

# HERKIMER-MADISON-ONEIDA

## ON-THE-JOB TRAINING POLICIES AND PROCEDURES MANUAL

(WDB APPROVED 3/2/18)

### 1. OVERVIEW OF OJT:

On-the-Job Training (OJT) is a work-based training strategy available through the Workforce Innovation and Opportunity Act (WIOA). WIOA enhances the access of job-seeking individuals to employment, education, training, and supportive services that foster success in the labor market by providing the skills needed to compete in the global economy. Using work-based learning strategies is a key factor in helping adults and dislocated workers and youth find employment; potential employees are easier to find and develop when employers are involved in the process. Moreover, the reimbursement of incurred training costs to employers creates an environment conducive to better training and, in turn, better employees.

"On-the-Job Training" is defined in WIOA sec. 3(44) 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, typically up to 50 percent of the wage rate of the participant, depending on funding streams and company size, for the extraordinary costs of providing the training and additional supervision related to the OJT.
- 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.<sup>1</sup>

OJT provides an excellent opportunity for individuals to build or update their skills and/or establish themselves in emerging high-demand fields. It also provides an incentive for businesses to hire individuals and invest in their skill development.

OJT programs can be particularly successful for individuals who:

- Are unable or unlikely to obtain employment without retraining;
- Are low income, receiving unemployment insurance, or public assistance, or need to earn a wage while learning an occupational skill;
- Are individuals with barriers to employment who need help finding their next job;
- Are individuals who can learn the skills necessary for the occupation more easily and thoroughly on the job; and/or,
- Need supervision as they learn specific skills for an occupation.

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<sup>1</sup> WIOA section 3(44)

## 2. OJT OUTREACH

Outreach is proposed to promote the use of OJT to both employers and job seekers. Working Solutions American Job Center (AJC) staff should ensure that both the Business Services function and the Job Seeker Services functions include information about OJT.

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

Outreach includes, but is not limited to: face-to-face contacts, hard-copy mail outs (introductory letters, notes of appreciation, newsletters), involvement with organizations like the Chamber of Commerce, press releases, networking with other agencies, and speaking to civic organizations.

Sample outreach strategies include:

- Educating job seekers about how to “sell” OJT to potential employers;
- Projecting company savings by utilizing OJT and ensuring required paperwork is minimal.
- Encouraging the job seeker to use an introductory letter from the OJT provider when interacting with employers as part of their job search.
- Researching businesses thoroughly before contacting them and noting previous labor needs;
- Working with other agencies to target high growth industries for regional outreach;
- Working with State Apprenticeship Agency (SAA) and Office of Apprenticeship (OA) staff who interact with business as part of their primary function;
- Educating employers about how the OJT model can enhance their business, cut waste, help train employees, reduce turnover and increase profits;

## 3. EMPLOYER PRE-SCREENING FOR OJT

OJT is provided under an agreement with an employer in the public, private non-profit, or private sector. Prior to entering into an OJT agreement, a pre-screening should be conducted to ensure that the employer meets the minimum standards and can provide both training and employment to an OJT participant.

Employer checklists must include (at a minimum):

- The business has not exhibited a pattern of failing to provide OJT participants with continued employment;<sup>2</sup>
- The business verifies WIOA funds will **not** be used to relocate operations in whole or in part<sup>3</sup>;

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<sup>2</sup> 20 CFR 680.700(b)

<sup>3</sup> 20 CFR 683.260(a)(1)

- The business has operated at its current location for at least 120 days. If less than 120 days and the business relocated from another area in the U.S and individual(s)/employees were not laid off at the previous location as a result of the relocation;<sup>4</sup>
- The business is not utilizing OJT participants to fill job openings as a result of a labor dispute;<sup>5</sup>
- OJT funds will not be used to directly or indirectly assist, promote, or deter union organizing;<sup>6</sup>
- The OJT will not result in the full or partial displacement of employed workers;<sup>7</sup>
- Worker Adjustment and Retraining Notification Act (WARN) notices have previously been filed, if applicable.

Participant wages to be paid are:<sup>8</sup>

- At the same rate, including periodic increases, as other participants or employees who are similarly situated in comparable occupations with the same employer, and who have equivalent training, experience, and skills;
  - In any event, no less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1) or the applicable Federal, State or local minimum wage;
- Participants must be provided benefits (*e.g.*, workers' compensation, health insurance, unemployment insurance, retirement benefits) at the same level and to the same extent as other participants or employees working a similar length of time and doing the same type of work;<sup>9</sup>
  - The employer will comply with the non-discrimination and equal opportunity provisions of WIOA law and regulations;<sup>10</sup>

#### 4. OJT PARTICIPANT REQUIREMENTS

Upon visiting an AJC, an individual may be considered for an OJT when he/she has met the eligibility requirements for the WIOA Adult, Dislocated Worker, or Youth program, and has been determined to be in need of training services. Once deemed eligible, the individual will then receive an assessment and will have developed an Individual Employment Plan (IEP) showing that an OJT is appropriate. The individual may also be considered for any other types of work-based learning under WIOA. An individual referred to an AJC by an employer may be considered for OJT with that employer only after the individual has met eligibility requirements for training services, and for whom an IEP has been developed and indicates that an OJT is appropriate.

Proper program eligibility is required for each funding source, e.g. WIOA Adult, Dislocated Worker and Youth formula programs (including Statewide Activities), and National Dislocated Worker Grants (DWGs). Regardless of the funding stream, consideration should be given to: the skill requirements

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<sup>4</sup> 20 CFR 683.260(a)(2)

<sup>5</sup> 20 CFR 680.840

<sup>6</sup> 20 CFR 680.830

<sup>7</sup> 20 CFR 683.270

<sup>8</sup> 20 CFR 683.275(a)

<sup>9</sup> 20 CFR 683.275(c); 20 CFR 683.280(b), 20 CFR 680.700(b)

<sup>10</sup> 20 CFR 683.285

of the occupation; the academic and occupational skill level of the participant; prior work experience; and the participant's IEP.

An Individual Employment Plan (IEP) is an effective service in identifying the appropriate mix of career and training services for the participant. The IEP can help both the case manager and the participant identify the skills needed for achieving employment success. Once the preliminary information has been gathered, and the assessment process is completed, the local area should take into account the following considerations before placing the participant in an OJT program:

- Does the participant need to learn skills for the desired position, or do they already have those skills?
- Does the participant have a need for training?
- What is the best way for the individual to obtain the skills needed (i.e., OJT or occupational skills training or both;)?
- Can the position be obtained at this business without OJT training? If a need for OJT cannot be documented, a direct placement or referral to other services should be considered. If a need for OJT has been determined and recorded on the IEP, a referral may be made to appropriate employers.
- Is the participant likely to succeed in training?

In addition, factors used to select OJT as the most appropriate referral may include the participant's need for occupational training, participant's job readiness, and match of referral to the participant's needs, interests, and employment objectives, as well as capability of the participant to complete the training. Prior to employer selection, it is vital for both the participant and the long-term relationship with the employer that the local board has identified the participant as likely to succeed in an OJT program. In summary, it is the local area's responsibility not only to ensure the *eligibility* of the participant, but also to assure the individual's *suitability* for OJT with the employer in question.

## 5. REQUIRED DOCUMENTS

To encourage the use of OJT by employers and job seekers, it is critical that the OJT providers (employers) keep paperwork to a minimum. However, there are several documents required to effectively implement an OJT, including: Employer Pre-Award Review, OJT contracts, training plans, invoicing and monitoring documentation. Please note that OJT is considered a program cost under WIOA and should be reported as such on financial reports.

### A. *Employer Pre-Award Review*

The Pre-award review form (Attachment A) is a checklist of required information followed by the OJT Due Diligence Request form (Attachment B) and the Business Application (Attachment C). Note that job opportunities considered for OJT reimbursement must be located in New York State.

Businesses must also complete the Responsibility Questionnaire (Attachment D). If an organization has submitted a Responsibility Questionnaire within the last 12 calendar months all that is needed is an attestation (Attachment E) that the information presented in the form remains true, accurate and complete.

In order to make sure that the applicant business is a responsible training provider for an OJT candidate the following must be verified:

- Responses to Responsibility Questionnaire-A “yes” answer to any part of questions 1-5 requires that a written explanation be prepared by the company, on letterhead and signed by an officer of that company
- Registration with the New York Department of State’s Division of Corporations-This search can be conducted on-line at: <http://www.dos.state.ny.us/corps/bus>
- Federal OSHA records-these records are found on-line at: <http://www.osha.gov/pls/imis/establishment.html>. Search under NYS only
- NYSDOL records. Requests for the evaluation of this information should be made via email to: [OJTDueDiligence@labor.ny.gov](mailto:OJTDueDiligence@labor.ny.gov) using the OJT Due Diligence Request Form presented in Attachment B. The subject line should read “Local Area OJT Due Diligence Request-(Business Name)”. The appropriate Regional Business Services Representative (BSR) should be listed in the cc line of the requesting email. Upon receipt of the request, NYSDOL will send back a confirmation email. The records to be checked will include:
  - ✓ Unemployment Insurance Records
  - ✓ WARN notices and/or participation in the Shared Work program
  - ✓ Open investigations with NYSDOL’s Public Works, Labor Standards and/or Safety and Health Divisions
  - ✓ Worker’s Compensation Insurance and Disability Insurance coverage; and
  - ✓ Active TAA petitions

This review is considered valid for a three month (3mos.) period beginning on the date the review is completed. After this three month period, the organization must undergo a new due diligence review if it wishes to enter into a new contract.

- In addition, an on-site review must be conducted with the business. This review will allow staff to see where the OJT participant will be working, meet the trainee’s supervisor, and gain a better understanding of the business’ facility and operations. The purpose of the site visit is to determine whether the business will afford a viable on-the-job training opportunity.

#### *B. OJT CONTRACT*

An employer orientation must be completed with each employer and/or employer representative to discuss the contract provisions and training plans. The contract process sets the ground-rules for OJT with an employer and ensures there is a legally binding agreement between the employer and the OJT training provider. Contracts include the terms and conditions that the employer and OJT provider agree to provide for a successful OJT experience.

An OJT contract must comply with the requirements of WIOA rules and regulations including identifying the occupation, skills and competencies to be learned, and the length of time the training will be provided.

Also note that states make guarantees to the United States Department of Labor (ie: WIOA rule, discrimination, anti-lobbying, Davis-Bacon). The OJT provider is required to include by reference these assurances and certifications.

OJT Contract Parameters:

- An OJT contract will cover up to 50% of a wage rate depending on funding source and/or company size, unless funded under grants allowing a higher reimbursement rate that is correlated with either the size of the business or the skills eligibility of the trainee.
- An OJT contract may be written for a maximum of six (6) months. It must be limited to the time required for a participant to become proficient in the occupation for which the training is being provided.
- An OJT contract may only be written for a position that provides a minimum of 35 hours of work per week.
- An OJT contract may only be written for positions that pay minimum wage or above.

OJT Contract Attachments:

- ✓ Contract Signature Page
- ✓ Data Sheet
- ✓ Program Summary, Job Description and Training Plan form
- ✓ Trainee Report & Voucher Back Up
- ✓ OJT General Provisions, Assurances and Federal Certifications
- ✓ Midpoint Monitoring Form

C. TRAINING PLANS

An OJT training plan and the corresponding training is developed based on the occupation the participant has chosen. This plan is a formal and written program of the structured job training that provides participants with a combination of instruction in job-ready skills (where indicated), general employment competencies and occupational skills that enable the participant to attain self-sufficiency. Training providers can use O\*NET and/or a job description as a basis to begin listing skills or tasks. Keep each skill description concise and comprehensive and make sure the individual tasks are observable and measurable. Assistance is available from the local NYS Department of Labor Job Analyst.

The Training Plan must include:

- Participant and employer information: name, social security number and contact information;
- OJT contract reference that may include: start and end dates, wage rate, and reimbursement rates;
- Occupational information: job title and description, O\*NET code, and number of hours per week;
- Job skills and activities: 1) skills/activities needed to successfully reach or obtain employment in this occupation; 2) skills and activities in which participants will be trained or achieved, including an outline of any measurable skill gains to be achieved;
- Monitoring and written evaluation of participant's performance in meeting achieved goals;
- Training hours: length of training time for each skill or activity;

- Progress measurement: How the progress of the participant is measured in the skills to be achieved (i.e., observation of lead worker or supervisor, demonstration of specific competencies, observation of specific tasks, etc.);
- Confirmation that it is consistent with the participant's IEP;
- Signatures of participant and date, of Employer and date, and of OJT provider (employer or outside training provider), and date.

In determining the appropriate length of the contract, 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.<sup>11</sup>

Using machinery repair as an example, the following points need to be considered: which tools are needed, what is their proper use, what skills are necessary and what training is needed in order to disassemble and reassemble parts? O\*NET is a useful resource to use in determining the length of training, but not as useful a resource in determining the specific needs of the employer. The training plan becomes the statement of work in the contract which is used as a guide when delivering training. It is also useful for determining whether the services contracted for have been delivered. Participant progress is determined once skills are identified and a method for measuring them is established.

#### *D. INVOICING*

Payments to employers for OJT must be in compliance with WIOA program guidelines. They are compensation for the employers' "extraordinary costs" associated with training participants and potential lower productivity of participants while in OJT.<sup>12</sup> Employers are not required to document these extraordinary costs. Extraordinary costs associated with training of participants are usually understood to mean:

- More intense supervision;
- Above average material waste;
- Abnormal wear on tools;
- Down time; and
- Lower rates of production

The participant must receive wages and fringe benefits equal to those similarly employed by the employer. It is expected that the participant will continue working after the payments to the employer end. It is also expected that the participant will continue to receive compensation and benefits commensurate with their job performance and in alignment with other workers.

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. In

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<sup>11</sup> 20 CFR 680.700(c)

<sup>12</sup> 20 CFR 680.700(a)

case there is no available timesheet, a paystub may also be used for verification. Also, payments to employers should reflect scheduled raises and regular pay increases, if they occur.

#### *E. MONITORING AND PERFORMANCE ACCOUNTABILITY*

A midpoint monitoring evaluation is part of the OJT contract documents. It reflects the skills training being provided to the participants, and shows the progress the participant is making toward achieving competencies and skill gains.

Monitoring is the responsibility of the LWDB. Monitoring at the local level will include oversight of the participant training and corresponding employer payroll records. On site monitoring of OJT employers is required at least once to ensure validity and propriety of the reimbursement amounts claimed, and that the training for which the contract is written is actually delivered. The on-site monitoring of the OJT must include: documentation of information received directly from the participants with the participant supervisor's perspective about how the training is progressing, as well as the review of the employer payroll records.

## **CUSTOMIZED TRAINING POLICY (CT)**

Customized training is designed to meet the specific requirements of an employer or group of employers with the commitment that the employer(s) hire an individual upon successful completion of the training. The employer must pay for a significant portion of the cost of training taking into account the size of the employer, the number of employees participating in the training, wage and benefit levels of those employees (at present and anticipated upon completion of the training), relation of the training to the competitiveness of a participant, and other employer-provided training and advancement opportunities.

*Contracts will not be written with an employer who has previously exhibited a pattern of failing to provide CT participants with continued long-term employment with wages, benefits, and working conditions that are similar to those provided to regular employees.*

## **REFERENCES**

**WIOA Regulations at 20 CFR, parts 680.200, 700, 710, 720, 730**

**TEGL 2-15, "Operational Guidance for National Dislocated Worker Grants, pursuant to the Workforce Innovation and Opportunity Act (WIOA or Opportunity Act)."**

**TEGL 19-16, "Guidance on Services provided through the Adult and Dislocated Worker Programs under the Workforce Innovation and Opportunity Act (WIOA) and the Wagner-Peyser Act Employment Service (ES), as amended by title III of WIOA, and for Implementation of the WIOA Final Rules."**



## **ATTACHMENTS**

<b>Attachment A</b>	<b>Pre-award review</b>
<b>Attachment B</b>	<b>OJT Due Diligence Request</b>
<b>Attachment C</b>	<b>Business Application</b>
<b>Attachment D</b>	<b>Responsibility Questionnaire</b>
<b>Attachment E</b>	<b>Responsibility Questionnaire Attestation</b>
<b>Attachment F</b>	<b>OJT Contract Consisting of:</b> <ul style="list-style-type: none"><li>• <b>Cover Page</b></li><li>• <b>Data Sheet</b></li><li>• <b>Individual Employment &amp; Training Plan</b></li><li>• <b>Job Description (added from company or ONET)</b></li><li>• <b>Trainee Report &amp; Voucher Back Up</b></li><li>• <b>Service Visit Report</b></li><li>• <b>General Provisions &amp; Certifications</b></li></ul>