

# SOUTHWESTERN AREA WORKFORCE DEVELOPMENT BOARD

## ON-THE-JOB TRAINING POLICY 17-03

### DATE OF ISSUE

May 4, 2017

### EFFECTIVE DATE

July 1, 2017

### APPLICABILITY

This applies to Southwestern Area Workforce Development Board's (SAWDB) Adult, Dislocated Worker, and Youth service providers providing On-the-Job training. OJT is an allowable activity for youth, but should be discouraged when it conflicts with educational goals and achievements.

### PURPOSE

The objective of this rule is to establish requirements for the SAWDB in the delivery of on-the-job training services under the Workforce Innovation & Opportunity Act (WIOA). Priority of service for Adult funds must be given as defined in TEGL 3-15.

### BACKGROUND

On-the-job training (OJT) provides WIOA participants the opportunity to receive training while employed and to be paid wages and benefits comparable to other similar positions. OJT also provides employers the opportunity to be reimbursed a percentage of the wages paid to WIOA participants who are engaged in productive work.

### ACTION

OJT services shall be provided by an employer or a registered apprenticeship program sponsor in the public, private non-profit or private for-profit sector with payment for WIOA participant(s) engaged in productive work that: (a) an official employer orientation shall be provided and documented before the OJT contract period begins, including review of OJT contract, training plan, progress report/invoice forms, and contact information; (b)

provides knowledge or skills essential to full and adequate performance of the job; (c) provides reimbursement to the employer of up to 75% of the participant's wage rate (excluding benefits) for the extraordinary costs of providing training; for employers with 50 or fewer employees and up to 50% for employers with fifty-one (51) or more employees as defined in CFR 680.730(d) is limited in duration as appropriate to the occupation and considering the individual's prior work experience and employment development plan; must also be no less than 160 hours; and (e) prepares the participant for long-term, unsubsidized employment; any individual referred to a center by an employer (commonly referred to as a "reverse referral") shall go through the system in the same manner as other job seekers and be determined to be eligible and in need of training in order to participate in OJT.

A. WIOA mandates that training services for OJT training be provided through the use of a contract.

- 1) Each OJT contract shall be designed for a particular participant and employer. Procurement of OJT contracts is conducted through non-competitive negotiations. Documentation detailing how the price was derived must be developed and maintained in contract.
- 2) Contracts shall not be written for seasonal, intermittent, or other types of temporary employment and must not involve payment in the form of a commission, tip, or similar kinds of payments. Occupations which have not traditionally required specific occupational training as a prerequisite for performance, such as porters, janitors, stackers, laborers, etc. Generally, contracts should be written for full-time employment; the standard for what

constitutes "full-time" employment may vary depending on the occupation, industry or needs of the participant.

- 3) OJT contracts may be issued within the local area in any occupation in which an employer provides employment and training in a permanent, full-time position with reasonable expectation of retention in unsubsidized employment upon successful completion of training.
  - 4) Service providers must have adequate internal controls, such as a participant roster with their estimated earnings or other system, to determine whether an OJT contract can be issued for less than their "Median Earnings" performance measure. This is to ensure that the overall negotiated performance measure for "Median Earnings" is being met.
  - 5) The local workforce development board shall make efforts to assure that the occupations and positions are those which afford adults and dislocated workers the opportunity to become self-sufficient as defined in the local five-year plan.
- B. The service provider shall ensure that OJT contracts are not written with employers who have had two or more previous OJT's and exhibited a pattern of failing to provide participants with continued, long-term (9 months or longer) employment as regular employees with wages and working conditions the same as other employees. The service provider must consider whether the OJT participant quit voluntarily, was fired for cause or if business conditions changed the employment opportunities with the employer. Employers may be sanctioned and determined ineligible for no less than 6 months but not longer than 18 months. Employers may appeal the service provider decisions following WIOA Program Complaint Resolution Procedures.
- C. The service provider shall ensure that OJT contracts are not written with employers which has relocated within the last 120 days and dislocated workers at its previous location.

- D. The service provider shall ensure that OJT contracts are not written with employers in which the participants will be employed to carry out the construction, operation, or maintenance of any part of a facility that is used or to be used for sectarian instruction or as a place for religious worship. Adult and Dislocated Worker Services Technical Assistance Guidance page 17.
- E. OJT contracts may also be written for eligible employed workers. An eligible employed worker is an individual who is job attached but in need of skills upgrade and not earning a self-sufficient wage as determined by the SAWDB. Contracts must relate to the introduction of new technologies, introduction to new production or service procedure, upgrading to new jobs that require additional skills, workplace literacy.

#### **TRAINING ORIENTATION**

An official participant orientation shall be provided and documented before the OJT contract begins. At a minimum, the orientation should include the following: 1) OJT training plan review; 2) participation requirements; 3) time sheet tracking and payroll verification requirements including OJT progress report and invoice form; 4) information regarding additional services and activities, including supportive services available through the workforce system, to ensure successful participation. Specific Vocational Preparation (SVP) is available either through the O\*Net or New Mexico Workforce Connection Online System (NMWCOS)

OJT participants allowed with an employer: No more than 50% of the number of the employer's full-time workforce at the location where training is to take place may be trained under OJT at any one time. An employer having a regular full-time workforce of one may train one individual under OJT.

- A. The SAWDB shall ensure that OJT contracts include, at a minimum, the following contract elements:
- 1) Job description (using O-Net <http://online.onetcenter.org>) or other

- source) training online or curriculum, including provision for any required classroom/adult basic education/or vocational training as established by the needs assessment.
- 2) participant hourly wage rate and allowable training hours (work zones as noted on O-Net);
  - 3) provision for wage increases based upon successful achievement of training goals as provided to other similar employees, if applicable;
  - 4) provision for assurances not to reduce wage rates after completion of training contract;
  - 5) agreement on the maximum amount of reimbursement and/or allowable costs of training;
  - 6) provisions for participant time off, if necessary; to attend WIOA sponsored meetings, workshops, classes or other events;
  - 7) duration of contract;
  - 8) a provision for recoupment of overpayments;
  - 9) a provision for termination due to lack of funds or lack of participant attendance or unsatisfactory progress;
  - 10) a provision for termination due to failure of the employer to comply with initial or upgraded employment requirement (OJT for employed workers only);
  - 11) a provision for allowing for SAWDB or their designee, state and federal staff monitoring and review of training records;
  - 12) a provision for meeting record retention requirements;
  - 13) identification and reporting of new employees versus employed workers (OJT for employed workers only);
  - 14) employer requirement to maintain attendance and payroll records to support requests for reimbursement;
  - 15) provision for the submittal of participant reimbursement/progress evaluations on a timely basis;
  - 16) state and federal taxpayer identification numbers for payment of state gross receipt tax and unemployment compensation tax;
  - 17) worker's compensation coverage; (not required for exempt employers)
  - 18) a provision for equal employment opportunity;
- 19) a provision for drug-free workplace;
  - 20) a provision for debarment and suspension, where applicable;
  - 21) a requirement that the service providers report program outcomes;
  - 22) a requirement for job retention beyond the training period; and
  - 23) other provisions as required by local policies and procedures;
  - 24) signatures and dates must be in place on OJT contracts before the participant begins training;
- B. In determining an employer's viability for a contract, the employer's past history with OJT and must be considered. The SAWDB may also consider the employer's finances, lay-offs, relocation, labor disputes, as well as the occupational and industry outlook.
  - C. SAWDB Administrative Entity or designee shall make provisions for the maintenance and retention of all on-the-job training records, including systems of issuance, funding obligations/expenditures, oversight, and completion in accordance with WIOA record retention requirements. Such records shall be retained for a period of three (3) program years from the date the individual participant exits unless an unresolved audit is pending. In that case, records must be retained until final resolution of the audit.
  - D. SAWDB Administrative Entity or designee shall establish and collect relevant performance criteria/program outcomes for each of their service providers.
  - E. SAWDB Administrative Entity or designee shall ensure that, career services are made available to individuals in One Stop Centers.
  - F. SAWDB Administrative Entity or their designee shall ensure that selected training providers are afforded appropriate training and technical assistance necessary to deliver the required WIOA services.
  - G. SAWDB Administrative Entity or their designee shall review each OJT contract on-site to

determine that payroll and time and attendance records substantiate amounts claimed for reimbursement and that training, wages, hours, benefits, and working conditions are provided in accordance with the contract.

**INQUIRIES**

Questions related to this policy should be directed to the Administrative Entity at (575) 744-4857.

**ATTESTED**

This policy was reviewed and approved by the SAWDB

on: \_\_\_\_\_

\_\_\_\_\_  
SAWDB Chairman

\_\_\_\_\_  
Date