

EXECUTIVE SUMMARY

The Workforce Innovation and Opportunity Act (WIOA) of 2014 provides guidance on the provision of Incumbent Worker Training (IWT) for an employer (or group of employers) and employees. IWT is work-based training designed to ensure that employers and employees can acquire and develop the necessary skills to obtain and maintain a quality workforce by increasing the competitiveness of both. Through IWT, an employer can avert the need for layoffs and retain a skilled workforce.

IWT is a business service, so the delivery of the training service does not require an employee to meet the eligibility requirements for formula funding participants (unless they are co-enrolled), does not require an Individualized Training Account (ITA), nor does it require the training program to be listed on the Eligible Training Provider List (ETPL).

IWT funding includes options to use up to 20% of formula allocations for IWT activities (this does not include administrative functions) or use Rapid Response funds by leveraging IWT activities into part of a layoff aversion strategy.

REFERENCES

- Workforce Innovation and Opportunity Act (WIOA) (Public Law 113-128)
- Title 20 Code of Federal Regulations (CFR) Part 680, Subpart F: Incumbent Worker Training
- Training and Employment Guidance Letter (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-Peyser Act Employment Service (ES), as amended by title III of WIOA, and for Implementation of the WIOA Final Rules* (March 1, 2017)
- California Workforce Service Directive (WSD) 19-01, *Incumbent Worker Training* (July 2, 2019)
- California Workforce Service Directive (WSD) 16-04, *Rapid Response and Layoff Aversion Activities* (July 22, 2016)

POLICY AND PROCEDURES

Incumbent Worker Training (IWT) provides both workers and employers with the opportunity to build and maintain a quality workforce. work2future's IWT is a business-driven program designed to meet the needs of an employer or group of employers to retain a skilled workforce or avert layoffs. These are two distinct, though not mutually exclusive goals, and may result in different IWT strategies and types of employees selected for training. In both instances, there is an expectation that the incumbent worker will be

promoted or retained by the company after they receive training. Ideally, this would also create additional back-fill opportunities for other workers.

IWT can be used to:

- Obtain the skills necessary to retain employment, such as increasing the skill levels of employees so they can be promoted within the company and create backfill opportunities for less-skilled employees, or
- Help avert potential layoffs of employees.

The program is intended to offset via reimbursement a portion of the employer's cost to train and upgrade the skills of its incumbent workers. Eligible employers must demonstrate that by receiving funding assistance through the program, their business will not only improve the skills of their workers but also improve their business processes and competitiveness and decrease the risk of layoffs.

Eligibility for participation in IWT is based on a combination of the following factors:

- The relationship of the training to the competitiveness of the employee and employer
- The characteristics of the participants in the program
- Other factors Local Boards determine appropriate, which may include, but are not limited to:
 - The number of employees participating in the training
 - The employees' advancement opportunities, along with wages and benefits (both pre- and post-training earnings)
 - The existence of other training and advancement opportunities provided by the employer
 - Credentials and skills gained as a result of the training
 - Layoffs averted as a result of the training
 - Utilization as part of a larger sector and/or career pathway strategy
 - Employer size

Definitions and Guidelines

For the purposes of this policy, the following definitions apply:

What is an Incumbent Worker?

An incumbent worker is a person who is currently employed and could benefit themselves and their employer by upgrading their skills through training. The training should give the employee the opportunity for advancement and wage gains within their company.

Who is an Eligible Employee for Incumbent Worker Training?

An eligible employee is one who is directly employed by the company at a facility located within Santa Clara County (with priority given to companies located in the San Jose Silicon Valley Local Workforce Service Area) and meets these requirements:

- Employee must be at least 18 years of age.
- Employee must work at least 20 hours per week.
 - Full-time employment is preferred. However, IWT can also be used for part-time workers

if the use of IWT focuses on increasing skills to advance these workers to more skilled, full-time positions with the same employer.

- Employee must have an established employment history with the employer for six months or more (which may include time spent as a temporary or contract worker performing work for the employer receiving IWT funds).
 - There is an exception to the six-month requirement: In the event an IWT is being provided to a cohort of employees, not every employee in the cohort must have an established employment history with the employer for six months or more, if a majority (at least 51%) of those employees being trained meet the employment history requirement.
- Employee must meet Selective Service requirements.
- Employee must be committed to attending all trainings.
- Employee must agree to be registered in CalJOBS and cooperate with data collection requirements.
- Employee must meet the Fair Labor Standards Act (FLSA) requirements for an employer-employee relationship.

Who is an Eligible Employer for Incumbent Worker Training?

Financially viable, private sector employers and certain nonprofit and local government entities (e.g., a nonprofit or county hospital) are eligible to receive IWT funds. The employer(s) must have been in operation for 12 months or more, not currently or recently experiencing bankruptcy, be current on all local, state, and federal tax obligations, and not appear on any federal suspensions or debarment lists. An eligible employer must be located in the work2future service area and have a valid California Employer Account Number. Employers are encouraged to provide training to a group of employees and not a single individual, although the number of employees in the company will be taken into consideration. A group of employers who need the same training for their workers may work together as a cohort to request IWT funding.

Employers that are in the process of a layoff or have had a layoff in the last six months are not eligible for IWT (excludes temporary hires or contract workers.) If a layoff occurs while the employer has an open IWT program, the current workers will be able to complete the training.

In the event of exigent circumstances (i.e., pandemic related worksite closures or natural disaster events), the employer must complete all agreed upon training plans and may request revisions to impacted training methods and timelines in the IWT training plan.

It is preferred that all IWT be in in-demand occupations or be within priority and/or high-growth industry sectors as identified by work2future. These sectors currently include, but are not limited to:

- Healthcare
- Construction
- Advanced Manufacturing
- Information and Communications Technology

IWT funds are limited. The maximum work2future subsidy awarded is dependent on the size of the employer and may not exceed the amounts detailed in the table below. The initial training agreement may not exceed 12 months.

Size of Employer	Employer Portion	work2future Subsidy	Max Subsidy per Employee	Max Subsidy per Year
≤ 50 employees	At least 10%	Up to 90%	\$9,000	\$90,000
51-100 employees	At least 25%	Up to 75%	\$7,500	\$75,000
100+ employees	At least 50%	Up to 50%	\$5,000	\$50,000

Only one IWT per employer (based on FEIN#) may be awarded per program year (July 1–June 30). If an employer has multiple sites within the work2future service area, those sites must work together to submit their contract and the size of employer calculation will include employees at all site locations.

What is the Employer’s responsibility?

After discussion with the work2future Business Services team, the employer(s) must complete an IWT contract and training plan, including all required documentation, to be considered for IWT funding support.

Employers will be required to provide a portion of the training costs, dependent upon the number of employees, either through direct cost contribution or in-kind contribution, totaling:

- At least 10 percent of the cost for employers with 50 or fewer employees,
- At least 25 percent of the cost for employers with 51 to 100 employees, or
- At least 50 percent of the cost for employers with more than 100 employees.

Examples of direct cost contributions include expenses associated with the cost of books, tools, and/or supplies; the cost of registration, tuition, and/or other school fees; the cost of a teacher/instructor; any on-the-job portion of training if required for certification/licensing; and other costs, fairly evaluated.

The employer must disclose in-kind contributions. In-kind contributions, in addition to any direct costs, may include wages paid by the employer to participating employees while the employees are attending the IWT program as well as facility usage if the training takes place at the employer site or travel costs if the training takes place off-site.

Employer will collect and supply all required trainee information to work2future prior to the start date of the training. The employer will keep accurate records of the project’s implementation process and certify that all information provided, for the purpose of requesting reimbursements and reporting training activity, is accurate and true, including evidence that the employer has paid the training expenses in accordance with the terms of the agreement prior to requesting reimbursement of allowable training costs.

The employer will submit reimbursement requests, with required support documentation, to work2future following the agreed upon timeline in the IWT contract.

All awarded IWT funds are subject to federal Workforce Innovation and Opportunity Act (WIOA) and State Dislocated Worker Program reporting requirements and performance standards. All training sessions must have signed attendance sheets or digital confirmation of attendance. Trainee participation is required. The employer must submit to work2future copies of all credentials, certificates of completion, or other documentation of the employee’s participation within 30 days of the end of training to be considered eligible for reimbursement. IWT projects require regular communication with the work2future Business Services team on the status of the project. Upon training completion, each project requires one year of

follow-up to track project outcomes (e.g., providing updated trainee wages and promotions). Employers submitting an IWT contract are agreeing to provide this information. Compliance with program communication requirements, including follow-up, will be taken into consideration when reviewing future training opportunities.

What is work2future's responsibility?

work2future will review the contract and training plan from the individual employer(s), will verify the eligibility of the employer(s), employee(s) and training provider(s), and will notify the employer(s) of funding awards. Once funding is approved, the work2future Business Services team will enroll the employer(s) and the participating incumbent workers in CalJOBS to ensure all state and federal tracking requirements are followed. work2future is responsible for collecting required training documentation and certificates of completion/credential. work2future will follow-up with the employer to ensure the training plan is being fulfilled.

work2future will process reimbursement requests from the employer following the agreed upon timeline in the IWT contract. work2future's share of direct cost contributions is limited to expenses associated with the cost of books, tools, and/or supplies; the cost of registration, tuition, and/or other school fees; the cost of teacher/instructor; any on-the-job portion of training if required for certification/licensing; and other costs, fairly evaluated.

Who can provide training and what activities are included?

Public or private educational institutions, trade associations, community-based organizations, economic development agencies, unions, or government agencies may provide IWT, and training can be conducted at the employer's own facility, at the training provider's facility, or at a combination of sites.

Training must be skills-based and result in improved productivity, efficiency, and an increase in the employee's existing wages. IWT may include industry- or business-specific skills, technical and computer skills, and/or "soft skills," such as leadership and management training.

Training opportunities should expand and improve an employee's occupational skills and provide employees with opportunities for advancement and wage gains within their company or be used to avert layoffs.

The employer will select the training provider. It may be public or private. Training providers should be accredited, offer curricula that lead to industry-accepted credentials, and demonstrate high completion/graduation rates. Training providers should be California-based unless the training is so unique that the training provider cannot be found in California.

The employer itself, in some circumstances, may also be considered as a training provider, if the training is specific and no alternative is available.

All training plans must show an end date that completes training within 12 months of award date. All training should have specific start and end dates.

The following types of training methods are allowable for IWT:

- Classroom training – instruction in a classroom setting that is provided to a group of trainees and conducted by a qualified instructor.
- Laboratory training – hands-on instruction or skill acquisition under the constant and direct guidance of a qualified trainer. Laboratory training may require the use of specialized equipment or facilities. Laboratory training may be conducted in a simulated work setting, or at a productive work setting, also known as Productive Laboratory.
- Computer-based training – delivered through a computer program at a pace set by the trainee, to be completed within the agreed upon program timeline. There is no requirement for delivery by a live trainer and training does not have to be interactive.
- Video Conference training – live, interactive instruction provided by a trainer through a video communications session.
- E-Learning instruction – delivered through a web-based system, conducted in a virtual environment utilizing a web meeting/webinar.

Prohibitions

20 CFR 680.840 clarifies that there is an explicit prohibition on the use of work-based training funds which includes IWT, in assisting, promoting, or deterring union organizing activities.

20 CFR 683.270 prohibits displacement of regular, unsubsidized employees by participants. This section includes the layoff rule, has extensive anti-displacement provisions and affirms the primacy of collective bargaining agreements.

20 CFR 683.275 Prohibits employers from treating trainees differently from regular employees; covers pay, safe work conditions and fringe benefits with continued long-term employment as regular employees with wages and employment benefits (including health benefits) and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work.

20 CFR 683.280 addresses workplace health, safety standards, and workers' compensation.

20 CFR 683.285 includes nondiscrimination and equal opportunity provisions and forbids employment or training in sectarian activities.

20 CFR 683.255 offers additional guidance on prohibition of sectarian activities.

20 CFR 683.260 prohibits business relocation assistance.

Exceptions

Any exceptions to this policy must be approved by the work2future-Director, Program Manager, or the authorized representative of the WIOA Service Provider and documented in the participant file.

INQUIRIES

Please contact the work2future Administrator on duty, work2future.MIS@sanjoseca.gov, for any questions regarding this policy.