the Trade Adjustment Assistance Program

If an individual is eligible for training dollars under Trade Adjustment Assistance (TAA), TAA should be used to fund the OJT. An exception would be situations where the cost exceeds the TAA program's ability to fund the training; WIOA funds can pay the portion of the cost that exceeds the TAA maximum, as applicable.

OJT Business Eligibility/Information

Prior to placement, an employer pre-screening must be conducted by ensuring the employer eligibility and requirements listed in this policy are met. The OJT Eligibility and Business Information must then be completed to ensure that the employer meets the minimum standards and can provide both training and long-term employment to the OJT participant. The OJT Eligibility and Business Information may be completed once, rather than each time an OJT placement is approved.

If a collective bargaining agreement is in place, the On-the-Job Training Eligibility and Business Information must indicate such. If the worksites Labor Union agreement indicates that approval on training components is needed, then the worksite must agree to provide Labor Union approval before the OJT begins.

The OJT Eligibility and Business Information must be updated:

1. If the business is sold or transferred;
2. If other significant changes affecting training, hiring, or job retention occur; and
3. At least once a year from the date of issuance.

OJT Contract and Training Plan

Every OJT opportunity will include an OJT Contract with the employer and an OJT Training Plan for the participant. The OJT Contract must include the requirements of WIOA rules and regulations; the occupation, skills, and competencies to be learned; and the length of time the training will be provided.

The OJT Training Plan also identifies the skills to be learned during the OJT. Service Providers, in conjunction with OJT Provider, may use the following to determine skills needed and justification of training duration:

1. Occupational Information Network (O*NET);
2. Specific Vocational Preparation (SVP);
3. Company job description;
4. Input from the employer/supervisor; and/or
5. Other appropriate data sources.

OJT Modifications and Exceptions

There are times when an OJT participant or work conditions may justify a modification to the original OJT Training Plan. Possible modifications to an OJT may include:

1. Extending the agreed upon length of OJT duration if the mandated maximum number of hours are not exceeded;
2. Adjusting the maximum or minimum number of hours/weeks to accommodate a participant's learning or other disability if mandated maximum number of hours are not exceeded;
3. Allowing employer reimbursement for training, even when the participant fails to complete the training, if the participant quit or was fired for just cause; and
4. Extending the agreed upon length of OJT duration for OJT participants who are performing satisfactorily, have completed substantial training and will be retained by an employer at the end of the training period, but have not learned all the required OJT related skills.

Contract modifications must be in writing, signed and dated by all parties prior to the effective date of the modification by completing the OJT Training Plan Modification. Verbal modifications are not valid.

Any exceptions to this policy must be approved by the Director of Workforce and Economic Development and documented in both the participant and employer files. Exceptions may be allowed for:

1. Employers new to the County of Orange;
2. Employers with workers in lay-off status less than 120 days;
3. Training plans exceeding the cost or time limits, or other policy statements not contained in the WIOA regulations.

All exceptions must be documented on the OJT Exception Request before the start date stated in the OJT Training Plan.

All Modifications and Exceptions must be documented in the participant's case file.

Participant Wages, Payments and Benefits

The County of Orange, Workforce and Economic Development Division (WEDD), and OCWDB are committed to providing WIOA participants work opportunities that lead to self-sufficiency.

- **Minimum Wage Compliance:** Employers participating in OJT programs must pay OJT participants at least the applicable federal, state, or local minimum wage, whichever is higher.
- **Comparable Wage Rates:** WIOA requires participants to be paid the same wage as other employees performing similar work, with similar skills and experience, within the same organization. This is intended to prevent wage discrimination against OJT participants and ensure fair compensation.
- **Progressive Wage Increases:** While WIOA does not mandate a specific wage level, it supports the concept of wage increases as participants gain skills and demonstrate increased productivity. This encourages employers to raise wages over time as the worker becomes more proficient.
- **Prohibitions on Displacement:** Employers cannot use OJT participants to replace regular employees or reduce the work hours, wages, or employment benefits of existing employees. This ensures that OJT participants are integrated fairly into the workforce.

As a hire-first program, OJT participants begin as an employee of the business. The employer is responsible for payment of wages and benefits to the participant. The employer must provide participant(s) with continued long-term employment or wages, benefits and working conditions that are equal to those provided to similarly situated employees.

WIOA funds are not to be utilized for holidays, sick leave, vacation, or overtime hours. OJT reimbursement payments may only be paid for regular wages paid by the employer. Overtime, premium pay, and other non-regular wages will not be reimbursed. This does not exclude a participant from working overtime; however, the reimbursement to the employer must be based on the regular wage rate. Employers will be expected to compensate the participant for such hours, equal to other similarly situated employees and in accordance to state and federal labor laws for any overtime hours worked.

If a participant is completing activities that are beyond the scope of the OJT Training Plan , it is the responsibility of the employer to pay these wages in full.

Wage Rate Calculations:

1. In cases where the OJT is for a salaried position, an hourly rate of pay should be calculated for reimbursement purposes by taking the gross monthly salary, multiplied by 12 then divided by 2080 hours (e.g., $\$2,600 \times 12 = \$31,200 / 2080 = \$15$). Note: With salaried positions, be sure that paid time off (i.e., vacation, sick, holiday, PTO) is accounted for and not reimbursed.
2. In cases where the participant may receive two different rates of pay (e.g., regular rate and shift differential for evening/weekend hours), use the higher wage rate for the total duration to calculate the amount. Extra funds will be de-obligated at the end of the OJT.

Time Records

The employer must have its own payroll system and maintain records of employment and time for a required seven years.

Payments to Employers

Employers may be reimbursed from 50 to 90 percent of the wage rate of an OJT participant based on the Employer Reimbursement Rate section in this policy. OJT payments to employers are deemed to be compensation for the extraordinary costs associated with training participants and potentially lower productivity of the participants while in the OJT. Employers are not required to document such extraordinary costs. The wages of incumbent employees during their participation in the OJT is not allowed as an expense under WIOA Title I. Payment will be released upon completion of the training hours and submission of the OJT Reimbursement Invoice and all required documentation to the OJT Provider.

Determining Training Duration

Training will be limited, based on the period of time required for a participant to become proficient in the job position related to the OJT Training Plan . OCWDB limits the training duration to no less than four (4) weeks and no more than 26 weeks (1,040 hours). Training duration is negotiated with the employer based on the skills that need to be learned to perform the job at a level comparable to an employee who would be hired without the need for OJT. The Bureau of Labor Statistics Occupational Outlook Handbook Occupational Finder at <https://www.bls.gov/ooh/> is a resource for Service Providers/OJT Provider when developing the training plan.

An OJT program is not intended for long-term continued training within the occupation. An OJT contract must be limited to the period of time required for a participant 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 Specific Vocational Preparation (SVP) level for the occupation, the academic and occupational skill level of the participant, prior work experience, the participant's IEP/ISP, and budget. Actual training hours will be negotiated between the employer, participant, and OJT Provider. All determinations must be documented.

SVP levels are used to provide guidance on the appropriate training length. Occupation SVP codes can be found at www.onetonline.org. SVP as defined in the U.S. Department of Labor Dictionary of Occupational Titles, is the amount of lapsed time required by a typical worker to learn techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation. OCWDB has determined the number of maximum training hours for each SVP level per the chart below.

SVP Level	OCWDB Maximum Training Hours/Weeks
2	160 Hours or 4 Weeks
3	320 Hours or 8 Weeks
4	480 Hours or 12 Weeks
5	640 Hours or 16 Weeks
6	800 Hours or 20 Weeks
7	960 Hours or 24 Weeks
8	1,040 Hours or 26 Weeks

SVP may be acquired in a school, work, military, institutional, or vocational environment. It does not include the orientation time required of a fully qualified worker to become accustomed to the special conditions of any new job.

SVP training includes training given in any of the following circumstances:

1. Vocational education (high school, commercial or shop training, technical school, art school, and that part of college training which is organized around a specific vocational objective);
2. Apprenticeship training (for apprentice jobs only);
3. In-plant training (organized classroom study provided by an employer);
4. On-the-job training (serving as learner or trainee on the job under the instruction of a qualified worker); or
5. Essential experience in other jobs (serving in less responsible jobs, which lead to the higher-grade job, or serving in other jobs which qualify).

Participant Case File

All documentation relative to the selection of a candidate for an OJT opportunity, Contract, Training Plan, Progress Reports, and modifications to the Contract or Training Plan should be included in the participant’s case file and entered in CalJOBS.

Activity code entered in CalJOBS must be as follows:

- Adult and Dislocated Worker: Activity code 301 (On-the Job Training)
- Youth: Activity code 428 (Youth On-the-Job Training)

Participant files must be available to federal, state and local monitors for compliance review.

Employer Files

OJT Provider is required to keep an individual file for each OJT Employer which includes the OJT Eligibility and Business Information verifying employer eligibility. Employer files must be available to federal, state and local monitors for compliance review.

Monitoring

Monitoring at the local, state, and federal level will include the oversight of the participant training and corresponding employer payroll records.

On-site monitoring visits should be conducted by the OJT Provider shortly after the participant begins work, with additional visits scheduled midway and at the end of the OJT Training Plan. Further, the Service Provider's staff should be conducting check-ins with the participants a minimum of once a month. All check-ins and on-site monitoring visits should be documented into CalJOBS.

Effective monitoring also includes desk review of correspondence from the employer, including OJT reimbursement invoices and required documentation to support those invoices.

Service Provider staff must regularly review each participant's progress in meeting program and service plan objectives, including the participant's acquisition of basic/occupational skills and the adequacy of supportive services provided as related to the OJT Progress Report . Any deviations from the OJT Contract should be dealt with and documented promptly.

ACTION

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

INQUIRIES

If you have any questions regarding this policy, please email info@ocworkforcesolutions.com.

ATTACHMENTS

Attachment I: Trade Adjustment Assistance Funding Transition

Attachment II: OJT Employer Information

Attachment III: OJT Contract Checklist

Attachment IV: OJT Sample Contract

Attachment V: OJT Training Plan

Attachment VI: OJT Training Plan Modification

Attachment VII: OJT Exception Request

Attachment VIII: OJT Sample Employer Invoice Form

Attachment IX: OJT Progress Report