

PROCEDURE FOR ON-THE-JOB TRAINING

Purpose

To identify the requirements for on-the-job training contracts and customized training projects.

Policy

The Workforce Investment Act and implementing regulations establish minimal requirements for on-the-job training contracts. Agreements for on-the-job training services must be in writing and must ensure that participants are provided a structured training opportunity in which to gain the knowledge and competencies necessary to be successful in the occupation in which they receive training. The training services shall be provided in a manner that maximizes consumer choice in the selection of an eligible provider of such services.

Definition

The term “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:

- A. Provides knowledge or skills essential to the full and adequate performance of the job;
- B. 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
- 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.

NEG Specific Criteria

Individuals served under the ARRA On-the-Job Training National Emergency Grants must meet the definition of a dislocated worker as defined in WIA Section 101(9) with special consideration for dislocated workers experiencing prolonged unemployment and those with the greatest barriers to reemployment. [Refer to the State WIA “Eligibility for Dislocated Workers” policy. The “unlikely to return to a previous industry or occupation” condition is considered met for workers whose layoff occurred since the onset of the recent recession (01/01/2008).] Any dislocated worker served under the OJT NEG must have been laid off since January 1, 2008, and qualify as experiencing prolonged unemployment.

Prolonged unemployment refers to a period of joblessness beyond the state’s average weeks for Unemployment Insurance (UI). The number of weeks is the important indicator, not the UI status. Therefore, an individual not covered by UI (ineligible or exhaustee) may still be identified as experiencing prolonged unemployment if s/he exceeds the specified duration. In Nebraska, the state’s average UI duration is 15.13 weeks.

Veterans that are dislocated workers and have been laid off on or after January 1, 2008 and meet the definition of prolonged unemployment will receive the highest priority.

OJT opportunities may not be created in the Public Sector using NEG funds. Since the OJT NEG is funded under ARRA, OJT positions cannot be developed with employers which are casinos or other gambling establishments, swimming pools, aquariums, zoos, and golf courses.

The NEG funding is only available for expenditure from the date of award through June 30, 2012.

Pre-Award Reviews

It is essential to conduct pre-award reviews or employer evaluations prior to contract execution. Service providers shall determine if the employer is qualified and capable of entering into an agreement to provide on-the-job training. Some examples of questions that need to be asked or information that needs to be identified:

1. Is the employer a new or established business? [If the company has operated at the current location less than 120 days and the business relocated from another area in the U.S., then verify that employees were not laid off at the previous location as a result of the relocation. Note Assurance 14.]
2. Has the applicant worked for the employer at any time in the past, and if so, what were the dates and circumstances? [Under the Eligibility for Dislocated Workers policy, dislocated workers shall not be considered eligible for services with the same employer or in the same occupation.]
3. What have been the hiring practices of this employer in general, and for this position in particular? [Note Section 195(4) of the Workforce Investment Act.]
4. Is the applicant related to the employer or any person who works for the employer in an administrative or supervisory capacity? [Note Assurance 4.]
5. What has been the employee turnover for this employer and this particular position? [Contracting with employers who have high employee turnover rates should be avoided.]
6. Has the employer incurred any layoffs in the past 12 months? [Check to be sure no Worker Adjustment and Retraining Notification Act (WARN) notices have been filed and note Assurance 13.]
7. Is the position full-time or part-time, and is it permanent, temporary, or seasonal? [Contracts shall not be established for positions that do not or cannot have a trainer or supervisor present, or for temporary positions that are supplied to employers by temporary employment contractors.]
8. Is the position covered by a collective bargaining agreement, and if so, is the training consistent with such agreement? [Note Assurance 15.]
9. Has there been any OSHA, wage and hour, or child labor law violations in the past year? [Note Assurance 5.]
10. Are there minimum qualifications for the position, and is there a written job description?

11. Are the pay and benefits equivalent to similar positions in the local labor market and/or similar positions with the employer? [Note Assurance 2.]
12. Does the employer provide worker's compensation or accident insurance? [Note Assurance 5.]
13. Is the employer's accounting system (especially payroll), personnel system, grievance system, etc., adequate to administer the contract agreement?
14. Is the employer presently disbarred or suspended from receiving federal contracts? [Note Assurance 8.]
15. Re-contracting is allowable with the same employer and certainly desirable when an employer/training provider has a high success rate of training and placement. However, re-contracting should not be entered into with employers who have received payments under previous contracts and have exhibited a pattern of failing to provide on-the-job training participants with continued long-term employment as regular employees with wages and employment benefits (including health benefits) and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work.
16. Reverse referrals occur when an employer with a hiring need sends an individual to the Career Center for an eligibility determination, and then hires the individual under an On-the-Job (OJT) training contract. Reverse referrals are allowed. However, all of the conditions of this OJT policy need to be met.

Service providers who initiate multiple or follow-on contracts with the same employer need not conduct a complete pre-award review of subsequent contracts if a review has been conducted within the past six (6) months.

Role of Community-Based Organizations

Community-Based organizations (CBOs) offer valuable resources, networks and knowledge including:

- Key local knowledge of the demonstrated need in the community;
- Critical local networks and contacts and can serve as intermediaries;
- Assistance in identifying and recruiting potential participants;
- Off-site training/counseling and mentoring to participants enhancing their employability;
- Wraparound services;
- Complementary resources; and
- Ability to act as subcontractors

It should be noted that a substantial connection to the local workforce system is an OJT NEG requirement.

Supportive Services

Supportive services shall be provided, as necessary and in accordance to local plans. They may include the following:

- Linkages to community services;
- Assistance with transportation costs;
- Assistance with child care and dependent care costs;
- Assistance with housing costs; and
- Assistance with uniforms or other appropriate work attire and work-related tool costs, including such items as eye glasses and protective eye gear.

For the OJT NEG, the maximum planned amount of support services available to a participant is \$200. However, this amount may be exceeded with the approval of the Local Area Program Manager.

On-the-Job Training Contract Requirements

OJT contracts shall be procured in accordance with all federal, state and local procurement policies and at a minimum shall contain or address the following information:

- A. The occupation(s) for which training is to be provided;
Training will be provided only for those occupations for which there is a demand in the area served, or in another area to which the trainee is willing to relocate.
- B. The length of time the training will be provided;

The length of the OJT NEG in Nebraska shall be based on the skill gap assessment, but it is limited to a maximum of six months. Skill Gap occurs where there is a gap between the skills of the individual and the skills needed for the targeted job. The skill gap is measured (and should be documented) by taking into consideration:

- The initial skills of the participant as determined by recognized skill assessment tools (not just educational attainment); and
- Skill level needed to perform the job.

There are several recognized skill assessment tools that are useful in determining the skills necessary for specific occupations and industries. Some of these include:

- Industries: Competency Model Clearinghouse
www.CareerOneStop.org/CompetencyModel Includes competency models for bioscience, construction, automation, and more

- Occupations: O*NET OnLine <http://online.onetcenter.org> Occupational Competency Profiles contain: tasks, knowledge, skills, abilities, detailed work activities
- Certification Finder: www.careerinfo.net/certifications_new/default.aspx Includes certifications for hundreds of occupations.

In most instances in Nebraska, the O*NET assessment shall be used, but the other tools listed above are acceptable.

The duration must be limited to the period of time required for a participant to become proficient in the occupation for which the training is being provided. 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 individual employment plan. Local policies for determining duration must be documented in the local policies or plans. [For the OJT NEG, the period of reimbursement will be limited to six months.]

C. The wage rate to be paid to the trainee;

Individuals in on-the-job training under Title I of WIA must be compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience and skills. Such rates must be in accordance with applicable law, but may not be less than the higher of the rate specified in Section 6(a) (1) of the Fair Labor Standards Act of 1938 or the applicable State or local minimum wage law.

D. The rate of reimbursement to the employer;

On-the-job training payments to employers are deemed to be compensation for the extraordinary costs associated with training participants and the costs associated with the lower productivity of the participants. Employers may be reimbursed up to fifty (50) percent of the wage rate of an OJT participant for the extraordinary costs of providing the training and additional supervision related to the OJT. Employers are not required to document such extraordinary costs.

For one-time NEG purposes, states shall be allowed to waive (by virtue of receiving the OJT NEG) the fifty percent employer limit for reimbursement and use a sliding scale for OJT employer reimbursement. In Nebraska, the sliding scale shall be based on the Employer Size at local operation where the OJT placements will be made as identified below:

- 1-50 employees – up to 90% reimbursement of the trainee's wage;
- 51-250 employees – up to 75% reimbursement of the trainee's wage; and
- 251 and more employees—standard 50% reimbursement of the trainee's wage;

E. The maximum amount of reimbursement (Wage Cap);

For the purpose of the OJT NEG, the training reimbursement level is restricted by a wage cap and is not to exceed a percentage (typically 50% up to 90%) of the state's average hourly wage rate. The training reimbursement percentage is applied against the participant's wage rate unless the wage rate exceeds the state's average hourly rate. In that case, the training reimbursement percentage must be applied against the state's average hourly rate. In Nebraska, the average wage rate is \$17.94/hour. (The total wage the participant receives may exceed Nebraska's average wage rate. However, the employer cannot receive a training reimbursement beyond a percentage of the capped level.)

- F. A training outline that reflects the work skills and competencies to be learned in the position;

Efforts should be made to develop programs which contribute to occupational development, upward mobility, development of new careers, and opportunities for nontraditional employment.

OJT NEG contracts must ensure the employer's responsibility for documenting skills gained by dislocated workers during the training period.

- G. An outline of any other separate classroom training that may be provided by the employer; and
- H. The employer's agreement to maintain and make available accurate and complete time and attendance, payroll and other records to support amounts claimed by the employer for reimbursement under the contract.

The employer should preserve all trainee payroll, fringe benefit, and personnel records (including time and attendance sheets normally kept by the employer for employees) for three (3) years from the close of the applicable program year or longer if any litigation or audit has begun or any claim is instituted which involves these records. In that case, the employer shall retain the records beyond the 3 year period until the litigation, audit findings or claim has been resolved.

- I. In the case of OJT contracts for employed workers, the OJT must relate to the introduction of new technologies, introduction to new production or service procedures, upgrading to new jobs that require additional skills, workplace literacy, or other appropriate purposes identified by the local board. OJT contracts may be written for eligible employed workers when the employee is not earning a self-sufficient wage as determined by local policy. [However, this provision is not applicable to the ARRA funded NEG.]
- J. Written assurances.

OJT contracts must include several standard assurances that are designed to acknowledge a contractor's responsibilities in accepting public funds for training. These assurances should address these issues:

1. At the end of the training period, the employer intends to retain the trainee in the occupation and compensate the trainee for at least the hourly wage rate

specified in the contract agreement. Retention will be subject to the employer's right to terminate the trainee for normal business or personnel reasons.

2. Individuals in on-the-job training must be provided 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.
3. Funds provided to employers for OJT must not be used to directly or indirectly assist, promote or deter union organizing.
4. No individual in a decision making capacity including WIB members shall engage in any activity, including participation in the selection, award, or administration of a contract supported by WIA funds if a conflict of interest would be involved.
5. The employer will provide worker's compensation coverage for the trainee and abide by health and safety standards established under State and Federal law.
6. The trainee will not conduct political or sectarian activities while under the provisions of the OJT contract.
7. The employer will not discriminate against any trainee on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any Workforce Investment Act Title I-financially assisted program or activity.
8. The employer certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this contract by any Federal department or agency.
9. The employer certifies that it will provide a drug-free workplace as defined by the Drug-Free Workplace Act of 1988.
10. The employer is in compliance with all State and local laws regarding taxation and licensing.
11. Trainees who are working as laborers/mechanics in any construction, alteration or repair (including painting and decorating) of public buildings or works must be compensated in compliance with the Davis-Bacon Act.
12. A trainee in an OJT program shall not displace (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits) any currently employed employee (as of the date of the participation).
13. The employer agrees that no trainee shall be hired into or remain working in any position when any other individual is on layoff from the same or any substantially equivalent job. An OJT trainee may not be employed in a job if 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 WIA participant. It is not allowable for an OJT job to be created

in a promotional line that infringes in any way on the promotional opportunities of currently employed workers.

14. The contract will not encourage or induce the relocation, or an establishment or part thereof, that results in a loss of employment for any employee of such establishment at the original location.
15. Nothing in the OJT contract shall impair existing contracts for services or existing collective bargaining agreements unless the employer and the labor organization concur in writing.
16. The Contractor certifies that it has registered with and is using a federal immigration verification system as defined in section 7 of Nebraska Laws 2009, LB 403 to determine the work eligibility status of all new employees physically performing services within the State of Nebraska.

Performance Information

Providers of on-the-job training will not be subject to the eligible provider requirements. However, one-stop operators in a local area must collect performance information on providers of on-the-job training. At a minimum, this performance information should include:

- Data on placement of trainee at end of the contract;
- 6-month employment retention rate;
- Rate of successful completion of On-the-Job Training; and
- Average Wage of OJT Training Recipients and Wage after his/her training ends (increase or decrease).

The one-stop operator will determine whether providers meet acceptable performance levels for the above criteria. If a provider meets the performance criteria, it is considered an eligible provider of training services. The one-stop operator will include the provider on the list of eligible providers, with accompanying performance information, and disseminate this information through the One-Stop delivery system.

Monitoring and Oversight

Service deliverers must monitor training, invoice and reimbursement systems on a pre-determined systematic and documented basis. Employers shall be required to maintain an internal supporting documentation system in accordance with contract record requirements and service deliverers shall include contract provisions that will allow access to those records by authorized entities.

Monitoring of OJT contracts must include review of selection patterns and other areas of potential concern regarding trainees' civil and other employment rights to ensure the quality of the One-Stop operator's selection of training opportunities.

OJT Related Education Outline (optional)

- The OJT Related Education Outline form should be used when OJT funds are used to reimburse an employer for paid classroom training through a Training Provider (not the employer).
- If the employer pays for client classroom training during the training period, NDOL will reimburse the employer based on the amount specified in the OJT contract.
- NDOL will reimburse the employer for classroom training time if the classroom training is not normally provided to regular employees.
- **Enter the following information on the OJT Related Education Outline form:**
 - Trainee Name (client)
 - Social Security Number
 - Occupation (client's job title)
 - DOT Code (get this from the employer)
 - Related Education Training Period (begin and end dates for the classroom training)
 - Hours/week (how many hours the client will be in the classroom)
 - Vendor (Training Provider—cannot be the employer)
 - Training Site (location of training/campus)
 - Address
 - City/State/Zip
 - Classroom Training Costs (identify specific items and costs)
 - Equipment/Material
 - Supplies
 - Books/Tuition
 - Teaching Aides

Wage Reimbursement Process

- Employers will be reimbursed up to 50% of the trainee's wages, up to \$8000 per trainee.
- The reimbursement percentage and maximum amount of reimbursement are outlined in the OJT contract.
- The employer agrees to submit accurate time and attendance, payroll, and other records to support reimbursement.
- The Employer must submit accurate payroll documentation for reimbursement.
- Accurate payroll documentation must show:
 1. Employer/Company name
 2. Employee's name
 3. Wages paid out by the employer
 4. Date range for wages paid
 5. Employee's wage rate
 6. Employee's hours worked for the date range
- NDOL Staff must submit the following documentation to process an OJT wage reimbursement:
 - A copy of the employer's W-9 (only for the first submission)
 - Accurate Payroll Documentation (listed above)
 - Copy of the OJT contract with each bill submission
 - FAV
 - DEAS
- **On the FAV* enter:**
 - **Vendor Name, Address, City, State, Zip**—the “vendor” is the employer; enter the employer's information
 - **Vendor FTIN** (Federal Tax Identification Number)—enter the employer's FTIN
 - **Function Code**—652 (for OJT activity)
 - **Specific Item(s) of Assistance**—enter OJT

- **List the START and END dates for the OJT** in this section. Finance needs the OJT start and end dates entered to prove services were not provided before the Issue Date (see Issue Date definition below).

- **Authorized Amount**—enter the expected reimbursement cost of the OJT

*See WIA Bill Paying Guide for complete FAV instructions.

- **On the DEAS** enter:**

- **Vendor/Owner Name**— the “vendor” is the employer; enter the Employer’s name

- **FTIN/SSN** (Federal Tax Identification Number/Social Security Number)— enter the employer’s FTIN

- Enter 652 as the function code for the OJT

*See WIA Bill Paying Guide for complete DEAS instructions.