

### **I. Purpose**

This policy provides guidance regarding the limitations and eligibility of individuals to participate in On-the-Job Training (OJT) opportunities. WIOA provides for a workforce system that is job-driven. OJT opportunities provide structured training for participants to gain the knowledge and skills to be competent in the job for which they are hired and lead to stable employment.

### **II. Background**

The Workforce Innovation and Opportunity Act (WIOA) allows for the delivery of training services to Adult, Dislocated Worker, and Youth participants utilizing On-the-Job Training contracts. Employers must commit to hire and retain the participant at the end of a successful training period. OJT provides an incentive to employers to hire individuals and invest in their skill development, and trainees can earn a wage as they learn. It is a critical tool that helps job seekers enter successful employment.

WIOA defines On-the-Job Training 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 to the full and adequate performance of the job;
- Provides reimbursement to the employer of up to 50 percent of the wage rate of the participant, 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.”

### **III. Instructions**

Participants must meet program eligibility requirements for WIOA Dislocated Worker, WIOA Adult, or WIOA Youth programs. In addition, participants must have received an assessment resulting in the development of an Individual Employment Plan (IEP for WIOA Adult and Dislocated Worker participants) or Individual Service Strategy (ISS for older WIOA Youth participants) that documents the participant’s appropriateness for OJT.

Regardless of the funding source, 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 IEP/ISS.

#### **Participant Eligibility for an OJT**

1. WIOA-funded OJT is available for eligible unemployed or underemployed adult and dislocated workers.
2. Employed workers may be eligible for WIOA funded OJTs when the employee is not earning a self-sufficient wage as determined by the LWDB.
3. WIOA eligible Youth may be eligible for WIOA-funded OJT when provided with academic and occupational learning. The academic and occupational learning may occur inside or outside the

work site. The employer can provide the academic and occupational learning component, or it may be provided separately in the classroom or by other means.

4. Participants who have completed occupational skills training via an individual training account (ITA) may be considered for OJT if it creates an opportunity for the participant to become employed. As outlined in TEGL 19-16 and 21-16, training services may be provided to adults and dislocated workers, and youth participants if, after an interview, evaluation, or assessment and career planning, the participant has been determined to have the skills and qualifications to successfully participate in an OJT.

**Note:** WIOA in-school youth aged 14-21 years may qualify for OJT, although such training may not be an appropriate activity for in-school youth whose individual service strategy (ISS) may be geared toward completion of secondary or postsecondary education instead of employment.

OJT participants must receive 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. Appropriate workers compensation insurance protection must also be provided to all OJT participants by the employer.

OJT participants are not eligible to receive Needs Related Payments (NRPs) and cannot be immediate family members of the business owner or direct supervisor. OJT-related conflict of interest must be avoided; due diligence regarding conflict of interest in OJT activities must be present.

### **Priority of Service**

Participants in WIOA programs who face significant barriers to employment – such as recipients of public assistance, low-income individuals, or individuals who are basic skills deficient – should be given service according to their level of need. Please refer to the LWDA's *Priority of Service Guidance* concerning the order of service delivery.

### **Employer Eligibility for an OJT**

OJT is provided under an agreement with an employer in the public, private, non-profit, or private for-profit sector to WIOA eligible participants.

A private placement agency may, if all required OJT criteria are met, be an eligible employer for WIOA-funded OJTs. STLWDA will contract with the employer who has contracted with the private placement agency. Wage reimbursements will be made only to the primary employer and, in turn, reimbursements are made to the private placement agency by the primary employer. These represent OJTs in scenarios of "temp," "temp to hire" or continued long-term employment

### ***When selecting a participating employer, the following must be considered:***

1. The employer and occupation are in an in-demand industry as determined by local labor market information (LMI) and offer wages and benefits that lead to self-sufficient employment.
2. The employer agrees to post Job Orders for all current and future openings at [www.Jobs4TN.gov](http://www.Jobs4TN.gov) prior to customer(s) being referred and reviewed for eligibility.

3. Employers participating in work-based training must be registered with Internal Revenue Service (IRS), have an account with Unemployment Insurance, and carry workers' compensation insurance (Federal Register Vol. 81, No. 161, Page 56117)
4. Businesses must not be presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from participation in transactions by USDOL or the State of Tennessee. STLWDA will utilize SAM.gov to verify an employer is not in debarment status before issuing an OJT contract.
5. The employer must comply with all applicable federal, state, local laws and regulations related to providing reasonable working conditions. OJT participants are not permitted to train or work in buildings or surroundings under working conditions that are unsanitary, hazardous, or dangerous to the trainee's health or safety.
6. The employer must be financially solvent and have an adequate payroll recordkeeping system that tracks hours worked, gross pay, deductions, and net pay.
7. The agreement between the LWDB and the employer will not displace any currently employed worker (WIOA Section 181[b][2][A]). Agreements will not be made with an employer who has terminated any regular employee, or otherwise reduced the workforce, in order to hire an OJT employee.
8. No contract may be written with a company that has relocated (for the first 120 days after beginning operations) if the move has resulted in any employee job losses at the original location (WIOA Section 181[d][2]). To verify that the relocation has not resulted in a loss of employment WIOA program staff and the OJT employer must complete a Standardized Pre-Award Review.
9. The employer must not currently be involved in a labor dispute or have workers currently in a layoff status. (20 CFR 680.840) F. Employees may not work on construction, maintenance, or operation of any facility that is used for sectarian activities. (WIOA Section 188[a][3])
10. The prospective employers must not meet the existing "pattern of failing to provide OJT participants with continued long-term employment as regular employees with wages and employment benefits". (20 CFR 680.700[b]).
11. The employer must not illegally discriminate in training or hiring practices because of race, color, sex, national origin, religion, disability, political beliefs or affiliation, or age (WIOA Section 188[a][2]).
12. Only employers with a history of successful training and retention of OJT employees will be used as repeat OJT sites. Employers that use OJT to subsidize short-term "revolving door" positions will be decertified as OJT sites.

### **OJT Pre-Award Review**

Prior to the placement of an OJT participant, an employer pre-screening must be conducted utilizing the On-the-Job Training Pre-Award to ensure that the employer meets the minimum standards and can provide both training and long-term employment to the OJT participant. The OJT Pre-Award may be completed once, rather than each time an OJT agreement is renewed. In case of a collective bargaining agreement, the document must identify union concurrence before the OJT begins.

The OJT Pre-Award must be updated:

1. If the business is sold or transferred; and/or
2. If other significant changes affecting training or hiring occur.

### **On-the-Job Training Contract (Master Agreement)**

Every On-the-Job Training Contract will include an agreement (contract) with the employer and a training plan for the employee outlined in an addendum to the contract. The contract must include the requirements of WIOA rules and regulations and the addendum will outline the type of occupation, skills, competencies to be learned, and the length of training that will be provided. The On-the-Job Training Contract is required for each employer regardless of the number of participants trained or hired. The Contract may be effective for a maximum period of one year and cover all addenda approved with the employer prior to the Contract's expiration date.

The OJT Contract, while establishing the reimbursement procedures, remains nonfinancial in nature, and no money is obligated until the addendum is approved. The OJT Contract should be modified before expiration only if there are significant changes, such as layoffs or changes in federal, state, and local rules and policies pertaining to the implementation of OJTs.

### **On-The-Job Training Addendum (Training Plan)**

A training plan is included for each participant prior to the participant beginning the OJT and outlines the planned training activities to be accomplished during the training period. The agreement between the employer and STLWDA is the document which authorizes reimbursement of the agreed upon amount after successful completion of the training plan period (or the retention period, if applicable).

The duration of the OJT shall not exceed a maximum of **400** hours unless extenuating circumstances exist, in which case appropriate documentation is required. The length of the training considers several factors such as participants' skills gap, including prior work experience, the occupation for which the participant is receiving training, the content of training, and the service strategy of the participant. The OJT training plan should identify the skills to be learned during the OJT. OJT providers may base the identification of the skills needed, as well as the justification of training duration, upon the Occupational Information Network (O\*NET) and specific vocational preparation (SVP), company job description, input from the employer/supervisor, and/or other appropriate data sources available. All forms of justification must be documented and become a part of the IEP/ISS for the participant.

### **Exceptions for individuals with disabilities or other significant barriers**

OJT participants facing a significant barrier to employment, such as a disability covered under the Americans with Disabilities Act (ADA), may be considered for a longer training duration

### **Employer Reimbursement**

OJT training payments to employers are deemed to be compensation for the extraordinary costs associated with training a participant and his/her potentially lower productivity. Employers will be reimbursed up to 50% of the wage rate of an OJT participant, not to exceed **\$5,000 per participant**.

### **Invoice**

Payments to employers are managed by an invoice system that documents the number of hours worked by the OJT participant and the hourly rate of pay. Payment point procedures are in place

via the Board staff. Payment reimbursement will **not exceed 50% of wages**. The LWDB approved a maximum amount of **\$5,000 per participant**; however, exceptions may be approved at the discretion of the Director.

WIOA participants who have utilized the maximum allowed under the most current ITA Policy may also qualify for up to \$5,000.00 for an OJT so long as the training aligns with the participant's career pathway and is needed to secure employment.

### **Data and Reporting**

Providers must properly record all necessary information related to eligibility and progress in the Jobs4TN system. At a minimum, this should occur monthly; however, it is recommended by the LWDB that more frequent communication occur, especially for participants with significant barriers to employment.

### **Monitoring Procedures**

Depending on the duration of the contracted training, any work-based training contract is monitored at least once by the LWDB Quality Assurance Department. Monitoring is based on the contract agreement between the employer and the LWDB. The employer is required to submit the following for reimbursement and documentation of services provided:

- Invoice form
- Payroll records showing the gross wages paid to the trainee
- Time records showing actual hours worked; SETD reimburses employers for the actual hours worked

Monitoring will include, but is not limited to:

- An annual review of the provider's oversight of participant's training and files
- Annual onsite monitoring visits of each OJT employer
- Desk review of correspondence from the employer, including payment invoices and required documentation to support those invoices
- Regular reviews of each trainee's progress in meeting program and service strategy objectives.

On-site Review: On-site reviews will utilize standard monitoring instruments covering the following areas, as applicable:

- a. VOS reports
- b. Participant files
- c. Training plans
- d. Participant interviews
- e. Health and safety conditions
- f. Worksite monitoring

### **Monitoring Report Format:**

Within 30 days of the initial monitoring completion, LWDB monitor will transmit a draft report of findings, or a final report of no findings, to the contractor. Contractors with open findings will have 30 calendar days after receipt of the monitor's report to address the findings and present corrective actions. Upon receipt of the corrective action report from the contractor, the LWDB monitor will

have 30 calendar days to issue a final monitoring report. If the contract still has open items or pending corrective actions, the LWDB monitor will conduct a subsequent monitoring event within three months of the published report to confirm actions have been taken and correct the open items. Follow-up contacts will be made to ensure that the corrective actions have been implemented. Documentation of follow-up will be maintained in the monitoring file.

All written reports and other documentation pertaining to monitoring and other oversight activities will be made available for review by the LWDB and any federal and state officials

Reports and other records of monitoring activities must be retained for five years from the date of submission of the final expenditure reports regarding the funding sources monitored. If any litigation, claim, audit or other action involving the records has been started before the expiration of the five-year period, the records must be retained until completion and resolution of all such actions or until the end of the five-year period, whichever is later.

The key monitoring issues include verifying and documenting that:

1. There was a need for training;
2. Training was provided to the participant;
3. The length of OJT training was reasonable;
4. The employer reimbursement rate complied with policy; and
5. Other applicable OJT rules and requirements were followed.

**Outreach Goals for Participants and Employers:**

The LWDB sets the outreach goals for participants and employers annually during its quarterly Local Workforce Board meeting. The goals are tied directly to the annual budget and are approved by the Board.

**AUTHORIZED BY:**

  
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Michele Holt, Director, Workforce Development  
Date 9/12/18

**APPROVED BY:**

  
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Tony Cates, Chair, Workforce Development Board  
Date 9-12-18

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