

Subject:	On-the-Job Training
Policy Number:	ADWB-02-2017
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Implementation Date:	<i>Pending Board Approval</i>
Distribution:	Arapahoe/Douglas Works! Workforce Center Leadership and Employees

The Arapahoe/Douglas Workforce Board (ADWB) has designated Arapahoe/Douglas Works! (ADW!) as the one-stop operator, and thereby the facilitator of the following approved policy and associated language contained herein.

CITATIONS/REFERENCES

- Workforce Innovation and Opportunity Act (WIOA) of 2014, Pub. L. No. 113 and 128, Sections 129, 134, 181, 194.
- WIOA Department of Labor-Only Final Rule (81 FR 56072, Aug. 19, 2016).
- Training and Employment Guidance Letter (TEGL) 03-15 Guidance: Services Provided through the Adult and Dislocated Worker Program under the Workforce Innovation and Opportunity Act (WIOA or Opportunity Act) and Wagner Peyser, as Amended by WIOA, and Guidance for the Transition to WIOA Services
- TEGL 23-14: WIOA Youth Program Transition
- PGL WIOA-2016-08, Change 1: On-the-Job Training

PURPOSE

To establish guidance, process and procedure in regards to providing On-the-Job Training (OJT) under WIOA Title I Adult, Dislocated Worker, and Young Adult programs.

BACKGROUND

WIOA was signed into law on July 22, 2014 and is designed to help job seekers access employment, education, training, and supportive services to succeed in the labor market; and to match employers with the skilled workers they need to compete in the global economy. WIOA supersedes Titles I and II of the Workforce Investment Act (WIA) of 1998, and amends the Wagner-Peyser Act and the Rehabilitation Act of 1973.

Furthermore, WIOA provides for a workforce system that is universally accessible and customer centered, and training that is job-driven. Work-based learning activities enable participants to gain skills while employed or while engaged in an experience that prepares them for permanent employment along a career pathway. OJT is a critical training service for workers who want to develop the necessary skills for a good job and for employers who need a pipeline of skilled workers to remain competitive.

OJT must be provided under a contract with an employer or registered apprenticeship program sponsor in the public, private non-profit, or private sector. Through the OJT contract, occupational training is provided for the WIOA participant in exchange for the reimbursement, typically up to 50% of the wage rate of the participant, for the extraordinary costs of providing the training and supervision related to the training. In limited circumstances (see “Employer Reimbursement Rate” Section of this policy), the ADWB approves a reimbursement rate up to 75% of the wage rate of the participant. Under WIOA, USDOL no longer grants waivers to increase the reimbursement rate.

POLICY/ACTION

The ADWB has established this OJT policy and procedure in compliance with WIOA Title I and the Final Rule, and in accordance with the following topics covered in this corresponding OJT PGL.

➤ DEFINITION

OJT is defined at WIOA Sec. 3(44):

“**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:

- Provides knowledge or skills essential to the full and adequate performance of the job;
- Is made available through a program that provides reimbursement to the employer of up to 50% of the wage rate of the participant (with some exceptions, see “Employer Reimbursement Rate” Section of this policy), 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.

➤ ELIGIBILITY FOR TRAINING SERVICES FOR ADULTS AND DISLOCATED WORKERS

Under WIOA, there is no sequence of service requirement for career services and training services. However, training services may be provided to adults and dislocated workers only if the Workforce Specialist (WFS) determines, after an interview, evaluation or assessment, and case management, that the participant:

- Is unlikely or unable to obtain or retain employment, that leads to economic self- sufficiency or wages comparable to or higher than wages from previous employment through career services alone;
- Is in need of training services to obtain or retain employment that leads to economic self- sufficiency or wages comparable to or higher than wages from previous employment; and
- Has the skills and qualifications to successfully participate in the selected program of training services.

WIOA requires that training services are linked to in-demand employment opportunities (justification may include, but is not limited to: labor market information/data, hard-to-fill reports, ratio of applicants to job orders, and Central Planning Region Targeted Industries) in the local area or planning region or in a geographic area in which the adult or dislocated worker is willing to commute or relocate. The selection of training services should be conducted in a manner that maximizes customer choice, is informed by the performance of relevant

training providers, and coordinated to the extent possible with other grant assistance. Once eligibility for training services has been established, the WFS must then determine that an OJT is appropriate.

Training services for WIOA Title I adults and dislocated workers, when determined appropriate, must be provided either through an Individual Training Account (ITA) or through a training contract. OJT is provided through a contract.

➤ ELIGIBILITY FOR TRAINING SERVICES FOR EMPLOYED WORKERS

WIOA permits training services, including OJTs, for WIOA-eligible employed workers that are not earning a self-sufficient wage or wages comparable to or higher than wages from previous employment, as determined by the ADWB.

For individuals who are employed at program entry, the WFS must determine that the individual:

- Is not earning a self-sufficient wage or wages comparable to or higher than wages from previous employment (examples may include, but are not limited to: previous paystubs and self-sufficiency standards per the "Self-Sufficiency Standard for Colorado Report Prepared for Colorado Center on Law and Policy"); and
- The OJT or other training relates to the introduction of new technologies, introduction to new production or service procedures, upgrading to new jobs that require additional skills or workplace literacy, or other appropriate purposes identified by the local board.

Note: Incumbent Worker Training is a separate type of training that will be covered in a separate PGL and local policy. The training eligibility described in sections above will not apply to incumbent workers receiving only the IW service. It will apply to incumbent workers who receive career, supportive, or training services in addition to the IW service.

When an individual is referred to ADW! by an employer, it is ADW!'s responsibility to ensure the eligibility of the participant/trainee for both the program and training and also to assess the individual's suitability for OJT with the employer in question. The individual must not already be working for the employer unless they meet the training eligibility requirements for an employed worker.

➤ YOUNG ADULTS

WIOA prioritizes work experiences for Young Adult program participants by requiring that local areas spend at least 20% of local Young Adult program funds on work experience. Paid and unpaid work experiences that have academic and occupational education as a component are one of the 14 Youth program elements. Work experiences may include the following four categories: summer employment opportunities and other employment opportunities available throughout the school year; pre-apprenticeship programs; internships and job shadowing; and OJT opportunities. In order to participate in OJT, a young adult who has been determined eligible for the program must have an objective assessment and an Individual Services Strategy (ISS) that identifies OJT as an appropriate Young Adult program element.

LOCAL POLICY REQUIREMENTS

In alignment with the OJT PGL, the ADWB has established and addressed the following local requirements:

➤ LENGTH OF TRAINING

In determining the appropriate length of an OJT contract, ADW! will first reference the U.S. Department of Labor's Specific Vocational Preparation (SVP) levels as a starting point for each OJT training plan. Other considerations will include the skill requirements of the occupation, the academic and occupational skill level of the participant, prior work experience, and the participant's Individual Employment Plan (IEP) or ISS. All OJT activities will be limited to the period of time required for a participant to become proficient in the occupation for which the training is being provided. Each training plan will be customized based on all considerations. An OJT will not exceed six (6) months (with the exception of an OJT in coordination with Trade Adjustment Assistance).

➤ PART-TIME OJT

Part-time OJT contracts may be written for customers when determined appropriate (which may include, but not limited to: disabilities, pregnant/parenting, in-school young adult, OJT participation in conjunction with classroom training, etc.).

➤ EMPLOYER REIMBURSEMENT RATE

Occupational training is provided for the WIOA participant through an OJT contract in exchange for a reimbursement to the employer, typically up to 50% of the wage rate of the participant. The reimbursement is for the extraordinary costs associated with training participants and the potentially lower productivity of the participants while in the OJT. As mentioned previously, in limited circumstances, the ADWB approves a reimbursement rate up to 75% of the wage rate of the participant by taking into account the following factors:

- The characteristics of the participants (e.g., length of unemployment, current skill level, and barriers to employment);
- The size of the employer, with an emphasis on small businesses (the Small Business Administration's definition of "small business" which varies by industry may be used as a guide);
- The quality of employer-provided training and advancement opportunities, for example if the OJT contract is for an in-demand occupation and will lead to an industry-recognized credential; and
- Other factors may include, but are not limited to: the number of employees participating in the training, wage and benefit levels of the employees (both pre and post participation earnings), and relation of the training to the competitiveness of the participant.

ADW! will allow a cost up to \$6,000 in reimbursements per OJT trainee linked to in-demand employment opportunities in the local area or planning region or in a geographic area in which customer is willing to commute or relocate.

➤ ELIGIBILITY FOR EMPLOYED WORKERS

Per Section C. of this corresponding OJT PGL, WIOA permits OJT contracts for WIOA-eligible employed workers that are not earning a self-sufficient wage or wages comparable to or higher than wages from previous employment. The ADWB is responsible for determining the "self-sufficient wage" in local policy. The OJT must also relate to:

- The introduction of new technologies;
- Introduction to new production or service procedures;
- Upgrading to new jobs that require additional skills or workplace literacy, or other appropriate purposes as defined by the ADWB.

➤ EMPLOYER ELIGIBILITY/PRE-AWARD REVIEW

To determine eligibility, employers must first complete the MATCH Employer Eligibility Application which will be reviewed by ADW! in order to ensure qualifications and requirements are met in accordance with the OJT PGL. The MATCH Employer Eligibility Application will include, at a minimum:

- Names under which the establishment does business, including predecessors and successors in interest;
- The Federal Employer Identification Number (FEIN);
- The name, title, and address of the company official certifying the information; and
- Whether WIOA 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.

➤ EMPLOYER REQUIREMENTS CONTRACTS

OJT must be provided through a contract with an employer or registered apprenticeship sponsor in the public, private non-profit, or private sector. The contract with the employer 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. The OJT contract will include, at a minimum:

- the occupation, skills and competencies to be learned;
- the training program /curriculum for training;
- an outline of any separate classroom training that may be provided by the employer;
- the length of training time provided;
- the wage rate for the participant;
- the percentage rate used for reimbursement to the employer and the maximum amount for reimbursement;
- 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.
- 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;
- assurances that training will be in accordance with WIOA Section 181 (fair and equal wages, prohibition on displacement of current employees, equal benefits and working conditions, prohibition on use of funds after relocation, collective bargaining); and assurances that training will be in accordance with the Final Rule, §680.700 – 680.730.

➤ EMPLOYER-EMPLOYEE RELATIONSHIP

OJT trainees must be regular employees of the participating employer, not independent contractors or temporary or seasonal hires.

➤ WAGE RATES

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.

➤ EMPLOYER RESTRICTIONS/PATTERN OF FAILURE

An OJT contract must not be written with an employer who has previously demonstrated a “pattern of failure” as defined by the ADWB and the Final Rule Section 680.700. Such failure may include, but is not limited to: 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. In addition, OJT trainees must be regular employees of the participating employer, not independent contractors or temporary or seasonal hires.

Exhibiting “a pattern of failure” means that the employer has violations noted in this section, or there is substance to a formal complaint filed by an employee that is severe enough to terminate the contract in that the problem is not resolved via informal/formal interventions. If an employer has exhibited a “pattern of failure,” ADW! will not write additional OJT contracts with that employer for a period of two (2) years. Employers that have been determined to have violated the above may submit a request for re-consideration.

➤ 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 and the original location is in the United States. To verify that an establishment which is new or expanding has not relocated employment from another area, the MATCH Employer Eligibility Application must be completed. This pre-award review must be conducted jointly by ADW! with the establishment as a prerequisite to WIOA assistance.

➤ LEGAL USE OF FEDERAL FUNDS

WIOA funds may not be used to help employers to fill positions that promote or support the use, possession or distribution of marijuana.

➤ 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.

➤ COORDINATION WITH REGISTERED APPRENTICESHIPS

An OJT contract may be developed with a Registered Apprenticeship program for training participants. OJT contracts are made with the employer, and Registered Apprenticeship generally involves both classroom and on-the-job instruction. The OJT contract may be made to support some or all of the OJT portion of the Registered Apprenticeship program. A combination of an Individual Training Account (ITA) to cover the classroom instruction along with an OJT contract to cover OJT portions of the Registered Apprenticeship is allowed. If an apprentice is employed at the time of program enrollment, the requirements for employed workers must be followed (see “Eligibility for Training Services for Employed Workers” Section of this local policy).

➤ COORDINATION WITH TRADE ADJUSTMENT ASSISTANCE (TAA)

Co-enrollment of workers certified as eligible for TAA, in partnership with WIOA, allows for the timely provision of individualized career services and improves the effectiveness of the TAA program. Co-enrollment also may assist

in making additional funds available for OJT. The TAA program allows reimbursement up to 50%, so for a co-enrolled TAA participant, the TAA Program may reimburse employers up to 50% and WIOA may reimburse employers up to an additional 25%, to bring the total reimbursement to employers up to 75% to align TAA Program benefits with WIOA benefits. The duration of an OJT for a TAA participant is limited to 104 weeks.

➤ **ELIGIBLE TRAINING PROVIDER EXCEPTION**

OJT providers are not required to be eligible providers on the state's Eligible Training Provider List (ETPL), and are not subject to the performance requirements for eligible providers.

➤ **STATE AND LOCAL MONITORING**

OJTs will be subject to annual program monitoring, which includes a sample review of OJT contracts and case files to ensure compliance with Federal, state and local policies. On-site monitoring of OJT employers is required by ADW! 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. On-site monitoring will include observing and reviewing worksite conditions.

The ADWB has established the following ADW! procedures, which will include, at a minimum:

- Roles of the employer, participant, and ADW!;
- Monitoring of OJT providers and worksites to ensure that all parties are in compliance with contract deliverables, cost, performance, and goals;
- Employer outreach strategies and equitable selection;
- On-site monitoring of worksite conditions and review of employer's payroll records; and
- Validation of skill and competency attainment for participants.

➤ **DOCUMENTATION EMPLOYER SELECTION**

ADW! will 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: ADW!'s website, newsletters, websites, forums, outreach materials, and other meetings or communications targeted to area employers. If the majority of OJT funds benefit only one employer in a local area 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.

➤ **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 are usually understood to mean more intense supervision; abnormal wear on tools; down time; and lower rates of production.

Payment to employers must 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.

➤ PARTICIPANT CASE FILES

Case files will include a copy of the OJT contract and 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 factors established in local policy;
- Amount of reimbursement, based on hours worked and wage rate;
- Length of the OJT, based on factors established in local policy; and
- Notes documenting trainee's progress, including employer progress reports, and any interventions needed to support trainee performance.

➤ TRACKING PARTICIPANTS IN CONNECTING COLORADO

- OJT activities are tracked in Connecting Colorado using the **OJ** code (applicable for WFS);
- The start and end dates for the training service must match the start/end dates of the OJT;
- *Applicable for Business Development Representatives only:* OJT activities are tracked in Connecting Colorado using the **TN** code (followed by the selection of "On-the-Job Training" in dropdown menu);

ADWB MEMBERS & ADW! EMPLOYEES

ADWB members as well as ADW! employees are not eligible for any ADW! OJT funding. In addition, relatives of ADWB members as well as ADW! employees are not eligible for any ADW! OJT funding.

Relatives are defined as:

- Parents, spouses, children, cousins, grandparents, siblings, nephews, nieces, aunts, uncles, in-laws; please note, this is inclusive of step-family.

All participants in this category will be referred to other outlining counties for program-attached services. Any ADWB board member relatives and/or ADW! employee relatives enrolled prior to July 1, 2008 will adhere to Local Policy #2008-21.

CONFLICTS OF INTEREST

Employees shall not have a personal interest in any actions in which they may be involved in selecting the vendor, executing a contract or purchase order, or negotiating or administering the contract or purchase order. Employees will not be allowed to solicit, obtain, accept, or retain any personal benefit (gift, favor, service, compensation, or discount) from any supplier, vendor, or any individual or organization doing or seeking business with the County. Employees having a potential personal interest in a County contract, purchase, payment, or other financial or monetary transaction shall give 72 hours written advance notice of the conflict to the County Attorney. Failure to disclose a conflict will not be tolerated. "Personal interest" includes an interest held by the individual or relatives. Relatives are defined as: parents, spouses, children, cousins, grandparents, siblings, nephews, nieces, aunts, uncles, in-laws; please note, this is inclusive of step-family).

Only the ADW! Program Manager and/or ADW! Deputy Division Manager may grant exceptions to provisions within this policy.

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