
Policy Number: 2016-1027.1-IWT

Purpose

The purpose of this policy is to provide guidance on the requirements for Incumbent Worker Training.

Effective Date

This policy will go into effect immediately upon passage and will apply only to Incumbent Worker Training programs that begin after the effective date.

Rescission

This policy replaces the prior Incumbent Worker Training policy (2016-1027.0-IWT) passed by this board on October 27, 2016.

Background

Under the Workforce Innovation and Opportunity Act (WIOA), incumbent worker training provides both workers and their employers with the opportunity to strengthen and maintain a quality workforce and improve the competitiveness of both. This work-based training is intended to provide existing employees within a company an opportunity gain new skills that will allow them to retain employment or, potentially, advance professionally.

IWT is a business service intended to develop a highly skilled workforce that allows employers to increase financial stability, viability, and competitiveness. In addition, individual businesses or groups of businesses may develop IWT programs to support the adoption of new technologies or prevent downsizing.

With this in mind, IWT is restricted to skill attainment activities and the desired result is that worker obtain industry recognized skills or credentials that will promote the worker's career and increase their overall employability. These new skills should allow workers to maintain or advance their careers and earning potential while allowing employers to backfill vacant positions created by promotion of newly trained employees.

Definitions

Cohort: a group of trainees to be trained by an employer as part of a single application for IWT.

Incumbent worker: a worker employed with the company for at least six months when the incumbent worker training starts.

Incumbent worker training: training designed to meet the special requirements of an employer (including a group of employers) to retain a skilled workforce or

avert the need to lay off employees by assisting the workers in obtaining the skills necessary to maintain or retain employment or have the opportunity for increased earnings potential through promotion.

In-kind contribution: non-cash contribution of goods or services provided by the business.

Layoff aversion: a continuum of strategies targeted to specific employers or industries that are experiencing a decline and have the potential to undergo layoffs or are experiencing a serious skills gap that impacts their ability to compete and retain workers. A layoff is considered to be averted when:

1. A worker's job is saved at an existing employer facing a risk of downsizing or closing; or
2. A worker at risk of dislocation faces a brief gap of unemployment when transitioning to a different job with the same employer or is hired at a new job with a different employer.

Non-Federal Share: the portion of training costs the employer is required to pay for their employee's participation in IWT. The minimum non-Federal share is determined by the size of the employer.

Eligibility Requirements for Businesses

Companies interested in IWT must meet certain requirements prior to being approved and must submit proper documentation in order to prove these requirements have been met. These requirements are not designed to be cumbersome or to intentionally disqualify certain employers. Instead, they are intended to ensure compliance with State of Ohio and Department of Labor guidance regarding the proper use of federal WIOA funds.

1. The characteristics of the participants in the program, specifically the extent to which they historically represent individuals with barriers to employment as defined in WIOA sec. 3(24), and how they would benefit from retention or advancement. (These definitions are detailed in Attachment A)
2. The relationship of the training to the competitiveness of a participant and the employer.
3. Other factors local areas determine appropriate, which may include, but are not limited to, the following:
 - a. The number of employees participating in the training;
 - b. The employees' advancement opportunities along with wages and benefits (both pre- and post-training earnings);

- c. The existence of other training and advancement opportunities provided by the employer;
- d. Credentials and skills gained as a result of the training;
- e. Layoffs averted as a result of the training;
- f. Utilization as part of a larger sector or career pathway strategy; or
- g. Employer size.

Other qualifying factors may be added at the discretion of the Workforce Development Board, the Board Executive Director, or other designee.

Disqualifying Factors

The following criteria will disqualify a company from being eligible for IWT funds:

1. Business that are presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from participation in transactions by the Department of Labor or the State of Ohio.
2. Businesses with outstanding tax liability to the State of Ohio that is past due by six months or more. In addition, businesses must disclose any known outstanding tax liabilities in other states. While out-of-state tax liabilities will not automatically disqualify a company from receiving funding, it will be considered prior to entering into a training agreement.
3. Ohio businesses must have all the approvals, licenses, or other qualifications needed to conduct business in the state, and all must be current. Should this status change during the time local IWT program activities are occurring and the business is disqualified from conducting business in Ohio, all training under the IWT program must cease.
4. The employer must comply with all applicable federal, state, and local laws and regulations related to providing reasonable working conditions. IWT 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.
5. Governmental entities, including the city, county, and state, may not participate in the local IWT program. Health care providers that are operating as not-for-profit entities are the only allowable exceptions to this prohibition.
6. Businesses that have relocated to Ohio and have laid-off workers at their former location in the United States may not be considered for this program until they have been in operation at the new location for 120 days. To verify that the business is not relocating employment from another area, the company must provide the names under which the

establishment conducts business, including predecessors and successors in interest; the name, title, and address of the company official certifying the information, and whether WIOA assistance is being sought in connection with past or impending job losses at other facilities of their company. A review will also be conducted to determine whether appropriate notices have been filed, as required by the Worker Adjustment Retraining Notification (WARN) Act and may also include consultations with labor organizations and others in the affected local area(s).

7. Businesses must not have any outstanding civil, criminal, or administrative fines or penalties pending or owed within the State of Ohio
8. IWT cannot be permitted if any of the following apply:
 - a. Any other individual is on layoff from the same or any substantially equivalent job.
 - b. The employer has terminated the employment of any regular, unsubsidized employee or otherwise caused an involuntary reduction in its workforce with the intention of filling the vacancy with the IWT participant; or
 - c. The job is created in a promotional line that infringes in any way on the promotional opportunities of currently employed workers.
9. Businesses may be determined to be ineligible if they have exhibited a pattern of failure to retain employees trained under a previous WIOA contract or to provide them with wages and working conditions equivalent to other works at the same level.

Eligibility Requirements for Employees

Incumbent workers are not required to meet eligibility requirements for Adult and Dislocated Workers under WIOA. However, being determined eligible for participation and enrollment into WIOA Adult and Dislocated Worker programs *does not* disqualify them from IWT.

To meet the definition of an Incumbent Worker, worker must be:

1. A US Citizen or other individual legally entitled to work in the US;
2. Age 18 or older;
3. Registered for the Selective Service unless an exception is justified (Selective Service requires registration of all males who are 18 or older and born on or after January 1, 1960);
4. Employed;
5. Meet the Fair Labor Standards Act requirements for an employer-employee relationship; and

6. Have an established work history with the employer for at least six months prior to the start of training. This history may include time spent as a temporary or contract worker performing the same work for the employer.

However, if IWT is being provided to a cohort of employees, more than 50% of the total of those included in the cohort must meet the six-month employment criteria. Workers with shorter tenure may also be included as long as the majority meet the requirement.

Training Provider Requirements

Employers may directly contract for training services or utilize WIOA Individual Training Accounts (ITA) to provide the required training. Should the employer choose training through an ITA, all established ITA requirements must be met, including the eligibility requirements for WIOA Adult and Dislocated Workers. If the employer decides to contract for training services, the contract must be established using proper procurement processes and procedures.

The training may be provided by a public or private educational institution, a private training company or private instructor, a company employee, or a combination of training providers. Those training providers without satisfactory past performance, accreditation, curricula leading to credentials, relevant training experience, accredited instructors, high job placement rates, and/or high training completion rates, should be avoided.

Training may be conducted at the employer's own facility, at a public or private training provider's facility, online, or at a combination of sites that best meet the needs of the employer and trainees. The training facility should provide an environment that supports learning and be within reasonable proximity to the trainees, so the cost and time required for travel is minimized.

Procurement of Training Services

The process of procuring a training provider may vary depending on the delivery method for the training and how the training is structured. As a result, there are several different procurement methods available.

1. The local workforce area may contract with eligible training providers (ETP) who are currently listed on the State of Ohio's ETP list without any additional procurement requirements. However, use of providers on the ETP list is intended for universally applicable off-the-shelf employer training and is not intended to include unique, specialized, or employer-specific training.

2. Businesses may also receive IWT assistance through reimbursement. Reimbursement may be utilized if the following guidelines are met:
 - a. Businesses may receive reimbursement for their actual training costs incurred under this program, as outlined in this policy.
 - b. Local area approval of a training plan is required before reimbursement may be provided to a business. The development of training plans is the joint responsibility of the local area and the business.
 - c. The training plan must identify all of the following:
 - i. The provider(s) of training.
 - ii. Type of training.
 - iii. Planned start and end dates.
 - iv. Number of individuals to be trained.
 - v. The projected cost of training.
 - vi. Any other information required by the local area.

Training plans must be approved by the local area *prior* to the start date of training. Businesses must agree to provide all documentation required by the local area to be reimbursed for the training.

- d. Training providers are not required to be listed on the state's eligible training provider list for the purpose of providing training under paragraph 2 of this section. Assistance may be provided upon request to businesses in identifying potential providers of training; however, the selection of a training provider is not subject to state or federal procurement requirements.
3. For businesses not following the guidelines in paragraph 2 of this section and that have training needs that cannot be provided by Ohio's eligible training providers, proper procurement procedures as identified in Workforce Development Board Procurement Policy (2017-1026.01-PRO) will be followed.

Allowable and Unallowable Costs

Allowable costs are only those directly related to training and may include:

1. Salaries for instructors or trainers
2. Development of curriculum, textbooks, manuals, training software, materials, and other non-consumables
3. Costs for off-site training facilities
4. Other necessary and reasonable costs directly related to training

Unallowable costs include but are not limited to:

1. Foreign travel
2. Purchase or lease of capital equipment
3. Incentivizing a business or a part of a business to relocate from another location in the United States
4. Payment of a worker's training wages
5. Reimbursement of training costs that are also being reimbursed by another State or Federal training program

NOTE: Management skill training such as Six Sigma and LEAN are allowed if promotional opportunities or increased wages can be identified upon completion of the training program. Six Sigma and LEAN training cannot be used for layoff aversion.

Cost Sharing Requirements

Employers are expected to contribute to the cost of the training either through cash payments, fairly evaluated in-kind contributions, or a combination of both. Examples of in-kind contributions could include but are not limited to:

1. Wages paid to trainees during the training period
2. Equipment purchased to be used in the training project
3. Manuals and textbooks
4. Curriculum development
5. Facility usage
6. Travel and lodging costs

The employer share cannot be paid by the Federal or State government under another Federal award or State funding opportunity, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs.

State policy allows local workforce areas to determine the minimum non-Federal share of employer costs based on a number of criteria including the number of workers being trained, wage and benefit levels of the employees, relevance of the proposed training to the competitiveness of the employer and employees, and the availability of other employer-provided training and advancement opportunities.

Minimum share contributions may also consider the size of the employer on a scale established by the State of Ohio in Workforce Innovation and Opportunity Act Policy Letter (WIOAPL) 15-23.1. This policy allows for smaller companies to pay a lower share of the training costs and is considered when determining IWT plans submitted by employers. The employer size is based on the number of

full-time equivalent workers at the time ITW documents are approved and this rule applies to all employers including those with seasonal or other intermittent fluctuations in employment.

Monitoring

The Workforce Development Board, through the Lucas County Department of Planning and Development may request employers provide documentation related to the IWT in order to monitor the program and authenticate the progress of those trained. Employers will be provided a list of potential documents to be requested prior to signing of any training agreements.

References

Workforce Innovation and Opportunity Act, § 134(d)(4), Public Law 113-128.

2 CFR Part 200, Appendix II

WIOA Regulations at 20 CFR Part 680

TEGL No. 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," dated March 1, 2017

ODJFS, Workforce Innovation and Opportunity Act Policy Letter No. 15-11.3, Use of ITAs (September 27, 2021)

ODJFS, Workforce Innovation and Opportunity Act Policy Letter No. 15-23.1, Incumbent Worker Training Guidelines (November 10, 2021)

Workforce Development Board Procurement Policy 2017-1026.01-PRO (October 26, 2017)

Attachment A: WIOA Populations with Barriers to Employment

As defined in WIOA Section 2(23), the following individuals are deemed to have a barrier to employment:

Type	Definition
Displaced Homemaker	<p>An individual who has been providing unpaid services to family members in the home and who:</p> <ol style="list-style-type: none"> 1. Is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment; and who either: <ol style="list-style-type: none"> a. Has been depending on the income of another family member but is no longer supported by that income; or b. Is the dependent spouse of a member of the Armed Forces on active duty and whose family income is significantly reduced because of a deployment, a call or order to active duty, a permanent change of station, or the service-connected death or disability of the family member.
Low income individual	<p>An individual who:</p> <ol style="list-style-type: none"> 2. Receives, or in the past six months has received, or is a member of a family that is receiving or in the past six months has received, assistance through SNAP, TANF, SSI, or State or local income-based public assistance; 3. Is in a family with total family income that does not exceed the higher of the poverty line or 70 percent of the lower living standard income level. 4. Is a homeless individual or homeless child or youth; 5. Receives or is eligible to receive a free or reduced-price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.), (does not include students in school districts participating in the Community Eligibility Provision (CEP) Healthy, Hunger-Free Kids Act of 2010); 6. Is a foster child for whom State or local government payments are made; or 7. Is an individual with a disability whose own income meets the eligibility income requirement of clause (2) but who is a member of a family whose income does not meet this requirement.
Indian, Alaska Native, and Native Hawaiian	<p>An individual who meets the definition of the term:</p> <ol style="list-style-type: none"> 1. “Indian” as defined in subsections (d), (e), and (l) of section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b); 2. “Alaska Native” as defined in subsections (b) and (r) of section (3) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b), (r)); or 3. “Native Hawaiian” as defined in section 7207 of the Native Hawaiian Education Act (20 U.S.C. 7517).
Individual with a disability	<p>An individual who:</p> <ol style="list-style-type: none"> 1. Has a physical or mental impairment that substantially limits one or more major life activities of such individual; 2. Has a record of such an impairment; or 3. Is regarded as having such an impairment.
Older individual	<p>An individual who is age 55 or older.</p>
Ex-offender	<p>An adult or juvenile who:</p> <ol style="list-style-type: none"> 1. Is or has been subject to any stage of the criminal justice process and for whom workforce services may be beneficial; or 2. Requires assistance in overcoming artificial barriers to employment resulting from a record of arrest or conviction.
Homeless Individual	<p>An individual who lacks a fixed, regular, and adequate nighttime residence including:</p> <ol style="list-style-type: none"> 1. An individual who: <ol style="list-style-type: none"> a. Is sharing housing with others due to loss of housing, economic hardship, etc.; b. Is living in a motel, hotel, trailer park, or campground due to the lack of alternative adequate accommodations;

	<ul style="list-style-type: none"> c. Is living in an emergency or transitional shelter; d. Is abandoned in a hospital; or e. Is awaiting foster care placement. <ul style="list-style-type: none"> 2. An individual who has a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings; or 3. Migratory children who qualify as homeless because the children are living in circumstances listed above.
Individual who is in, or has aged out of, the foster care system	<p>An individual who:</p> <ul style="list-style-type: none"> 1. Is in the foster care system; 2. Has aged out of the foster care system; 3. Has attained age 16 and left foster care for kinship guardianship or adoption; 4. Is a child eligible for assistance under the John H. Chafee Foster Care Independence Program; or 5. Is in an out-of-home placement.
Individual who is an English language learner, has low levels of literacy, or faces substantial cultural barriers	<p>An individual who:</p> <ul style="list-style-type: none"> 1. Has limited ability in reading, writing, speaking, or comprehending the English language and whose native language is a language other than English or who lives in a family or community environment where a language other than English is the dominant language; 2. Is unable to read, write, or speak English at a level necessary to function on the job, or in the individual's family, or in society; or 3. Perceives him or herself as possessing attitudes, beliefs, customs or practices that influence a way of thinking, acting, or working that may serve as a hindrance to employment.
Migrant or seasonal farmworker (MSFW)	<p>An individual who is employed, or was employed in the past 12 months, in farm work of a seasonal or temporary nature, including those whose agricultural labor requires travel to a job site such that they are unable to return to a permanent place of residence within the same day.</p>
Individual within two years of exhausting OWF eligibility	<p>Recipients of Ohio Works First (OWF) cash assistance who have received 36 months or more of their maximum 60 months of lifetime cash benefit payments</p>
Single parent	<p>A single, separated, divorced, or widowed individual who has primary responsibility for one or more dependent children under age 18 or a dependent with a disability (including a single pregnant woman).</p>
Long-term unemployed individual	<p>An individual who is currently unemployed and has been unemployed for 27 or more consecutive weeks.</p>