

Directive #: W2FOD-09

To: All work2future providers of services

From: San Jose Silicon Valley Workforce Development Board

Effective Date: July 1, 2015 Rev. 2020

Reference: Workforce Innovation Opportunity Act

SUBJECT: [VIRTUAL] WIOA-OJT Policy and Procedure



OPERATIONAL DIRECTIVE

work2future Workforce Development Board
5730 Chambertin Dr. San Jose, CA 95118
408-794-1200

EXECUTIVE SUMMARY

Effective *immediately*, this policy provides guidance and established the procedures for the **virtual** implementation of WIOA funded On-the-Job Training (OJT) opportunities for eligible WIOA Title I Adults and Dislocated, Youth and Disaster Worker Grants (DWG) program participants.

On-the-Job Training (OJT) is a training option that provides Employers the opportunity to train new employees (Trainees) on the specific knowledge or skills essential to the full and adequate performance of the job. OJT opportunities are formed through a contractual agreement between the Employer and the OJT Service Provider. The OJT Service Provider 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. However, Section 134(c) of WIOA authorizes local boards to reimburse employers up to a maximum of 75 percent of the wage rate of an OJT participant after considering factors listed in (20 CFR 680.730) and this policy.

POLICY AND PROCEDURES

OJT is a hire-first program. The Trainee begins their OJT as a full-time employee of the company that has agreed to provide the on-site training and long-term employment upon completion of the OJT. The rate of pay, fringe benefits, periodic pay increases, and working conditions offered to the Trainee are the same as similarly situated employees in similar positions by the same Employer and are in accordance with Section 6(a)(1) of the Fair Labor Standards Act of 1938 (29.U.S.C. 206(a)(a) or the applicable state or local minimum wage laws.

On-the-Job Training must be provided through a contract that provides a structured training opportunity for the OJT Trainee to gain the knowledge and skills to be competent in the job for which they are hired. The contract must be completed and signed by all parties before the OJT Trainee may begin the OJT training. OJT may be sequenced with other WIOA program services such as work experience, classroom training or basic skills training.

OJT Process and Documentation:

1. Eligibility Verification:
 - a. Participants must complete electronically the application/eligibility determination process.
 - b. Wet signatures on all WIOA applications will be **required** at such time the participant is able to meet in-person, with One-Stop staff.
 - c. Participants must provide the documentation required to substantiate his/her eligibility, and that the individual's authorization to work documentation will be verified at such time the participant is able to meet in-person, with One-Stop staff.
2. WIOA – CASE MANAGER must complete **Virtually** Initial Career Advising and complete the IEP and case notes in CalJOBS and complete the approval process outlined below.
3. OJT Approval Process:
 - a. Participants must have the knowledge, skills and abilities that an OJT employer is requesting for the position.
 - b. WIOA - CASE MANAGER will forward via email the following documentation for review and approval to Business Services Manager who will then assign the OJT to his/her staff
 - c. OJT – Business Services staff will contact participant for initial review, interview, and discuss the OJT plan.
 - Completing the requirements listed above will not guarantee approval for OJT training.
 - Each request will be reviewed and evaluated on a case-by-case basis.
4. Electronic Files: All OJT documentation will be stored electronically. **The Service Provider OJT documentation remain unchanged**, and that the documents must be available to the program and fiscal monitors and auditors for monitoring purposes to accurately report the following:
 - a. WIOA participant information, including eligibility criteria and barriers to employment
 - b. OJT related services and forms
 - c. Case management activities, including case notes; and
 - d. Performance information

Participant Eligibility

OJT Trainees must meet program eligibility requirements for each funding source, i.e. WIOA Adult, Dislocated Worker or Youth formula funded programs. Trainees must have received a documented assessment that results in the development of an Individual Employment Plan (IEP) that documents the participant has the interest, aptitude and skills to meet the specific Employer OJT requirements.

OJTs for Employed Workers

OJTs may be written for eligible employed workers when:

- The employee is not earning a self-sufficient wage;

- All other requirements of this policy are met; and
- The OJT relates to the introduction of new technologies, introduction to new production or service procedures, upgrading to new jobs that require additional skills, or workplace literacy, (20 CFR. 680.710)

Employer Eligibility

The OJT Employer:

- Must have operated in the Local Area for a minimum of 120 days and be current in unemployment insurance and workers' compensation taxes, penalties, and /or interest or related payment plan.
- 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; have adequate payroll record keeping systems that track hours worked, gross pay, deductions and net pay.
- Must not have relocated within the last 120 days, where relocation resulted in the loss of employment at the prior location. (20 CFR 683.260)
- Shall 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 OJT Trainees. (20 CFR 683.270)
- Must not be involved in a labor dispute or have workers currently in a layoff status or 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 a WIOA Program Administrator.
- Must not impair existing contracts for services or collective bargaining agreements. Must gain written concurrence with the appropriate labor organization before the OJT can begin if the OJT agreement would be inconsistent with a collective bargaining agreement. (WIOA Sec.181 (a)(2)(B). Additionally, the Employer must attest that the OJT agreement would not assist, promote or deter union organizing (20 CFR 680.850).
- Must not allow OJT Trainees to work on the construction, maintenance or operation of any facility that is used for sectarian activities or as a place of worship (WIOA Section 188 (a)(3)).
- Must not illegally discriminate in training or hiring practices because of race, color, sex, national origin, religion, disability, political beliefs or affiliations, or age (WIOA Sec. 188(a)(3)).
- OJTs must not be written with an employer who has previously exhibited a pattern of failing to provide OJT Trainees with continued long-term employment. (proposed rule at 20 CFR 680.700(b))

Employer Reimbursement Rates

- The employer reimbursement rates of the regular wages earned for OJTs range from a minimum of 50 percent to a maximum of 75 percent. The reimbursement rate is based on the size of the employer as follows:
 - A maximum of 50 percent for large employers defined as having 100 or more employees
 - A maximum of 65 percent for medium size employers defined as having 20-99 employees and
 - A maximum of 75 percent for small employers with a workforce of 1-19 employees.

Cost Per Participant

Subject to funding availability and the OJT Trainee's needs, the training costs are up-to \$6,000. Training costs in excess of \$6,000 will need a waiver and approved by work2future-Director, under special circumstances.

The OJT Contract

Every OJT opportunity will include a contract (agreement) with the Employer and a Training Plan for the Trainee and requires a written, signed agreement between a Service Provider representative and an authorized employer representative prior to the start of work. At a minimum, an OJT contract between the Service Provider and an employer must comply with the requirements of Sections 194(1) and (4) and 101(44) of the WIOA and include the occupation, skills and competencies to be learned; and the length of time the training will be provided. Contract modifications must be in writing, signed and dated by all parties prior to the effective date of the modification. Verbal modifications are not valid. The OJT Contract will be placed in the client case file and employer file, described below.

Training Plan Elements

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 academic and occupational skill level of the participant, prior work experience, the participant's individual employment plan and local office budgets. Actual training hours will be negotiated between the employer and the service provider. All determinations must be documented. The Training Plan must include the following elements:

1. The occupation(s) for which training is to be provided.
2. The duration of the training.
3. The wage rate to be paid to the trainee/participant.
4. The rate of reimbursement.
5. The maximum amount of the reimbursement.
6. A training outline that reflects the work skills required for the position.

The unit of measure for OJT is based on the number of hours in training over a fixed calendar period. The maximum number of hours for an OJT must not exceed 1,040 hours (six months).

Participant Case File

All documentation relative to the selection of a candidate for an OJT opportunity and the development and maintenance of the participant's OJT Training Plan should be included in the participant virtual case file. Participant files must be available to federal, state and local monitors for compliance review.

Employer Files

OJT Employers are required to keep an individual file for each OJT Employer which includes the Employer Pre-Screening Checklist 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 OJT Service Provider's oversight of the participant training and corresponding employer payroll records.
- On-site monitoring visits should be conducted by the contract manager shortly after the OJT Trainee begins work, with additional visits scheduled at appropriate intervals (determined by length of OJT Training Plan).
- Effective monitoring also includes desk review of correspondence from the employer, including OJT reimbursement invoices and required documentation to support those invoices.
- Service Provider must regularly review each Trainee's progress in meeting program and service strategy objectives, including the Trainee's acquisition of basic/occupational skills and the adequacy of supportive services provided as related to OJT.
- Any deviations from the OJT Contract must be addressed and documented promptly.

Exceptions

Any exceptions to this policy must be approved by the work2future-Director or the authorized representative of the WIOA Service Provider and documented in both the Trainee and Employer files.

INQUIRIES

Please contact: sangeeta.durrall@sanjoseca.gov for any questions regarding this policy.

Cc: Monique Melchor, Director
work2future Workforce Development Board