Kansas Department of Commerce
Workforce Services
Policy and Procedures Manual

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Originating Office: Workforce Services

Subject: WIOA Work-Based Training

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Programs: WIOA Title I – Adult and Dislocated Worker Programs

Purpose: To transmit state policy and guidance regarding WIOA Title I work-based training activities.

Reference: WIOA Sections 3(14); 3(24); 3(44); 122(h); 134(c)(3)(H); 134(d)(4); 134(d)(5); 181(a)(1)(A); 181(a)(2); 181(b)(5); 181(d); 181(e); 188; Fair Labor Standards Act Sec. 14 (c); Sec. 6(a)(1)

20 CFR Parts 680.180; 680.320; 680.530; 680 Subpart F

Training and Employment Guidance Letter (TEGL) 19-16

State Training Expenditure Policy 5-08-00

Background: The citations within this revised state policy are provided to assist the local workforce development boards (LWDB) in establishing appropriate local policies and procedures for WIOA work-based training activities.

Contact: Questions should be directed to WIOA Administrator, WorkforceSvcs@ks.gov

Attachment: None.

WIA On-the-Job and Customized Training

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WIOA WORK-BASED TRAINING

Definitions and types of Work-Based Learning

On-the-Job Training
On-the-Job Training (OJT) is defined by the Workforce Innovation and Opportunity Act (WIOA) in Section 3(44) as training by an employer that is provided to a paid participant while engaged in productive work in a job that provides knowledge or skills essential the full and adequate performance of the job; is made available through a program that provides reimbursement to the employer of up to 50 percent of the wage rate of the participant (certain exceptions up to 75 percent) for the extraordinary costs of providing the training and additional supervision related to the training; and 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 service strategy of the participant, as appropriate.

Customized Training
Customized Training is defined as training designed to meet the special requirements of an employer (including a group of employers); that is conducted with a commitment by the employer to employ an individual upon successful completion of the training; and for which the employer pays for a significant cost of the training, as determined by the LWDB in accordance with the factors in WIOA Section 3(14).

Incumbent Worker Training
Incumbent Worker Training is designed to meet the special requirements of an employer (including a group of employers) to retain a skilled workforce or avert the need to lay off employees by assisting the workers in obtaining the skills necessary to retain employment.

Internships or Work Experience
An Internship or Work Experience is a planned, structured, learning experience that takes place in a workplace for a limited period of time. Internships and other Work Experience may be paid or unpaid.

Transitional Employment
A transitional job is one that provides a time-limited work experience that is wage-paid and subsidized, and is in the public, private, or non-profit sectors for those individuals with barriers to employment who are chronically unemployed or have inconsistent work history, as determined by the Local WDB

Requirements for On-the-Job Training

Payments to employers for On-the-Job Training are considered training payments made to a training provider (the employer) as cost reimbursement for training services received and, as such, is not to be marketed as a 'wage subsidy' or 'wage reimbursement program'. The fair market value of the payment is determined to be equal to a percentage of the hourly wage the trainee receives in consideration of the costs incurred by the employer for providing the training service.

On-the-job training (OJT) is provided under a contract with an employer or registered apprenticeship program in the public, private non-profit, or private sector. Through the OJT contract, occupational training is provided for the WIOA participant in exchange for the reimbursement for the extraordinary costs of providing the training and supervision related to the training. Employer reimbursement is typically up to 50 percent of the wage rate of the WIOA participant.

OJT contracts must not be entered into with an employer who has received payments under previous contracts if the employer has exhibited a pattern of failing to provide OJT participants 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. Examples of a pattern of failure would include but are not limited to:

1) terminating an OJT employee or multiple OJT employees without sound justification shortly after the end of the OJT contract
2) paying OJT employees a substantially lower wage than other employees at the same level after the end of the OJT contract
3) not providing OJT employees with employment benefits after the end of the OJT contract

As part of required follow-up services under WIOA, the LWDB should regularly monitor the status of OJT employees after the OJT contract has ended to check for potential patterns of failure.

OJT contracts 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. To determine appropriate contract length, 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 (IEP).

OJT contracts may be written for eligible employed workers when the employee is not earning a self-sufficient wage or wages comparable to or higher than wages from previous employment, as determined by LWDB policy; when the requirements of 20 CFR 680.700 are met; and the OJT relates to the introduction of new technologies, new production or service procedures, upgrading to new jobs that require additional skills, workplace literacy, or other appropriate purposes identified by the LWDB.

OJT payments to employers are considered compensation for the extraordinary costs associated with training participants. Potentially there is lower productivity of participants during the OJT. Employers are not required to document such extraordinary costs. Employers may be reimbursed up to 50 percent (50%) of the wage rate of an OJT participant. In certain instances the LWDB may raise the OJT training reimbursement rate up to 75 percent (75%). The LWDB must take into account the following factors when increasing the reimbursement rate of OJT contracts:

1) characteristics of the participants considering whether they are individuals with barriers to employment defined in WIOA Sec. 3(24);
2) the size of the business, with an emphasis on small business;
3) the quality of the employer-provided training and advancement opportunities;
4) other factors the LWDB may determine to be appropriate, which may include the number of employees participating, wage and benefit levels (both during and after completion of the OJT), and relation of the training to the competitiveness of the participant.

LWDBs must document (via local policy and participant case notes) the factors used when deciding to increase the wage reimbursement level above 50 percent (50%). The maximum OJT reimbursement rate must not exceed 75 percent (75%).

OJT contracts may be entered into with registered apprenticeship program sponsors or participating employers in the registered apprenticeship programs for the OJT portion of the registered apprenticeship. Both Individual Training Account (ITA) and OJT funds may be used when placing participants in the registered apprenticeship program.

Requirements for Customized Training

Customized training can be used for both unemployed and employed workers and must be conducted with a commitment by the employer (including a group of employers) to employ an individual upon successful completion of the training, and employers must pay for a significant cost of the training. Customized training can only be used for employed workers when the employee is not earning a self-sufficient wage or wages comparable to or higher than wages from previous employment as determined by LWDB policy; and the training 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.

The State Workforce Board considers an employer (or group of employers) contributing 51% or more to the cost of the training to be significant.

Requirements for Incumbent Worker Training

Incumbent Worker Training (IWT) is designed to meet the needs of an employer or group of employers to retain a skilled workforce or avert layoffs. IWT is not permitted to be used to provide training for new hires. IWT can be used to either:

- help avert layoffs of employees as part of a lay-off aversion strategy, or
- obtain the skills necessary to retain employment, such as increasing the skill levels of employees so they can be promoted with the company and create backfill opportunities.

A LWDB may use up to 20 percent (20%) of their Adult and Dislocated Worker funds to provide the federal share of the IWT cost.

LWDB's must determine an employer's eligibility for participating in IWT based on the following factors which help to evaluate whether training would increase the competitiveness of the employees or both the employees and the employer:

- The characteristics of the individuals in the program (e.g. individuals with barriers to employment);
- Whether the training improves the labor market competitiveness of the employees or both the employees and the employer; and
- Other factors the LWDB may consider appropriate, including:
    - the number of employees participating in the training;
    - wage and benefit levels of those employees (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; or
    - employer size

For an employer to receive IWT funds, the individual(s) receiving training must be employed, meet the Fair Labor Standards Act requirements for an employer-employee relationship, and employment history requirement - have an established employment history with the employer for 6 months or more (which may include time spent as a temporary or contract worker performing work for the employer receiving IWT funds).

There is one exception to the six month requirement, which is that in the event incumbent worker training 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 as long as a majority of those employees being trained meet the

employment history requirement.

An incumbent worker does not have to meet the eligibility requirements for career and training services for adults and dislocated workers under WIOA, unless they are receiving career and/or training services in addition to (not a part of) incumbent worker services.

Generally, IWT should be provided to private sector employers; however, there may be instances where non-profit and local government entities may be the recipients of IWT funds.

A LWDB shall establish the non-Federal share of the training cost by taking into consideration such other factors as the number of employees participating in the training, the wages and benefit levels of the employees (both pre- and post-training earnings), the relationship of the training to the competitiveness of the employers and employees, and the availability of other employer-provided training and advancement opportunities. The non-Federal share shall not be less than:

- 10 percent (10%) of the cost for employers with not more than 50 employees;
- 25 percent (25%) of the cost for employers with more than 50 employees but not more than 100 employees;
- 50 percent (50%) of the cost for employers with more than 100 employees.

The non-Federal share provided by an employer may include the wages paid by the employer to the participant while the participant is attending the training.

IWT contracts shall not be approved for employees who will receive a wage rate less than the prevailing wage for the local labor shed.

Requirements for Internships and Work Experience

An Internship or Work Experience is a structured learning experience that takes place in a workplace for a limited period of time. Transitional Employment is type of Work Experience. Although Internships and Work Experience are not considered training services, Local Workforce Development Boards may include these expenditures when calculating the training percentage towards the Training Expenditure Policy 5-08-00.

Internships and Work Experience may be paid or unpaid, as appropriate and consistent with other laws, such as the Fair Labor Standards Act. Internships and Work Experience may be arranged within the private for profit sector, the non-profit sector, or the public sector. Labor standards apply in any work experience setting where an employee/employer relationship, as defined by the Fair Labor Standards Act, exists.

Requirements for Transitional jobs

Transitional jobs are a type of Work Experience LWDBs may provide and are considered an individualized career service. As a type of Work Experience, transitional jobs are a Career Service, rather than Training Service. Transitional jobs are time-limited and wage-paid Work Experiences that are subsidized up to 100 percent (100%). Transitional jobs can be in the public, private or nonprofit sectors, but are only available for individuals with barriers to employment who are chronically unemployed or have an inconsistent work history as determined by the LWDB.

Transitional jobs provide the participant with work experience with the context of an employee-employer relationship where the program provider acts as the employer. This service must be combined with career and supportive services. Transitional jobs must be designed to establish work history for the participant, demonstrate success in the workplace and develop the skills necessary for unsubsidized employment. For Transitional jobs there is no requirement that the employer retain the participant upon completion, however, retention, where appropriate is preferred. LWDBs may use up to 10 percent (10%) of their combined total of adult and dislocated worker funds to provide Transitional jobs.

If LWDBs decide to use Transitional jobs as a local strategy, LWDBs must adopt policies that include plans for reimbursement amounts, supportive services that must be included, and limits on the duration of Transitional jobs. LWDBs must also define and identify participants who are chronically unemployed or have inconsistent work history. LWDBs are encouraged to target individuals who are long-term unemployed, ex-offenders, and individuals who are currently receiving or have exhausted TANF benefits. LWDBs must also identify appropriate employers to act as host sites for Transitional job placements. Transitional jobs must be combined with comprehensive career services and supportive services.

Providing Services by Contract

Contracts for services may be used instead of ITAs when the services provided are on-the-job-training (OJT), customized training, incumbent worker training, or transitional jobs.

OJT Contract

At a minimum, an OJT contract must include the following provisions:

1. Occupation(s) for which training is to be provided;
2. Duration of training;
3. Wage rate to be paid by the employer to the trainee;
4. Reimbursement rate to be paid by the LWDB to the employer:
    - up to 50% of the cost of training or;
    - up to 75% of the cost of training in certain instances
5. Maximum amount of the contract (e.g.; not to exceed X amount of dollars);
6. Outline that reflects the work skills for the position for which the employer will provide the employee training and method(s) for evaluating proficiency attainment;
7. Description of any other classroom training that may be provided by the employer; and
8. Employer's agreement that they will maintain and make available time, attendance, payroll and other records to support amounts claimed for reimbursement under the contract.
9. Employer assurance that funds provided under the OJT contract will not be used to directly or indirectly assist, promote or deter union organizing.
10. Employer assurance the OJT does not displace (including partial displacement such as a reduction in non-overtime hours, compensation or benefits) any currently employed worker.
11. Employer assurance the OJT does not infringe on the promotional opportunities of currently employed workers
12. Employer assurance no former employee has been involuntarily terminated with the intention of filling the vacancy with an OJT candidate.
13. Employer assurance no other individual is currently on lay-off from the same or substantially equivalent job.

Customized Training Contract
A customized training contract should address the following:

1. Special training requirements of the employer (or group of employers);
2. Agreement that the employer will pay for 51 percent (51%) or more of the cost of the training; and
3. Agreement that the employer will employ (or in the case of persons already working, continue to employ) an individual on successful completion of the training.
4. Employer assurance that funds provided under the Customized Training Contract will not be used to directly or indirectly assist, promote or deter union organizing.

Incumbent Worker Contracts
An incumbent worker training contract should address the following:

1. The positions that are a potential threat for layoff;
2. The skills necessary to retain employment and that will be addressed under the contract;
3. Characteristics of individuals in the program;
4. If the training increases the competitiveness of the employees, the employer, or both;
5. Other factors the LWDB considers appropriate including:
    a. the number of employees participating in the training;
    b. wage and benefit levels of the employees (both pre- and post-training);
    c. other advancement opportunities provided by the employer;
    d. credentials and skills gained;
    e. number of layoffs averted;
    f. utilization as part of a lager sector and/or career pathway strategy; or
    g. employer size
6. Employment history of the employees with the employer;
7. The non-Federal share of the training cost paid by the employer which shall not be less than:
    a. 10 percent (10%) of the cost for employers with not more than 50 employees;
    b. 25 percent (25%) of the cost for employers with more than 50 employees but not more than 100 employees;
    c. 50 percent (50%) of the cost for employers with more than 100 employees.
8. Employer assurance that funds provided under the Incumbent Worker Training Contract will not be used to directly or indirectly assist, promote or deter union organizing.

Internship and Work Experience Contracts
Internship and Work Experience contracts should include the following:

1. Type of learning experience that is taking place under the contract;
2. Time period for the learning experience;
3. Pay rate (when a paid Internship or Work Experience) and number of hours to be worked each week under the contract;
4. Percentage of the pay rate (when a paid Internship or Work Experience) that is being subsidized by the program;
5. Maximum amount of the contract;
6. Employer's agreement that they will maintain and make available time, attendance, payroll and other records to support any claimed reimbursement amounts under the contract.
7. Employer assurance that funds provided under the Internship or Work Experience contract will not be used to directly or indirectly assist, promote or deter union organizing;

8. For Transitional jobs, the career and supportive services to be provided during the Transitional job.

Eligible Training Provider List

Providers of on-the-job training, customized training, incumbent worker training, internships, paid or unpaid work experience, or transitional jobs are not subject to the requirements applicable to entities listed on the eligible training provider list, and are not included on the State list of eligible training providers and programs.

Special Requirements, Exclusions and Restrictions

Rate of Compensation for OJT Participant

In accordance with WIOA Sec. 181(a)(1)(A), individuals participating in on-the-job training or individuals employed in activities under WIOA must be compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills, and such rates shall be in accordance with applicable law. Such rates shall not be less than the higher of either the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the applicable State or local minimum wage law.

Benefits and Working Conditions for OJT Participant

In accordance with WIOA Sec. 181(b)(5), individuals in on-the-job training or individuals employed in programs and activities under WIOA must be provided benefits and working conditions at the same level and to the same extent as other trainees or employees working a similar length of time and doing the same type of work.

Exclusion of Allowances, Earnings, and Payments

In accordance with WIOA Section 181(a)(2), allowances, earnings and payments to individuals participating in programs under WIOA Title I are not considered *income* for purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or federally-assisted program based on need, other than as provided under the Social Security Act (42 U.S.C. 301 et seq.).

Accommodations and Supportive Services

In accordance with WIOA Section 188, no individual shall be excluded from participation in, denied the benefits of, subjected to the discrimination under, or denied employment in the administration of or in connection with any such program or activity because of race, color, religion, sex, national origin, age, disability, or political affiliation or belief.

As with any employment situation, the employer of record should make reasonable accommodations to ensure participants have access to work-based training services. Employers should fully comply with the Americans with Disabilities Act (ADA). This applies to both employers and LWDB's, either of which may be established as the employer of record under a work-based training contract.

WIOA Adult and Dislocated Worker funds may be used to support any training service or work-based training activity as determined appropriate by the LWDB. Supportive services could be used to make reasonable accommodations to support a work-based training activity. LWDB's are encouraged to work with WIOA Core Partners and maximize the use of resources and avoid duplication of services.

Assisting, Promoting or Deterring Union Organizing

Funds provided to employers for work-based training may not be used to directly or indirectly assist, promote or deter union organizing (20 CFR 680.830).

Employment Generating Activities, Economic Development and Similar Activities
In accordance with WIOA Section 181(e), WIOA funds may not be used for employment generating activities, investment in revolving load funds, capitalization of businesses, investment in contract bidding resource centers, economic development activities, or similar activities, that are not directly related to training for eligible individuals under WIOA Title I.

Employment of Workers with Disabilities at Subminimum Wages
A worker who has disabilities for the job being performed is one whose earning or productive capacity is impaired by a physical or mental disability. Disabilities which may affect productive capacity include blindness, mental illness, developmental disabilities, cerebral palsy, alcoholism and drug addiction. The following, taken by themselves, are not considered to be disabilities for the purposes of paying subminimum wages: education disabilities, chronic unemployment, receipt of welfare benefits, nonattendance at school, juvenile delinquency, and correctional parole or probation.

Section 14(c) of the FLSA authorizes employers, after receiving a certificate from the Wage and Hour Division of the Department of Labor, to pay subminimum wages to workers who have disabilities for the work being performed.

Section 14(c) does not apply unless the disability actually impairs the worker's earning or productive capacity of the work being performed. A participant having a disability in and of itself is not sufficient to warrant the payment of a subminimum wage.

The employer of record must follow all applicable Federal and State laws regarding wages including Section 14(c) of the FLSA. This applies to both employers and LWDB's, either of which may be established as the employer of record under a work-based training contract.

Business Relocation
In accordance with WIOA Sec. 181(d) WIOA Title I funds may not be used, or proposed for use, to encourage or induce the relocation of a business or part of a business if such relocation would result in a loss of employment for any employee of such business at the original location and such original location is within the United States.

No funds provided under WIOA Title I for an employment or training activity shall be used for customized or skill training, on-the-job training, incumbent worker training, transitional employment, or company-specific assessments of job applicants or employees, for any business or part of a business that has relocated, until the date that is 120 days after the date on which such business commences operations at the new location, if the relocation of such business or part of a business results in loss of employment for any employee of such business at the original location and such original location is within the United States.

State Policy #5-08-00

State Policy #5-08-00 a minimum training expenditure of 40% for Adult and Dislocated Worker funds and a minimum training expenditure requirement of 20% for Youth funds. Below are the training services to be included in the calculations.

Training Services That Are Included

For Adult and Dislocated Worker, these training services and associated costs shall be included in the 40%

calculation:

- Occupational skills training
- On-the-job training
- Incumbent worker training
- Programs that combine worker training with related instruction
- Skills upgrading and retraining
- Entrepreneurial training
- Transitional jobs
- Customized training

For Youth funds, these training services and associated costs shall be included in the 20% calculation:

- Occupational skills training
- Programs that combine worker training with related instruction
- Skills upgrading and retraining
- Transitional jobs
- Customized training