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WORKFORCE DEVELOPMENT PROGRAMS

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Category:	Workforce Investment Act
Subject#:	On-the-Job Training
Source:	Federal/State
Replace:	01-08-WIA1
Contact:	Workforce Development Programs Director
Distribution:	Managers, Workforce Development Staff, Workforce Region Directors, Fiscal
Colorado One-Stop System Policy Guidance Letter#: 14-03-WIA	
Date: June 10, 2014	

I. REFERENCE(S):

A. Federal Laws and Regulations:

- Workforce Investment Act (WIA) of 1998 (Public Law 105-220), August 7, 1998, Sections 101, 122(h), 134 (d)(4)(D) and (G), 181, 188, 189(i), and 195(4) (29 USC 2918).
- WIA Final Rules and Regulations, 20 CFR 652 et al.: Parts 661, 663.430, 663.595, 663.700-730, Part 667.264, 667.268, 667.270-275, and 671.
- WIA Final Rules and Regulations, 29 CFR, Part 37.

B. Policy Guidance Letters (PGLs):

- PGL 11-06-WIA, WIA Waiver Policy at http://www.colorado.gov/cdle/pgl.

C. U.S. Department of Labor Resources:

- ETA's Building the Next Generation OJT Toolkit - https://ojttoolkit.workforce3one.org/.
- WIA/TAA OJT Technical Assistance Guide - https://ojttoolkit.workforce3one.org/view/2001114434470322226/info.
- Specific Vocational Preparation (SVP) levels – http://www.onetonline.org/help/online/svp

II. PURPOSE:

To provide guidance for the development of local policies and procedures in administering On-the-Job Training (OJT) for Adults, Youth, and Dislocated Workers, and to offer templates and promising practices for implementing OJT programs. All topics covered in this PGL should be addressed in updated local policies.

III. BACKGROUND:

Under the Workforce Investment Act (WIA), Adults and Dislocated Workers (DWs) can access a continuum of services based on their individual level of need. These services are offered through the One-stop Delivery System under a three-tiered approach. Customers who have been enrolled in Tier I Core and Tier II Intensive Services *and* have been unsuccessful in obtaining or retaining employment *and/or* were not earning a self-

sufficient wage are eligible to receive Tier III Training Services. Youth may receive OJT services when the youth training plan identifies employment goals and achievement objectives supporting the use of OJT.

For those individuals who would benefit from participating in training provided by an employer, Section 134 (d)(4)(D)(ii) of the Act identifies OJT as an allowable training service.

IV. POLICY/ACTION:

Local Workforce Investment Boards (LWIBs) are responsible for establishing OJT policies and procedures that comply with the WIA Law and the Final Rule, and ensuring that local policies are updated to address all topics **(items A through H below)** covered in this PGL. **Updated local policies should be sent via email to your Regional Liaison within 90 days of receipt of this PGL**.

A. Definitions

Per the WIA Section 101, OJT is defined as follows:

> *(31) "On-the-Job Training" means training by an employer that is provided to a paid participant while engaged in productive work in a job that-*
>
> *(A) provides knowledge or skills essential to the full and adequate performance of the job;*
>
> *(B) provides reimbursement to the employer of up to 50% of the wage rate of the participant, for the extraordinary costs of providing the training and additional supervision related to the training* (see waiver under Section C.2); *and*
>
> *(C) 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.*

B. Participant Eligibility and Employer Referrals

In selecting eligible OJT participants, the following eligibility requirements apply:

1. Eligible participants have met eligibility requirements for intensive services, received an assessment, and have an Individual Employment Plan (IEP) or Individual Service Strategy (ISS) that indicates an OJT is appropriate.
2. OJT trainees must be regular employees of the participating employer, not independent contractors or temporary or seasonal hires.
3. Employed workers *may* be eligible for OJT; see Section C.3.
4. Youth may be eligible for OJT opportunities only when appropriate, i.e., when the youth training plan identifies employment goals and achievement objectives supporting the use of OJT.

An individual referred to a One Stop Career Center by an employer may be considered for OJT with that employer only after the individual has met the eligibility requirements for intensive services, has received an assessment, and for whom an IEP/ISS has been developed that indicates an OJT is appropriate. It is the local workforce region's responsibility not only to ensure the eligibility of the participant/trainee, but also to assess the individual's suitability for OJT with the employer in question.

C. General Requirements

Local policies and procedures must include criteria for determining the following:

1. Length of training

In determining the appropriate length of an OJT contract, LWIBs should consider the skill requirements of the occupation, the academic and occupational skill level of the participant, prior work experience, and the participant's IEP. The U.S. Department of Labor's Specific Vocational Preparation (SVP) levels may be used as a starting point, but each training plan should be individualized based on the other considerations. Local policy must determine the circumstances in which an OJT participant may be employed less than full time.

2. Percentage rate for reimbursement to the employer

Colorado has a waiver in place through June 30, 2017 that allows a sliding scale for reimbursement amounts based on the size of the employer. The waiver is designed to create a greater incentive for businesses to become involved in workforce training activities.

- For employers with 50 employees or fewer - Up to 90% reimbursement;
- For employers with 51-250 employees - Up to 75% reimbursement;
- For employers with more than 250 employees – the Statutory 50% reimbursement.

3. OJT eligibility for employed workers

The Final Rule establishes requirements that permit OJT contracts for eligible employed workers that are not earning a self-sufficient wage. Local policy needs to define the criteria used to determine when an employed worker is eligible for an OJT. LWIBs may consider the introduction of new technologies, introduction to new production or service procedures, upgrading to new jobs that require additional skills, workplace literacy, or other purposes deemed appropriate by the LWIB. The OJT position should also provide the OJT Trainee with additional wages, hours or benefits.

D. Contract Requirements

OJT is provided for through a contract with a public, private non-profit, or private sector employer. The contract must ensure that participants are provided a structured training opportunity to gain the skills and competencies necessary to be successful in the occupation in which they receive training. See *Attachment 1* for a sample OJT contract that may be used as a template. This contract must:

1. identify the occupation, skills and competencies to be learned;
2. contain the training program /curriculum for training;
3. state the length of training time provided;
4. state the wage rate for the participant;
5. state the percentage rate used for reimbursement to the employer and the maximum amount for reimbursement;
6. include an outline of any separate classroom training that may be provided by the employer;
7. contain the employer's agreement to maintain and make available time and attendance, payroll and other required documentation to support amounts claimed by the employer for reimbursement;

8. contain assurances that training will be in accordance with: WIA Section 181(a)(1)(A) and 181 (a) (2), 188; and, the Final Rule Sections 667.266, 667.268, 667.270, 667.272, 667.274(a), and 667.275.
9. Contain assurance of safeguards against the displacement of current employees by an OJT participant.
10. Specify that the reimbursement is strictly for regular hours worked, and does not include paid time off (e.g. sick leave, vacation, holidays, jury duty, etc.), overtime, or benefits.

E. Training Providers

OJT providers will not be subject to the eligible training provider requirements set forth in the State Plan per Section 122 of the WIA.

The State encourages LWIBs to collect and disseminate performance information for use as a management tool when reviewing the performance of OJT providers. This performance data may include the following:

1. The number of trainees by industry/occupation;
2. The percentage of trainees who completed the program;
3. The percentage of trainees hired after completing program;
4. The percentage of trainees who retained employment six months after completing the program vs. the percentage of all exiters retaining unsubsidized employment six months after exiting;
5. The trainee wages six months after placement vs. the wages of exiters six months after exiting into unsubsidized employment; and
6. Average costs per trainee.

F. Employer Restrictions:

1. Wages

OJT participants should be compensated at the same rates, including periodic increases, as trainees or employees in similar occupations by the same employer and who have similar training, experience, and skills, and in accordance with the Fair Labor Standards Act.

2. Employer Pattern of Failure

An OJT contract may not be written with an employer who has previously demonstrated a “pattern of failure”, as defined by the LWIB and the Final Rule Section 663.700 (b). Such failure may include failing to provide participants with continued long-term employment, and wages, benefits, or 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.

Local policy must include the process to remove a work site that has exhibited a pattern of failure or has regularly not met their agreed-upon requirements for the OJT 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 OJT process;
- Corrective action interventions to be used; and
- Circumstances under which immediate termination of an agreement will occur.

3. Relocation
An OJT contract may not be written until 120 days after the commencement of operations of any relocating establishment, if the relocation resulted in the loss of employment for any employee at the original location. To verify that an establishment which is new or expanding has not relocated employment from another area, a standardized pre-award review must be conducted. This pre-award review must be conducted jointly by the local area with the establishment as a prerequisite to WIA assistance.

4. Pre-Award Review
Local policy must identify the process and procedures for the pre-award review. See *Attachment 2* for a sample Pre-Award checklist that may be used as a template.
The pre-award review must include:

- Names under which the establishment does business, including predecessors and successors in interest;
- The name, title, and address of the company official certifying the information; and,
- Whether WIA assistance is sought in connection with past or impending job losses at other facilities, including a review of whether WARN notices relating to the employer have been filed.

The pre-award review may include:

- Additional information specified by the LWIB; and,
- Consultations with labor organizations and others in the affected local area(s).

5. Workplace Laws
OJT participants shall be provided benefits (including health 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 with the same employer. Health and safety standards established under Federal and State law otherwise applicable to working conditions of employees are equally applicable to OJT participants, including workers' compensation.

G. State and Local Monitoring
The Final Rule, Section 667.400, identifies the need for annual program monitoring, which includes a sample review of OJT contracts and case files to ensure compliance with Federal, state and local policies.

LWIBs and sub-recipients (if applicable) will need to establish local monitoring policies and procedures for OJT providers. On-site monitoring of OJT employers is required by local workforce regions to ensure validity and propriety of the reimbursement amounts claimed by employers and to verify that the training for which the contract is written is delivered. Local policies and procedures should include, at a minimum:

1. Roles of the employer, participant, and workforce center representative;
2. Monitoring of OJT providers and worksites to ensure that all parties are in compliance with contract deliverables, cost, performance, and goals;
3. Employer outreach strategies and equitable selection;

4. On-site monitoring of worksite conditions and review of employer's payroll records; and
5. Validation of skill and competency attainment for participants.

H. Documentation

1. Employer Selection

Local regions should have sufficient documentation to demonstrate that participating employers were selected equitably and that a variety of employers were given sufficient opportunity to participate in OJTs. Documentation should demonstrate that a variety of employer outreach strategies were utilized to ensure that area employers are aware of OJT opportunities. Employer outreach strategies may include (but are not limited to) newsletters, websites, forums, outreach materials, and other meetings or communications targeted to area employers. For example, Pikes Peak Workforce Center promotes OJTs under Business Services on their website, as well as in their newsletter that is distributed to 800 businesses in the El Paso/Teller region. If the majority of OJT funds benefit only one employer in a workforce region in a given program year, this will be closely examined by the state monitoring team, and sufficient documentation must be provided to demonstrate that there was no preferential treatment given to that employer.

2. Payments to Employers

Payments to employers are in compensation for the "extraordinary costs" associated with training participants. Employers are not required to document these extraordinary costs. Extraordinary costs associated with training of participants are usually understood to mean:

- More intense supervision;
- Abnormal wear on tools;
- Down time; and
- Lower rates of production.

Payment to employers should be managed by an invoice system that clearly documents the number of hours worked each day by the participant and rate of pay for the time period. Invoices must be signed by both the participant and the employer or only by the employer if accompanying documentation (timesheets/time cards) is signed by the participant and reconciled to the invoice. The reimbursement is for regular hours worked, and does not include paid time off (e.g. sick leave, vacation, holidays, jury duty, etc.), overtime, or benefits. It may include time in classroom training that is part of the OJT training plan and occurs during regular work hours.

3. Participant Case Files

Case files should include sufficient documentation to justify the following:

- Demonstrated need for training to become employable, based on a detailed and comprehensive training plan to include the specific skills, databases, process, procedures and systems that the candidate will be trained on.
- Percentage of reimbursement to employer, based on number of employees.
- Amount of reimbursement, based on hours worked and wage rate.
- Length of the OJT, based on the skills/competencies needed and the time required to train the individual.

4. **Tracking Participants in Connecting Colorado**
   - OJT activities should be tracked in Connecting Colorado using the **OJ** code.
   - The start and end dates for the training service should match the start/end dates of the OJT.

I. Innovative OJT Practices Regionally and Statewide

CDLE encourages local workforce regions to collaborate with adjacent regions to establish consistent policies for OJT. This is particularly important when possible employers and job seeker pools cross workforce region boundaries. Such OJT policies may include:

1. **OJT Contracts and Forms** – streamlined contracts and paperwork offer consistency and efficiency for businesses that are operating in different workforce regions. See *Attachments 1* and *2* for sample forms.
2. **Development of an OJT training plan –**O*NET and/or a company job description may serve as a basis to determine occupation-specific skills.
3. **Duration of an OJT training plan** – USDOL's SVP levels may serve as a starting point but are not required. Although there is no legal limit to the duration of training, some local policies have set limits on the length of training (six months, for example).
4. **Additional items for reimbursement** – in addition to the wage reimbursement, some local areas will reimburse the employer or the individual for the cost of such items as uniforms, tools, or licensing fees
5. **Allowable costs** – discuss what are allowable OJT costs and reimbursements as well as the type of costs that are not allowable.
6. **Reimbursement terms** – some regions enforce reimbursement terms to support trainee retention. For example, an OJT provider may pay an employer one-half of the OJT reimbursement at the end of the training period and upon the trainee's successful completion of the training plan. Then, the second half of the OJT reimbursement is made at the end of 90 days if the trainee is still employed and working 30 hours or more each week.
7. **Preferences in training occupations** – some regions align OJT training efforts with high growth occupational strategies. In this case, they may want to establish a local policy for training in particular industries or occupations that are seen to be promising in the local area or region. For example, Arapahoe/Douglas Works! allows a cost up to $6,000 in reimbursements per individual for any OJT Training contract in areas of their targeted industries (Bioscience and Healthcare, Aerospace, Aviation, Information Technology, Finance and Broadband). They allow a cost up to $3,000 in reimbursements per individual for any OJT Training contract in all non-targeted industries.

J. Promising Practices and U.S. Department of Labor Resources

1. Washington State has compiled a list of promising and best practices that Washington and other states are using for OJTs (see *Attachment 3*).

2. Building the Next Generation OJT Toolkit has a variety of OJT resources to aid OJT providers in implementation with both employers and participants, including templates for outreach materials, contracts, pre-award checklists, training plans, and more.

3. OJT Federal Regulation Requirements for WIA is a tool for WIA OJT administrators and monitoring staff to use as guidance when implementing or reviewing OJT as a training option (see *Attachment 4*).

4. The WIA/TAA OJT Technical Assistance Guide is a comprehensive federal resource that covers federal requirements and provides technical assistance on a range of issues.

V. IMPLEMENTATION DATE: Effective immediately. Local OJT policies are to be reviewed and updated and sent to your Regional Liaison to ensure they reflect the requirements herein, within 90 days of receipt of this PGL.

VI. INQUIRIES:

Please direct all inquiries to Tom Morgan at Workforce Development Programs: (303) 318-8191 or tom.morgan@state.co.us.

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Elise Lowe-Vaughn, Director
Workforce Programs, Policy, and Special Initiatives

ATTACHMENTS:
1. Sample OJT Contract
2. Sample Pre-Award Review Checklist
3. OJT Promising and Best Practices, August 2011 (Washington State)
4. OJT Federal Regulation Requirements under WIA