



Southwest Georgia Workforce Development Board

Policy/Procedure Name: 3.4.1.2 - On the Job Training

Policy/Procedure #: WIOA-2017-8

State WDB State Policy Effective Revision Date: August 25, 2016

SWG A WDB Local Policy Approval Date: December 6, 2016

Rescinds Policy #8 & 8.1 – On the Job Training Policy dated 7/01/2015

SWG A WDB Local Policy Revision Date: February 28, 2017

Revision Date: March 12, 2019

### **PURPOSE.**

The On the Job (OJT) Training program provides a wage reimbursement for the employers of eligible participants during the determined training period. The eligible participant must have a skills gap, as defined by local policy. The training period may last no more than six months.

### **LOCAL POLICY.**

- a. Funding Limitations: OJT Agreement funding is limited to up to \$50,000 per employer per program year. Any exceptions require WDB Executive Committee and or WDB approval.
- b. OJT Occupations: The employer's open position and participant's job title must be an occupation within the LWIA 17 OJT Key Industries. (See Attachment 1 - LWIA 17 OJT Key Industries).
- c. OJT Wages: The minimum wage rate for an OJT is \$9.00 per hour.
- d. OJT Duration: The training period may last no more than six months as determined by the [Specific Vocational Preparation \(SVP\) code](https://www.onetonline.org/help/online/svp), <https://www.onetonline.org/help/online/svp>, and any additional documented skill gaps.
- e. OJT Agreement Approval: OJT Agreements requires the signature of the senior management or designee.

### **STATE POLICY.**

WIOA § 3 (44) defines On-the-Job Training (OJT) as training that is provided by an employer in the public, private non-profit, or private sector to a paid participant while engaged in productive work in a job that:

- A. Provides knowledge or skills essential to the full and adequate performance of the job;



- B. Provides reimbursement to the employer of up to 50% of the wage rate of the participant, except as provided for in WIOA § 134 (c)(3)(H), for the extraordinary costs of providing the training and additional supervision related to the training; and
- C. Is limited in duration as appropriate to the occupation for which the participant is being trained, taking into account the content of the training, the prior work experience of the participant, and the OJT training plan and/or service strategy of the participant.

OJT may be provided to eligible WIOA participants who, after assessment, are found to be in need of and suitable for training services in order to obtain or retain employment that leads to self-sufficiency. Local Workforce Development Area (LWDA) staff must document the decision to provide OJT in the participant's Individual Employment Plan or Individual Service Strategy maintained in GWROPP. The decision should demonstrate that the training chosen is appropriate and necessary, that the participant does not already possess all of the skills necessary for the job, or that the participant needs to upgrade skills to effectively perform in another job. No participant may begin OJT employment until a contract has been signed by the employer.

#### OJT Contract Requirements

- A. A pre-award review is required to verify that an establishment is expanding rather than/and not relocating employment from another area. The review will ensure that the establishment did not layoff or displace any workers at another location within the United States.
- B. WIOA OJT training is provided based on a formal, written contract with a private, non-profit or public sector that is signed prior to the initiation of training with a copy given to the employer.
- C. 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 OJT agreement, consideration should be given to the skill requirements of the occupation, the academic and occupational skill level of the participant, prior work experience and the participant's individual employment plan. WIOA § 3 (44)(C)
- D. An OJT contract may be for the term of the program year or it may be for the term of the skills training being provided.



- E. In determining an employer's viability for OJT contracts, local areas should consider the employer's past history with OJT or customized contracts, financial stability, layoffs, relocation and labor disputes, as well as the occupational and industry outlook.
- F. No placement may be made in agencies providing workers on a temporary basis to employers for which the agency receives compensation from the employer. There are many types of staffing agencies that provide a variety of services to employers including outplacement, managed services, and outsourcing. Outsourcing is a contractual agreement between an employer and an external third-party provider whereby the employer transfers responsibility and management for certain human resource services, benefit or training-related functions or services to the external provider. Outsourcing is different from these other types of staffing firm models because it is not a temporary situation for the employee.
- G. If all (or most) employees are hired by an outsourcing firm that an employer regularly uses as the employer of record, the use of OJT would be allowable. Excluded from this are firms that hire probationary employees through a traditional staffing agency and then transfer them to their own payroll after the probationary period has passed. Therefore, employer use of outsourcing firms or staffing agencies which are solely performing outsourcing functions, may allow for an OJT placement. The OJT contract should include a clause ensuring the following:
  - 1. The OJT trainee is to be considered a regular employee, not a temporary one.
  - 2. The reimbursement is to be paid to the employer, not the outsourcing firm, and it is to reimburse the employer for the extraordinary costs of training the employee.
- H. OJT training contract will address:
  - 1. The employer's commitment to hire the participant as a full-time employee with the same, wages, benefits, hours, and conditions as existing employees on the first day of the OJT;
  - 2. The hourly wage of the participant. The minimum starting rate of OJT employees shall be the greater of the applicable federal and state minimum wage or the same rate as trainees or employees similarly situated in similar occupations by the same employer, and who have similar training, experience and skills, whichever is higher. Note: WIOA funds shall not be used for overtime wages, holidays, sick leave, or vacations.
  - 3. 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. LWDAs should consult USDOL-specific vocational preparation codes (SVP) for occupations.
  - 4. A description of the occupations involved, skill(s) and competencies to be provided and learned, assessment (examples include: TABE, Career Scope, Prove It, etc.) and identification of the participant's skills gap;



5. Performance outcome requirements;
6. A training plan (with a rating scale for skills at hire and at completion of the OJT) that defines successful completion of training;
7. A provision addressing termination for lack of funds or recapture of funds, lack of participant attendance or failure of employer to comply with initial or upgraded employment requirements; and
8. A provision for maintaining and providing records for local area, state, and federal monitoring and review.

### OJT Restrictions

- A. Any firm, employer or industry who has received payments under previous contracts and has exhibited a pattern of failure to provide OJT participants continued, long-term employment as regular employees with wages and working conditions at the same level and to the same extent as similarly situated employees are ineligible to enter into further WIOA OJT contracts. WIOA § 194 (4).
- B. No WIOA funds shall be used to encourage or to induce the relocation of an establishment, or part thereof, which results in the loss of employment for any employee or such establishment at the original location. For 120 days after the commencement or the expansion of commercial operations of a relocating establishment, no WIOA funds shall be used for customized or skill training, on-the-job training, or company-specific assessments of job applicants or employees, for any relocating establishment or part thereof at a new or expanded location if the relocation of such establishment or part thereof results in a loss of employment for any employee of such establishment at the original location. For the purposes of this section, relocating establishment means a business entity, including a successor-in-interest, which is moving any operations from a facility in one labor market area within the United States and its territories to a new or expanding facility in another labor market area. For the purposes of this section, a labor market area is an area within which individuals can readily change employment without changing their place of residence.
- C. OJT training contracts will not be written to provide skills for seasonal, temporary or intermittent employment.
- D. WIOA funds shall not be provided to reimburse OJT training costs when the participant was referred and hired through a private employment agency and was required to pay a referral and placement fee;



## Employer Reimbursements

- A. OJT training reimbursement to employers is deemed to be compensation for the extraordinary costs associated with training participants, including extra supervisory efforts, non-productive time, material waste and other incidentals, and the costs associated with the lower productivity of the participants. Employers are not required to document such extraordinary costs. (20 CFR 680.720).
- B. Employers that meet the qualifications outlined in Section II are eligible to receive a wage reimbursement rate of 50%; however, some employers may be eligible to receive a wage reimbursement rate of up to 75%. WIOA § 134 (c)(3)(H)(ii) as noted above.
- C. In order for an employer to be eligible for a wage reimbursement rate of over 50% and up to 75%, that employer must **meet one of the four** following criteria:
  - a. The employer must be a small business as defined by the Small Business Administration. Small business size standards by industry can be found at [https://www.sba.gov/sites/default/files/files/Size\\_Standards\\_Table.pdf](https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf).
  - b. The OJT must lead to the participant's attainment of an industry recognized credential.
  - c. The participant must be determined to be an individual "with barriers to employment," as listed in WIOA Section 3 (24), to include individuals who are long-term unemployed.
  - d. The participant's job title must be on the state's in-demand occupations list. (See Attachment 1 - LWIA 17 OJT Key Industries.)
- D. OJT contracts are granted based upon availability of funding and may be limited or unavailable due to funding constraints.
- E. If a collective bargaining agreement exists between the employer and the employees or their representatives, a written concurrence from the appropriate labor organization(s) is required prior to the OJT.

## Employer Responsibilities

- A. The employer agrees that OJT employees will not displace any currently employed workers (including partial displacement, such as by reducing hours or denying promotional opportunities, wages or other employment benefits).



- B. The employer agrees that no OJT employee can be employed when: (a) any other individual is on lay-off from the same or substantially equivalent job, or (b) the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the intention of filling the vacancy created by hiring an OJT employee whose wages are subsidized under this agreement.
- C. The employer agrees that OJT employees may not be engaged in the construction, operation or maintenance of any facility used for religious instruction or worship.
- D. The employer agrees that no individual in a decision-making capacity engages in any activity, including the administration of the OJT contract supported by WIOA funds, if a conflict of interest, real or apparent, is present. A conflict of interest may arise in the event that an employee under this OJT contract is an immediate family member (or partner) of an individual engaged in a decision-making capacity with the LWDA, the Local Workforce Development Board (LWDB), or the employer. Immediate family is defined as husband, wife, son, son-in-law, daughter, daughter-in-law, mother, mother-in-law, father, father-in-law, brother, brother-in-law, sister, sister-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparents and grandchild, or an organization that has a financial or other interest in the firm or organization selected for the OJT contract. In the event of a potential conflict of interest, the Employer must notify the LWDA, in writing, of the potential conflict. No action regarding the individual may take place until approved by the LWDA in writing.
- E. The employer agrees that there will be no preferential treatment of a person or group of people over other people or groups in the workplace.
- F. The employer agrees that no person shall – on the grounds of race, color, sex, age, disability or national origin– be subjected to illegal employment discrimination.
- G. The employer agrees to maintain appropriate standards for health and safety in work and training environments.
- H. The employer agrees to comply with Georgia law regarding workers compensation insurance for all OJT employees. Information on how to comply with Georgia law is found at: <http://sbwc.georgia.gov>
- I. The employer agrees to retain the OJT employee upon completion of the training if the employee's performance meets the employer's standards.
- J. If the employer does not have an established employee grievance procedure, the employer agrees to abide by the procedure provided by the LWDA.



- K. The employer shall only employ OJT employees who have been found eligible for WIOA services prior to placement on the employer's payroll.
- L. The employer understands that OJT employees shall be compensated at the same rates, including periodic increases, as all similarly employed workers. In no event shall the rate of pay be less than the applicable state or federal minimum wage, whichever is higher. Additionally, OJT employees must receive the same benefits and have the same working conditions as similarly situated employees.
- M. The employer shall maintain all records pertaining to the OJT, including application, notice of hire, time sheets, payroll records, invoices for wage reimbursement and other relevant financial records, and shall make them available to the LWDA representative as requested. All said records, books, papers or documents shall be retained for a period of six years from the date of termination of this agreement and available for inspection by federal, state, and LWDA representatives. In the case of an audit or litigation, said documents shall be retained until all such actions are settled; even if the period of retention exceeds six years.
- N. The employer agrees to participate in any follow-up efforts conducted by the LWDA or its authorized representative to evaluate OJT effectiveness.
- O. Continuation of employer agreements for multiple years will be contingent on meeting established performance outcomes.
- P. The employer must not use funds provided for OJT to directly or indirectly assist, promote or deter union organizing.
- Q. The employer must not use the OJT to impair existing contracts for services or collective bargaining agreements.
- R. The employer will meet the provisions of the Georgia Illegal Immigrant Enforcement Act of 2011 by signing and complying with the affidavit.

#### Eligibility for Employed Workers

OJT contracts may be written for eligible employed workers when:

- A. The employee is not earning a self-sufficient wage as determined by LWDB policy;
- B. The requirements in 20 CFR 680.700 are met; and



- C. 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 identified by the LWDB.

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## Attachment 1

OJT Occupations: The Key Industries identified for investment of OJT funds are identified below. The employer's open position and participant's job title must be an occupation within the Key Industries. All exceptions will require WDB Executive Committee or WDB approval.

### KEY INDUSTRIES

- Aerospace and Defense
- Agribusiness and Agriculture
- Automotive
- Business and Administration
- Construction
- Energy, Environment and Infrastructure
- Film, Music, and Digital Entertainment
- Financial Services
- Food Processing
- Information Technology
- Medicine, Health and Life Sciences
- Logistics and Transportation
- Manufacturing