

BILL RITTER, JR.  
Governor

DONALD J. MARES  
Executive Director

CLARKE D. BECKER  
Director, Workforce  
Development Programs



## DEPARTMENT OF LABOR AND EMPLOYMENT DIVISION OF EMPLOYMENT AND TRAINING

WORKFORCE DEVELOPMENT PROGRAMS  
633 17<sup>th</sup> Street, 7th Floor  
Denver, CO 80202-3660

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### I. REFERENCE(S):

Title I of the Workforce Investment Act (WIA) of 1998; Federal Register 20 CFR 652 et al.; WIA; Final Rules (August 11, 2000); TEGL 14-08: Guidance for Implementation of the WIA and WP Funding under the ARRA of 2009; TEGL 13-08: Allotments under the ARRA; TEN 30-08: Overview of the ETA Implementation Strategy for WIA and WP under the ARRA of 2009; WIA Law 129(c)(2)(D); WIA Law 181(a)(1); 29 CFR 37.6(f)(1); Colorado Employment Security Act (CESA) 8-70-140(1)(e); WIA Section 188, Disability Checklist; 29 CFR Part 37; PGL 09-07-WIA: Recovery Act WIA Youth Programs

### II. PURPOSE:

The purpose of this program guidance letter is to provide policy and direction for the successful implementation of work experience and summer youth employment opportunities in the local workforce regions; to provide guidance regarding the payments of incentives to youth; and to identify local policy development requirements for these WIA activities. In addition, CDLE has developed templates for regions to follow, as they create or update their work experience agreement/contracts and timesheets. Regions are required to utilize all the data elements within these model formats, but are not required to use the formats themselves.

### III. BACKGROUND:

WIA requires that regions make summer youth employment opportunities available to eligible youth and encourages the use of work experiences for youth, adults, and dislocated workers when appropriate to their individual services strategies. With the passage of the American Recovery and Reinvestment Act (ARRA), an additional emphasis has been placed on these services and has underscored the need to provide comprehensive guidance for their implementation. This PGL has been developed to ensure that work experiences and summer

youth employment opportunities are operated within the legal requirements of WIA, ARRA, and related employment laws and regulations. For purposes of this PGL, the term work experience will be utilized as the generic term for both regular work experiences and the work component of summer youth employment opportunities.

**NOTE: The information contained in this PGL and attachments has been made available as a model for regions as they design local guidelines and operating procedures for work experiences; and should not be considered complete or in all cases legally binding. County-run workforce centers should seek legal counsel on the information and attachments provided for work experiences. State-run workforce centers must abide by state contracting regulations and documentation.**

#### IV. POLICY/ACTION:

##### A. REQUIRED POLICY/ACTION

In order to establish a consistent framework for the successful implementation of work experiences, regions should develop local work experience guidelines and operating procedures encompassing the following topics:

- Identifies the different characteristics of year-round vs. summer employment for youth work experiences, including how academic links are delivered during summer employment programs
- Addresses the distinctions made for adult/dislocated worker program and older youth work experiences, as appropriate
- Consistently applies a methodology on how wages and/or stipends will be determined and when they will be offered in conjunction with work experiences
- Creates a timesheet format for wages that includes all data elements identified within the attached timecard template (**see Attachment #1- Work Experience Timesheet Model**)
- Identifies appropriate documentation for stipend payments
- Addresses appropriate payroll methodology for internal payroll staff or external payroll vendors
- Identifies the costs associated with processing the work experience payroll as “administrative” costs
- Assures adherence to current workplace safety guidelines, FLSA and other relevant federal/state laws
- Identifies a work experience agreement/contract format between the region, the worksite and the customer
- Determines the use and duration of work experiences
- Identifies worksite pre-evaluation factors and a worksite pre-evaluation process
- Discusses the worksite pre-assessment process and the monitoring of active work experience sites
- Establishes a monitoring process and steps for addressing patterns of work-site non-performance, up to and including terminating use of the worksite
- Regions are required to create policies that cover stipends and youth incentives, but these may be separate from the work experience policy, as appropriate.

## **B. DEFINITIONS**

### **1. WORK EXPERIENCE**

A work experience is a planned, structured learning experience that takes place in a workplace for a limited period of time. The intention of a work experience is to enable participants to explore career options and gain exposure to the working world and its requirements, and not to benefit the employer, although the employer may, to a limited extent, benefit from the activities performed by the participant. For example, individuals placed in work experiences are generally considered trainees, and should not take on roles in which the employer depends on the trainee's productivity to maintain or advance the profit margin or performance of the company or agency.

Although the majority of work experience activities occur with youth participants, adults and dislocated worker participants may also take advantage of these services. Work experience opportunities are offered to participants when a comprehensive assessment and individual service strategy (ISS or IEP) identifies that the participant would benefit from this activity. They can also help to determine other specific needs, including the need for additional training. Public sector employers, private non-profit and for-profit employers are all considered acceptable for work experience placements. However, ARRA-funded work experience placements cannot involve work at any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool (See PGL 09-07-WIA for more information.)

#### **Youth Specific Information:**

Summer youth employment opportunities are required to link academic and occupational learning as part of the menu of services. In addition, other elements and strategies may be offered to serve the needs and goals of the participants, such as:

- Instruction in employability skills or generic workplace skills
- Exposure to various aspects of an industry;
- Progressively more complex tasks;
- Internships and job shadowing;
- The integration of basic academic skills into work activities;
- Supported work, work adjustment, and other transition activities;
- Entrepreneurship;
- Service learning;
- Paid and unpaid community service; and
- Other elements designed to achieve the goals of work experiences

### **2. WAGES FOR WORK EXPERIENCES**

WIA customers placed on regular payrolls for paid work experiences should be compensated according to minimum wage standards, and/or should be paid the prevailing wage of employees with similar training, experience and skills for a similar occupation, as set by the employer. However, since work experiences are intended as trainee positions, wages should not typically exceed those for entry level employees.

**NOTE: With many work experience placements, an individual's skill sets may not meet the standard occupational classification qualifications for the position. Therefore, this distinction may allow the wages to be set below the prevailing wage standards, and what might be acceptable for a placement of an individual that meets the classification requirements.**

### **3. STIPENDS FOR WORK EXPERIENCES**

Stipends can be offered in lieu of wages, or offered concurrently for the classroom training that complements a work experience. A stipend is usually a set amount given for participation/completion of an activity. This compensation can be given out in equal payments over a defined period of time.

Allowances or stipends should not exceed Colorado minimum wage. Payment of partial stipends may be made to participants that fail to complete a portion of their work experience activity. However, the participant's case file should contain documentation (at least a case note) regarding the reason for failure to complete and the period of time or activities that were completed.

CDLE expects the regions to update their local work experience policy to include information on the acceptable forms of documentation for the completion of an activity that results in a stipend. This should be tracked through Job Link (or Connecting Colorado), local financial management systems, and the case file. Some examples of acceptable documentation might include:

- Attendance records
- Certificate of Completion
- Case notes verifying the completion and date of completion
- Time records or time sheets

In addition, regions are **required** to describe the activity and the goal to be achieved that will result in a stipend being paid, within the Individual Employment Plan (IEP) or Individual Service Strategy (ISS). It is also recommended that information on the stipend payment structure (e.g. Lump sum or multiple payments) be included in the case file.

According to IRS publications, stipends are considered miscellaneous compensation and are **taxable**. Please consult with accountants or legal counsel to ensure that you are accurately processing stipend payments.

**NOTE: Local regions may determine whether to pay wages or provide stipends for summer youth employment. This determination is dependent on whether youth in summer employment are considered trainees or are placed on a regular payroll and considered as employees. For those considered as employees, local regions should follow all applicable provisions of the Fair Labor Standards Act as described below. This determination also impacts withholding of taxes and whether such youth are covered for unemployment compensation.**

For further information regarding whether an individual is an employee, please contact the US Department of Labor Wage and Hour Division at 1-866-4-USWAGE.

#### **4. INCENTIVES FOR YOUTH PARTICIPANTS**

Incentive payments are considered supportive services (“IN” activity code in Joblink) and set up as rewards for the completion of a specific activity, including work experiences. Incentives may be paid to WIA youth customers, but not adults or dislocated workers. According to IRS publications, incentives are considered miscellaneous compensation and are **taxable**. Please consult with accountants or legal counsel to ensure that you are accurately processing incentive payments.

**NOTE: Local regions should create a youth incentives policy requiring that incentive payments result from completion of activities that are tied to goals in the Individual Service Strategy; that sets reasonable limits on the amount of an incentive; and avoids the use of the term “bonus.” This policy should also include a process for awarding incentives that insures equitability and avoids arbitrary or discriminatory practices.**

#### **C. UNEMPLOYMENT INSURANCE (UI) BENEFITS AND WORK EXPERIENCE OPPORTUNITIES**

An individual receiving work relief or work training, such as a WIA work experience, is not considered “employed” for the purposes of qualifying for Unemployment Insurance Benefits, even though they might be on a regular payroll, receiving wages, and are considered employed under FLSA. Therefore, a participant completing a work experience and then filing for UI will not qualify for UI on the basis of the work experience.

However, work experience wages and stipends are counted as earnings when a participant is currently on a UI claim, and this income has the potential to affect the amount and duration of the UI claim, in the same manner as regular wages.

#### **D. WORKPLACE GUIDELINES**

##### **1. FAIR LABOR STANDARDS ACT (FLSA)**

The provisions of the FLSA apply to all adult and youth participants engaged in a paid work experience under WIA, as do Federal/State hourly minimum wage laws. Under certain circumstances, FLSA regulations may apply only to the workplace portion, and not to the classroom portion, of the summer youth employment opportunity. Questions regarding whether an individual is an employee, or whether an employee’s time spent in training is compensable can be answered by the USDOL Wage and Hour Division at 1.866.4.USWAGE, or at [www.dol.gov/esa/WHD](http://www.dol.gov/esa/WHD). Section D.6 (below) of this PGL provides additional information and resources to regions.

Unpaid work experiences and internships should be offered only in limited cases

based on a particular service strategy of a participant's individual employment plan, and when combined with other services. Some examples of unpaid internships might include:

- A customer has been unsuccessful in a previous work experience, and is offered another work experience opportunity to demonstrate their commitment to succeed
- A customer may find value in an unpaid work experience even if funding for wages were unavailable at the time
- A practicum/internship is required for a participant to complete a training program. This often occurs in the health care industry where the trainee is either required to complete (or become more employable with) a specified number of hours of experience before a hiring consideration can occur

## **2. NON-DISCRIMINATION AND EQUAL OPPORTUNITY**

WIA Section 188 prohibits discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief. An organization that accepts a work experience participant should be aware of obligations imposed by WIA Law, and must ensure that agency services are provided to all individuals that are eligible, and not discriminate based on circumstances that might limit the population served. For example, a faith-based organization that operates an emergency food distribution center must serve all individuals that are eligible to receive those services and not discriminate based on a religious preference.

## **3. WORKERS' COMPENSATION:**

Local regions should consult with local/county Workers Compensation and Risk Management Departments and/or payroll services contractors to ensure that all work experience participants under WIA programs are covered by Workers' Compensation. In addition, regions need to include language in the work experience agreement/contract that specifies how workers compensation coverage will be provided.

## **4. DISPLACEMENT OF EMPLOYEES:**

Adult, Dislocated Worker and Youth participants engaged in a paid work experience through WIA services should not unfavorably impact current employees from employment opportunities. In addition, regions should carefully consider the working environment and impacts of placing a participant in a position where a layoff or displacement may potentially occur (or has already occurred), particularly in seasonal positions. More specifically, regions are not allowed to place a participant in a paid work experience when:

- a) A regular employee is on layoff from the same or any substantially equivalent job; or the employer has terminated the employment of any regular, unsubsidized employee or otherwise caused an involuntary reduction in its workforce with the intention of filling the vacancy so created with a WIA participant; or the job is created in a promotional line

that infringes in any way on the promotional opportunities of currently employed workers

b) The placement results in a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits, of any currently employed employee (as of the date of the WE participation)

c) The placement impairs existing contracts for services or collective bargaining agreements. When a program or activity authorized under title I of WIA would be inconsistent with a collective bargaining agreement, the appropriate labor organization and employer must provide written concurrence before the program or activity begins

## **5. SECTARIAN PLACEMENTS**

Participants in a paid work experience must not be employed to carry out the construction, operation, or maintenance of any part of a facility that is intended for sectarian instruction or as a place for religious worship. Work experience placements are allowable in faith-based community organizations, as long as the participant does not engage in inherently religious activities, such as religious worship, instruction, or proselytizing.

In addition, work experience participants should only be placed in faith-based organizations that do not discriminate against a person seeking help who is eligible for services. For example, a religious organization that runs an emergency shelter must not serve only persons of that faith and turn away others.

## **6. RESOURCES RELATED TO WORKPLACE GUIDELINES**

The following resources have helpful information on child labor laws, OSHA, CDLE youth programs, and the FLSA:

<a href="http://www.coworkforce.com/sjh">www.coworkforce.com/sjh</a>	CDLE - Governor's Summer Job Hunt
<a href="http://www.dol.gov/esa/regs/compliance/whd/hrg.htm">www.dol.gov/esa/regs/compliance/whd/hrg.htm</a>	USDOL- Wage and Hour Division
<a href="http://www.dol.gov/dol/topic/youthlabor">www.dol.gov/dol/topic/youthlabor</a>	USDOL - Youth and Labor
<a href="http://www.dol.gov/esa/WHD">www.dol.gov/esa/WHD</a>	USDOL – Wage and Hour Division
<a href="http://www.opm.gov/flsa">www.opm.gov/flsa</a>	OPM - Fair Labor Standards Act
<a href="http://www.youthrules.dol.gov">www.youthrules.dol.gov</a>	USDOL – Youth Rules
<a href="http://www.osha.gov/teens">www.osha.gov/teens</a>	OSHA – Teen Worker Questions

For information regarding whether an individual is an employee, regions may also contact the US Department of Labor Wage and Hour Division at 1-866-4-USWAGE.

## **E. WORK EXPERIENCE AGREEMENTS OR CONTRACTS**

Regions are required to complete a work experience agreement/contract with each worksite that is utilized. CDLE recommends that a signed copy of the Work Experience Agreement is given to all parties to ensure that the expectations are

fully understood. CDLE has provided **Attachment #2-Work Experience Agreement Model** to use as a guide in creating a work experience agreement.

At a minimum, worksite agreements should include the following elements:

- Names and contact information of all parties
- The names and titles of all employer staff that are authorized to sign the timecard for the work experience participant(s)
- Responsibilities and expectations of the participant, the worksite employer, and the WFC representative
- The job title, pay, duties and goals for each work experience participant
- Identification of the legal requirements that must be met per D. 1-5 above. In addition it should include worksite safety requirements and provisions related to the avoidance of sexual harassment
- A statement informing the worksite that they may be subject to worksite monitoring by both state and local representatives, as well as regular visitations by case management staff to check on the progress of the work experience participants
- Provision for termination of the agreement for non-performance (See F.3 below) or failure to meet any of the requirements of the agreement/contract
- Other information, relative to the specific work experience activity
- Signatures and dates from site supervisor, participant and WFC representative

**NOTE: Regions should also consider the appropriateness of establishing an indemnification clause, and include clear directions on overall responsibilities as well as what steps should be taken for non-performance or other unexpected problems occurring at a worksite.**

## **F. EVALUATION AND MONITORING OF WORKSITES**

### **1. PRE-EVALUATION OF WORKSITES**

The region should develop a worksite pre-evaluation tool to determine the appropriateness of utilizing the employer for work experiences. The evaluation components should include the key legal provisions of the worksite contract such as safety, labor law requirements, status of layoffs, etc. In addition, it should evaluate age appropriateness and level of exposure to work readiness and job skills, type of supervision available, as well as review the previous work experience placements at the same location.

Potential worksite employers should also demonstrate a commitment to helping participants receive the experience and training needed to meet their ISS goals. As part of participation, these employers should be willing to work closely with program staff, especially when accepting participants that have barriers to employment. Proper worksite supervision should be one of the factors that are reviewed prior to placement of the participant in the work experience activity.

### **2. WORKSITE MONITORING**

Regions should actively monitor the worksite and activities described in the work

experience agreement/contract to ensure that the legal and performance requirements, as well as the work experience goals are being met by all parties.

Local monitoring procedures should include a monitoring guide and information on how the regions will monitor to the provisions of the work experience agreements with the employer, participant, and the workforce center representative. In addition, local regions should ensure that the work place has policies on workplace safety and follows those guidelines. Procedures should also be in place to validate skill and competency attainments.

Additional items to consider when monitoring a work site are:

- Appropriateness of work experience for participants
- Quality of work experience in teaching good work habits or job skills
- Quality of outcomes and other benefits to participants
- Adequacy of work site supervision in assuring compliance to legal requirements and program goals

### **3. NON-PERFORMANCE OF A WORKSITE**

Local regions should ensure that a process has been established to remove a work site that has exhibited a pattern of failure or has regularly not met their agreed upon requirements for the work experience participant. These procedures should include the local process to determine the following:

- What constitutes an employer “exhibiting a pattern of failure”
- Deficiencies or situations that occur within the work experience process
- Corrective action interventions to be used
- Circumstances under which immediate termination of an agreement will occur

A work experience agreement may not be written with an employer who has previously demonstrated a previous “pattern of failure”, as defined by the local workforce board and the Final Rule Section 663.700 (b). Such failure may include failing to provide participants with continued employment and wages, benefits, and working conditions that are equal to those provided to regular employees who have worked a similar length of time and are doing the same type of work.

## **G. RECORDING WORK EXPERIENCE ACTIVITIES AND PAYMENTS, AND INCENTIVES, IN JOBLINK**

**Work experiences** are considered intensive services by USDOL. Please refer to appropriate help screens in Joblink to ensure that proper coding of additional services is accurate. Activity Codes for work experiences are:

**SE:** youth summer employment, including work experience activities

**WE:** paid work experience

**WU:** unpaid work experience

**The amount spent on stipends or wages** can be recorded in the “cost” field listed under the WE or SE activity codes in Joblink.

**Incentives** are recorded by using the **IN** activity code. In addition, anticipated incentives should be addressed in the ISS and/or case notes.

**V. IMPLEMENTATION DATE:**

Upon issuance of this PGL

**VI. INQUIRIES:**

Please direct all inquiries to your State Workforce Liaison at Workforce Development Programs.

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Clarke D. Becker, Director  
Workforce Development Programs

**ATTACHMENTS:**

1. Work Experience Timesheet Model
2. Work Experience Agreement Model