

New Mexico Workforce Connection



Central Region

Operational Policy No. OP-412, Change 4 (Employer Assurances)

Subject: On-the-Job Training Policy
Effective: PY19, 8/19/2019

PURPOSE:

To provide guidance to Workforce Connection of Central New Mexico (WCCNM) on the development of local policies and procedures to administer On-the-Job-Training (OJT) contracts under the WIOA Title 1 Adult, Dislocated Worker and Youth programs.

REFERENCE(S):

- Workforce Innovation and Opportunity Act (WIOA), July 22, 2014, §181, §188(a)(3)
- WIOA Final Rules-U.S. Department of Labor (Title I): 20 CFR 683.255 Subpart F 680
- WIOA Section 3(44)
- Office of Management and Budget (OMB), Uniform Guidance at 2 CFR 200 et al., Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- Training and Employment Guidance Letter WIOA No 19-16 Operating Guidance for the Workforce Innovation Opportunity Act.
- Fair Labor Standards ACT (FLSA) §203

BACKGROUND:

On-the-Job Training (OJT) is a critical training service for workers who want to develop the knowledge and necessary skills for a good job and for employers who need a pipeline of skilled workers to remain competitive. It also provides an incentive for businesses who agree to train WIOA Eligible and suitable individuals. The financial assistance is compensation for the extraordinary costs associated with training participants, the costs associated with lower productivity of new employee and investing in their skill developments.

DEFINITION:

1. On-the –Job Training means training by an employer that is provided to a paid

participant while engaged in productive work in job that:

- a. Provides knowledge or skills essential to the full and adequate performance of the job;
- b. Is made available through a program that provides reimbursement to the employer of up to 75% of the wage rate of the participant for the extraordinary costs of providing the training and additional supervision related to the training; 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.

2. **Appropriate Commitment** to hire an individual means to maintain an employer-employee relationship meeting the requirements of the Fair Labor Standards Act for a minimum of one (1) year.
3. **High-priority Occupation (HPO)** is an in-demand occupation that has higher skill needs and is likely to provide a self-sufficient wage. Statistical data, regional expertise, and local workforce development area inputs are combined to determine whether or not an occupation meets the high-priority criteria.
4. **Incumbent Worker** is an individual who is employed, meets Fair Labor Standards Act requirements for an employer-employee relationship, and has established employment history with the employer for six (6) months or more.
5. **Incumbent Worker Training (IWT)** is training provided to an incumbent worker that is designed to meet the needs of an employer(s) to retain a skilled workforce or avert the need to lay off employees; increase the competitiveness of the employer or employee; and be conducted with a commitment by the employer to retain or avert the layoffs of the incumbent worker trained. Such training may also include the upskilling of an employer's current workforce, which may lead to additional opportunities for potential jobseekers.
6. **In-Demand Industry Sector** is an industry sector that has a substantial current or potential impact (including jobs that lead to economic self-sufficiency and opportunities for advancement) in the state, regional or local economy, as appropriate, and that contributes to the growth or stability of other supporting businesses, or the growth of other industry sectors.

Note: The determination of whether an industry sector or occupation is in-demand in a local area is made by the WCCNM, as appropriate, using business and labor market projections and statistics. However, all HPOs are considered in-demand occupations, and therefore, eligible for on-the-job training.

7. **Recent Employee** is an individual who is an employee, meets Fair Labor Standards Act Requirements for an employer-employee relationship and has an established employment history with the employer for six (6) months or less.

Eligible Training Provider Exception

New Mexico Local Boards are not required to procure employers for OJT. However, if a Local Board chooses to offer OJT, it must establish local policies for identifying employers for OJT. WIOA specifies that OJT is exempt from ITA and eligible training provider certification requirements. Local Boards must administer OJT pursuant to a contract instead of using an ITA.

EMPLOYER ELIGIBILITY

WCCNM may engage in OJT opportunities with existing employers in the workforce area or new or relocating businesses as appropriate. Any public, private non-profit, private sector employer or registered sponsor may utilize OJT, with the following exceptions. OJT **may not** be utilized by any of the following:

1. An employer who has been convicted of violating federal laws and regulations within the last two years of requesting an OJT regarding: submission of worker adjustment and retraining notification (WARN) notices, occupational safety and health administration (OSHA) and Americans with Disabilities Act (ADA) standards, equal employment opportunity (EEO) and wage and hour requirements, state unemployment insurance (UI) laws, and fair labor standards and collective bargaining agreements.
2. An establishment which is presently suspended or barred from doing procurement business with any branch of government.
3. An employer providing workers on a temporary basis to employers for which they receive compensation from the employer.
4. An employer who has exhibited a pattern of failing to provide OJT participants with continued long-term employment with 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.
5. An establishment that plans to use the WIOA to relocate from another area, or locate new branches, subsidiaries, or affiliates.

RESTRICTIONS:

WCCNM must be familiar with the limitations and prohibitions on the use of funds allocated to the local area under WIOA title I-B 181 and Part 680 of federal regulations as follows.

1. WIOA funds cannot be used to pay the wages of employees during their participation in an economic development activity provided through a statewide workforce development system.
2. When relocation of a business results in the loss of employment of any employee of such business, no funds provided for employment training can be used for on the job training until after 120 days have passed since the relocation that caused the loss of employment at an original business location in the United States.
3. WIOA work-based training funds may not be used to directly or indirectly assist, promote or deter union organizing.
4. WIOA work-based training funds may not be used to directly or indirectly aid in the filling of a job opening which is vacant because the former occupant is on strike, or is being locked out in the course of a labor dispute, or the filling of which is otherwise an issue in

- a labor dispute involving a work stoppage.
5. WIOA work-based training funds must not be used to directly or indirectly provide supportive services described in §680.900 or §681.570.
 6. Business 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.
 7. WIOA funds may not be used to help employers to fill positions that promote or support the use, possession or distribution of marijuana.

DETERMINING FACTORS

When considering the appropriateness of an OJT the WCCNM should consider the following:

1. The strategy of the WCCNM in fulfilling the vision and goals established for the local area (i.e., the local plan)
2. The characteristics of the workers to be trained (i.e., the extent to which these individuals historically represent individuals with barriers to employment as defined in WIOA Section 3 (24), and how such individuals would benefit from a skills gain that results in retention or advancement).
3. The quality of trainings, (i.e., industry-recognized credentials advancement opportunities, etc.)
4. The number of participants the employer plans to train.
5. The wage and benefit levels of participants (before and after training)
6. The occupation (s) for which OJT is being provided must be in-demand as defined by WIOA Section 3(23) and as determined by workforce development area-specific labor market information. **(As defined in OP – 418 Demand Occupations, Change 3)**
7. Employer's industry status: Is the employer in:
 - An in-demand industry as defined by WIOA Section 3(23) and determined by labor market information; or
 - A stable industry as determined by labor market information; or
 - A declining industry, but there are compelling reasons (e.g., evidence of long-term viability of the employer) justifying investment in OJT.

Employer's unemployment insurance and workers' compensation status. The employer must be current on unemployment insurance and workers' compensation taxes, reporting, penalties, and /or interest or related payment plan.

OCCUPATIONAL ELIGIBILITY

OJT **may not** be utilized for any of the following:

1. Occupations dependent on commission or draw as a primary source of income.
2. Intermittent seasonal occupations.
3. Part-time occupations.
4. Occupations temporary in design.
5. Occupations which have not traditionally required specific occupational training

as a prerequisite for performance, such as porters, janitors, stackers, laborers, etc.

6. Occupations whose prior training and/or certification make the individuals fully qualified to perform the occupation, such as school teacher, cosmetologist, LPN, RN, etc., unless they are unable to enter employment without additional on-the-job-training due to occupational skill gaps.
7. Any occupation whose training time is less than 160 hours.
8. When there is a layoff or hiring freeze in the same or any substantially equivalent job within the same organizational unit.
9. When an employer has laid off workers in substantially equivalent positions or where the OJT will impair any existing labor agreements, contracts for services or promotional opportunities for current employees. For the purposes of the OJT, "substantially equivalent position" is one in which the job responsibilities and skill, experience, and performance requirements have remained unchanged since the time of the layoff.
 - a. To provide evidence that the position has "substantially changed," there should be a new and different job description for the position.

EMPLOYER ORIENTATION

1. An official employer orientation must be provided and documented before the OJT contract period begins. Orientation should begin at recruitment when the potential employer is informed about the responsibilities of providing structured on-the-job-training at the worksite as described in this section under "employer recruitment".
2. A pre-award review must be completed to determine employer eligibility. This provides an additional opportunity to share information about OJT and learn about the needs of the employer.
3. The orientation must include a review of the OJT Contract, OJT Training Plan, OJT Progress Report and Invoice Forms and contact information for the case manager and administration of the WIOA programs.
4. Employers will be informed about the role they play in developing a structured training plan based on the skill gaps possessed by the OJT participant. Employers are informed of the importance of having experienced employees act as trainers for optimum results with predictable training outcomes.
5. Benefits of OJT are explained including OJT provider assurances, contract terms and conditions including terms and conditions of employer reimbursement.
6. Employers are informed about the requirements for local, state and possibly federal monitoring of the program and records maintenance requirements.
7. Employers are informed about records maintenance requirements.

PARTICIPANT ELIGIBILITY

On-the-Job Training is available to Adults and Dislocated Workers and Youth as defined by the WIOA, who are unemployed or underemployed and additionally meet **ALL** of the following requirements:

1. Participant meets all eligibility requirements for WIOA and Training services.
2. Participant is enrolled into WIOA prior to beginning training under an OJT contract.
3. Participant was determined to be in need of training in order to become employed in a

- job which leads to a self-sufficient level of income.
4. Participant was determined to be a good candidate for the particular vocation and position for which they are to receive OJT as evidenced in their individual employment plan or comparable document.
 5. OJT contracts may be written for an employed worker as long as they meet all the requirements above and are not earning a self-sufficient wage at time of enrollment as defined by state and local board policy.
 6. If the OJT is with the individual's current employer, employer must verify that the on-the-job training will relate to the introduction of new technologies, introduction to new production or service procedures, or is an upgrade to a new job that requires additional skills.
 7. OJT is an allowable activity for youth.
 8. Priority of service must be given as defined in federal and state policy.

Any individual referred to a WCCNM by an employer (commonly referred to as a "**reverse referral**") must go through the eligibility process in the same manner as other job seekers and be determined to be in need of training in order to participate in OJT. This process must be completed prior to the beginning date of the OJT training. A referral by an employer for an OJT position does not disqualify an individual, but neither shall it be considered to give higher priority to the individuals over other eligible candidates. The final selection of an eligible individual for OJT should be a joint decision of the employer and the local service provider.

The following are indicators that **can be** used to identify participants likely to benefit from OJT. Participant has:

- Less than two years total work experience.
- Five or more jobs in the last two years.
- No work experience in the last two years.
- Classroom training, but no work experience.
- Review participants' employment history and educational background in the New Mexico Workforce Connection Online System.

PARTICIPANT ORIENTATION

An official participant orientation must be provided and documented before the OJT contract period begins. At a minimum the orientation should include the following:

1. OJT Training Plan review.
2. Participation requirements including workplace safety.
3. Timesheet tracking and payroll verification requirements including the OJT Progress Report and Invoice Form.
4. Provision of information regarding additional services and/or activities, including support services, available through the workforce system.

NUMBER OF OJT TRAINEES ALLOWED WITH AN EMPLOYER

No more than 50% of the number of the employer's full-time work force at the location where training is to take place may be trained under OJT at any one time. Once a participant has

been trained and retained by the employer, he/she is counted in the regular full-time work force number and additional individuals may be trained. An employer having a regular full-time work force of one (1) may train one (1) individual under OJT.

To ensure equitable funding distribution among multiple industries and employers within the Central Region: any one employer shall not exceed ten WIOA OJT enrolled employees (maximum) in any given fiscal year. Of the ten (10) participants, no more than five (5) may be placed in a contract providing a skill upgrade.

On the Job Training contracts within the City of Albuquerque and the City of Rio Rancho must have a minimum hourly requirement of \$13.30 per hour. *Exceptions may be made when co-enrolling youth participants in OJT contracts (in the same municipalities). A minimum of \$10.00 per hour is required.*

A projected work force number may be used for new or expanding business. The projected number must be attained within twelve months. If the projected number is not attained, appropriate adjustments in the number of OJT trainees allowed in further training should be made.

OJT WAGES AND GENERAL WORKING CONDITIONS

Wage Reimbursement – New employees hired under OJT must at a minimum be paid the employer's usual entrance wage rate for the occupation in which they are to be trained and employed, which must not be lower than the federal, state, or local minimum wage rate. Trainees must be paid the same entry wage rate as non-WIOA funded employees in the same occupation. The reimbursement for training cost will be based on the employer's normal full-time work week, which must be at least 30 hours per week and will not include non-regular wages such as; premium pay, shift differential. Reimbursement must not be claimed for time which the OJT trainee is absent from training, including illness, holiday, plant downtime, or other events during which no training occurs.

Workers' Compensation – In New Mexico, state workers' compensation law is applicable, workers' compensation benefits in accordance with such law shall be available to all participants on the same basis as the compensation is provided to other individuals in the same employment.

Health and safety standards established under Federal and State law otherwise applicable to working conditions of employees are equally applicable to OJT participants.

OJT TRAINING CONTRACT

The OJT Pre-Award, OJT Contract, and Training Plan must be signed by all required parties prior to any individual's training beginning date.

All OJTs are accompanied with job order in NMWCOS.

OJT TRAINING PLAN

The OJT training plan shall be included in the OJT training contract. An OJT training plan shall be modified if a change is needed in any part of the original OJT training plan.

1. The OJT training plan will be developed with the employer to establish training outcomes.
2. The gap between the skills of a participant and the skills needed for the job will determine the number of training hours for which an employer will be reimbursed.
3. An analysis of the OJT position will be conducted based on information from the employer combined with occupational information network (ONET) details or comparable information regarding specific qualifications and skill required for the OJT position.
4. The training plan shall reflect the results of individual skill assessment and an analysis of employer job performance requirements to determine what training is needed.
5. The training plan shall be maintained and updated as needed.

OJT TRAINING DURATION

The basis for contract training duration shall clearly be documented. The maximum duration for an OJT contracts is 1040 training hours. Determining length of training should include the following;

1. Skill gap is defined as the gap between the skills of an individual participant and the skills needed for a job.
2. The skill gap will determine the number of training hours for which an employer will be reimbursed.
3. The skill gap shall be clearly defined and incorporate the use of recognized skill assessment tools and occupational evaluation tools.
4. An individual training plan shall be developed consistent with the duration of the contract. For example, a contract written for six months shall include a training plan that outlines six months of specific training to be provided by the employer which in turn should be consistent with the documented skill gap for the individual.
5. Specific vocational preparation (SVP) is defined as the amount of time required by a typical worker to learn the techniques, acquire the information, and develop the expertise needed for average performance in a specific job. A table reflecting SVP levels is included in the state technical assistance guide to assist in determining the maximum contract duration.

Exception: Training can exceed 1040 hours based on the need for individuals with a documented disability to obtain the skills necessary for the job.

| SVP | Number of Training |
|-----|--------------------|
| 2 | 160 |
| 3 | 320 |
| 4 | 640 |
| 5 | 800 |
| 6 | 960 |
| 7 | 1040 |

The OJT Training Plan must be attached to the OJT Training Contract. An OJT Training Plan Modification must be completed if a change is needed in any part of the original OJT Training Plan. An OJT Training Plan must trigger obligating funds identified in the Plan.

OJT REIMBURSEMENT RATE

Participants must be paid the higher of federal, state, or local minimum wage, or the prevailing rate of pay, including periodic increases, as other trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills. Provisions for wages under the amendments to the Fair Labor Standards Act (FLSA) apply to all participants employed.

Participants may work overtime (subject to regulations of the Fair Labor Standards Act with respect to the level of compensation), provided that this is part of the design of the project and regular employees of the employer in question are also working overtime, subject to the limit on duration and level of compensation for workers under this project. Although overtime hours worked can be used to determine the reimbursement for a given period, an overtime wage rate cannot be used to calculate the reimbursement amount. To calculate the reimbursement, the provider would apply the standard wage rate to both the regular and the overtime hours.

REIMBURSEMENT PERCENTAGE

For all WIOA OJTs, WCCNM may reimburse employers for the extraordinary cost of training OJT participants at a rate of up to 75% of the applicable wage level using a sliding scale based on employer size and can be uniformly applied.

Employer size: WCCNM may use the following sliding scale for employer reimbursement based on employer size: 1) up to 75 percent for employers with 50 or fewer employees; and 2) up to 50 percent for employers with 51 or more employees. Payroll records shall be used to document employer size or a penalty of law statement on the Pre-Award Checklist assisting to the number of current employees.

WCCNM will reimburse employers for the extraordinary cost of training OJT participants consistent with this section, related State and Federal guidance and any waivers granted by USDOL.

PROGRESS REPORT AND INVOICE FORM

A Progress Report and Invoice Form must be completed at least monthly throughout the life of the OJT training. This provides a trainee evaluation of progress and documents hours and skills developed.

An invoice system is in place to reimburse the employer the cost of providing the training and any additional supervision related to the training.

SUPPORTING DOCUMENTATION

1. OJT Pre-Award Checklist
2. OJT Employer Contract
3. OJT Training Plan
4. OJT Training Plan Modification
5. OJT Progress Report and Invoice Forms
6. Case Notes (recorded in the Workforce Connection On-Line System to track customer activity and interactions)

COORDINATION WITH REGISTERED APPRENTICESHIPS

An OJT contract may be developed with an Apprenticeship, Pre-Apprenticeship and Registered Apprenticeship program for training participants. OJT contracts are made with the employer and apprenticeships generally involve both classroom and on-the-job instruction. The OJT contract may be made to support some or all of the OJT portions of the apprenticeship is allowed. If the apprentice is employed at the time of the program enrollment, the requirements for employed workers must be followed.

CONFLICT OF INTEREST

State and WCCNM members and WCCNM members of standing committees may not vote or nor participate in any decisions regarding the provision of services by such members or any organization they directly represent, nor on any matter that would provide any direct financial benefits to that member or the member's immediate family. For example, a WCCNM member who is also an employer who wants to use services on a fee-for-service basis would be prohibited from voting to approve the use of local area services, facilities, or equipment for employment and training activities to such board member's workers. Neither membership on the state board, WCCNM or WCCNM standing committee, nor recipient of WIOA funds to provided training and related services, by itself, violates these conflict of interest provisions. In accordance with 200.112 of the Uniform Guidance, recipients of the federal awards must disclose in writing any potential conflicts of interest. Sub-recipients must disclose in writing any potential conflict of interest to the recipient of grant funds.

LOCAL PROCEDURES

Local Procedures will be developed separate of this policy and maintained with the WCCNM Administrative Entity.

Local procedures must include the "**Pattern of Failure**" process to remove

a work site that has exhibited a pattern of failure or has not met their agreed-upon requirements for the OJT participant. These procedures should include the local process to determine the following:

- Deficiencies in the quality of training or the training environment;
- Corrective action interventions to be used; and
- Circumstances under which immediate termination of an agreement will occur.

OJT OUTREACH

WCCNM must demonstrate that a variety of employer outreach strategies were utilized to ensure that area employers are aware of OJT opportunities, selected equitably and that a variety of employers were given sufficient opportunity to participate in OJTs.

Americas Job Center staff should ensure that both the Business Services function and the Job Seeker Services functions include information about OJT with objectives for outreach defined regionally and suited to the area employment conditions with the main focus being on the jobs in high-growth/in-demand sectors or occupations.

OJT can be done directly or indirectly to both employers and job seekers. Integrating OJT outreach in to Business Services activities minimizes the chance of multiple staff contacting one employer.

Outreach strategies may include:

- Researching business thoroughly before contacting them and noting previous labor needs utilizing the Customer Relationship Management tool;
- Newsletters, forums, outreach materials, hard copy mail outs, involvement with organizations like Chamber of Commerce and organizations representing industry sectors, partnerships with local economic development, press releases and speaking at civic organizations;
- Working with other agencies to target high growth industries for regional outreach;
- Work with State Apprenticeship Agency staff who interact with business as part of their primary functions;
- Educating employers about how the OJT model can enhance their business, cut waste, help train employees, reduce turnover and increase profits;
- Educating job seekers about how to “sell” OJT to potential employers;
- Ensuring required paperwork is minimal.

INQUIRIES:

WIOA Manager 505-724-3629

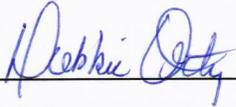
ATTACHMENT: Employer Assurances

EMPLOYER ASSURANCES

1. Employer shall provide worker's compensation coverage for the OJT Trainee.
2. If the OJT is provided to one of the Employer's current employees, the Employer verifies that the OJT will relate to the introduction of new technologies, introduction to new production or service procedures, or is an upgrade to a new job that requires additional skills, and that the OJT position will provide the OJT Trainee with additional wages, hours or benefits.
3. Employer certifies that the company is financially solvent on the date of this contract, and the Employer's best projection is that they will remain financially able to meet contract obligations at the end of the training period, including OJT Trainee's retention.
4. Employer agrees that wage and labor standards will be adhered to and to pay the OJT Trainee at the same rates, including increases, and benefits as trainees or employees who are situated in similar jobs. Such rates shall be in accordance with applicable law, but in no event less than the higher rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 or the applicable state or local minimum wage law.
5. Conditions of employment and training will be in full accordance with all applicable Federal, State, and local laws and ordinances (including but not limited to anti-discrimination, labor and employment laws, environmental laws or health and safety laws).
6. Employer certifies that the OJT will not impair existing agreements for services or collective bargaining agreements and that either it has the concurrence of the appropriate labor organization as to the design and conduct of an OJT, or it has no collective bargaining agreement with a labor organization that covers the OJT position.
7. Employer assures that they have not been debarred or suspended in regard to federal funding.
8. Employer further assures that OJT funds will not be used to assist, promote or deter union organizing.
9. Employer certifies that no member of the OJT Trainee's immediate family is engaged in an administrative capacity for the Employer, or will directly supervise the OJT Trainee. For the purpose of this contract, immediate family is defined as spouse, children, parents, grandparents, grandchildren, brothers, sisters or person bearing the same relationship to the OJT Trainee's spouse.
10. Employer assures that the OJT Trainee(s) will not 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.
11. Employer assures that the OJT Trainee has not been hired into or will remain working in any position when any other person is on layoff from the same or a substantially equivalent job within the same organizational unit or has been bumped and has recall rights to that position, nor if the OJT is created in a promotional line that infringes on opportunities of current employees.
12. Employer must provide comprehensive general liability insurance protection to Trainee.
13. OJT contract is subject to modification or termination due to actions taken by the Federal, State, or Local governments that result in a frustration of contract

purpose. Such actions include, but are not limited to withdrawal of WIOA funding by the United States Congress, or the failure by the United States Congress to authorize WIOA program activities.

This Policy has received approval by the Workforce Connection of Central New Mexico Board and rescinds any policy previously in effect.

A handwritten signature in blue ink, appearing to read "Debbie Oddy", is written above a horizontal line.

WCCNM Board Chair