**Job-Driven National Emergency Grant**

**On-The-Job Training Policy**

# **References:**

Workforce Investment Act of 1998; Workforce Innovation and Opportunity Act Sections 3, 108, 122, 134, 181, 188, and 194; Workforce Innovation and Opportunity Act – Notice of Proposed Rulemaking; 10 U.S.C. §§ 101(d) and 991(b); 38 USC § 101(16); 40 U.S.C. § 3142; 42 U.S.C. §§ 1751 et seq., 8102, 11434a(2), and 14043e-2(6); 20 CFR Parts 663, 667, and 710 and §§ 679.430, 680.120, 680.130, 680.530, 680.700, 680.720, 680.730, 683.270, and 683.410; 29 CFR § 37; TEN 38-12; TEN 29-13; WIA Five-Year Integrated State Plan (7/1/2012 through 6/30/2017) Waiver Section; Nebraska Revised Statutes §§ 4-114 and 48-1203; Nebraska Department of Labor National Emergency Grants and Eligibility for Dislocated Workers policies

# **Background:**

This policy only applies to the administration of the Job-Driven National Emergency Grant (JDNEG). In July 2014, the Nebraska Department of Labor was awarded the JDNEG by the U.S. Department of Labor. Nebraska’s JDNEG project is a partner-driven strategy that creates reemployment services and work-based trainings for dislocated workers, the long-term unemployed, underemployed, and veterans returning from service. This industry-driven project will help connect and prepare participants for employment opportunities in manufacturing and transportation, distribution, and logistics (TDL) industries. The JDNEG will primarily utilize on-the-job training services to assist participants.

JDNEG On-the-Job Training (OJT) activity is provided under a contract with an employer in the private non-profit, or private for-profit sectors. This training arrangement is an exception to the Individual Training Account (ITA) requirement specified in Section 134 of the Workforce Innovation and Opportunity Act (WIOA).

# **Action:**

After the 10-day review period, this policy is considered final. Questions and comments should be submitted in writing to [ndol.wioa\_policy@nebraska.gov](mailto:ndol.wioa_policy@nebraska.gov).

# **Policy:**

The Job Driven National Emergency Grant establish certain requirements for OJT 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 the participant is able to gain the knowledge and competencies necessary to be successful in the occupation for which they receive training.

## **Definitions**

*On-the-Job Training*: 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:

1. provides knowledge or skills essential to the full and adequate performance of the job;
2. provides wage reimbursement to the employer for the extraordinary costs of providing the training and additional supervision related to the training; and
3. 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.

*Dislocated Worker:* The term “dislocated worker,”[[1]](#footnote-1) *for purposes of qualifying for OJT under WIOA Section 134, is defined as an individual who meets one of the following five parts:*

1. Part I
2. Has been terminated or laid off, or who has received a notice of termination or layoff, from employment;
3. is eligible for or has exhausted entitlement to unemployment compensation; or
4. has been employed for a duration sufficient to demonstrate, to the appropriate entity at a One-Stop center referred to in Section 121(e) of WIOA, attachment to the workforce, but is not eligible for unemployment compensation due to insufficient earnings or having performed services for an employer that were not covered under a state unemployment compensation law; and
5. is unlikely to return to a previous industry or occupation (see “*Unlikely to Return*” subsection below);[[2]](#footnote-2)
6. Part II
7. Has been terminated or laid off, or has received a notice of termination or layoff from employment as a result of any permanent closure of, or any substantial layoff at, a plant, facility, or enterprise;
8. is employed at a facility at which the employer has made a general announcement that such facility will close within 180 days; or
9. for purposes of eligibility to receive services other than training services described in Section 134(c)(3) of WIOA, career services described in Section 134(c)(2)(A)(xii) of WIOA, or supportive services, is employed at a facility at which the employer has made a general announcement that such facility will close;[[3]](#footnote-3)
10. Part III
11. Was self-employed (including employment as a farmer, a rancher, or a fisherman) but is unemployed as a result of general economic conditions in the community in which the individual resides, or because of natural disasters; [[4]](#footnote-4)
12. Part IV
13. Is a displaced homemaker;[[5]](#footnote-5)
14. Section 3(16) of WIOA defines “displaced homemaker” as an individual who has been providing unpaid services to family members in the home and who:
15. is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment; and either
    1. has been dependent on the income of another family member but is no longer supported by that income; or
    2. is the dependent spouse of a member of the Armed Forces on active duty[[6]](#footnote-6) and whose family income is significantly reduced because of;
       * 1. a deployment;[[7]](#footnote-7)
         2. a call or order to active duty pursuant to a provision of law referred to in Section 101(a)(13)(B) of Title 10, United States Code;
         3. a permanent change of station; or
         4. the service-connected[[8]](#footnote-8) death or disability of the member;[[9]](#footnote-9) or
16. Part V
17. Is the spouse of a member of the Armed Forces on active duty[[10]](#footnote-10) and who has experienced a loss of employment as a direct result of relocation to accommodate a permanent change in duty station of such member; or
18. Is the spouse of a member of the Armed Forces on active duty and is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.[[11]](#footnote-11)

*Separating Service Members*: Similar to other US DOL ETA-funded programs, veterans will receive Priority of Service for training and services made available under the JDNEG, as described in Training & Employment Guidance Letter (TEGL 10-09). As clarified in TEGL 22-04, separating service members are generally considered to have satisfied the termination component of the WIA definition of a dislocated worker. Therefore, as long as a separating service member satisfies the other criteria for dislocated worker eligibility, including the requirement that the individual is “unlikely to return to previous industry or occupation”, he or she would generally be an eligible dislocated worker under the JDNEG.

***Unlikely to Return***.

In order to be considered as “unlikely to return” to a previous industry or occupation, a participant must meet at least one of the following criteria:

1. participant worked in a declining industry or occupation, as documented on state or locally developed labor market statistic lists of such industries or occupations. State labor market data lists are available from the Nebraska Department of Labor’s Labor Market Information Division. Local lists must be developed by an appropriate entity, such as the local Workforce Development Board, economic development agency, a qualified consultant/educational entity, or other valid public use quality source of labor market information.
2. participant worked in an industry or occupation for which there are limited job orders in NEworks at the time of eligibility determination, as documented by the assigned career planner.
3. participant is insufficiently educated and/or does not have the necessary skills for reentry into the former industry or occupation, as documented through an in-take orientation process or assessment of the individual’s educational achievement levels, testing, or other suitable means.
4. participant has had a lack of job offers as documented by the assigned career planner, rejection letters from employers in the area, or other documentation of unsuccessful efforts to obtain employment in the prior industry or occupation.
5. participant cannot return to their previous industry or occupation because they have physical or other limitations, which would prevent reentry into the former industry or occupation, as documented by a physician or other applicable professional (*e.g.*, psychiatrist, psychiatric social worker, chiropractor). In circumstances where support documentation is not available, an individual’s self-attestation may be utilized to demonstrate unlikely to return.
6. participant s that may have worked seasonally can be considered unlikely to return to a previous industry or occupation[[12]](#footnote-12) as a temporary or seasonal worker, for a variety of reasons such as:
7. change in family situation that requires higher income;
8. disability that precludes returning to the same industry or occupation;
9. natural disaster that results in lost wages;
10. loss of agricultural land;
11. mechanization; or
12. any significant variance to normal seasonal employment patterns resulting in uncertain return-to-work dates.
13. participants laid off on a temporary basis with a specific return date and/or determined by Unemployment Insurance to be attached to an employer do not meet the criteria of unlikely to return work in a previous industry or occupation.

## **General Restrictions and Guidelines**

OJT contracts should not be entered into with employers who received previous payments and that have exhibited a pattern of failing to provide OJT participants with continued long-term employment as regular employees with wages, employment benefits, and working conditions on the same level and to the same extent as other employees working a similar length of time and doing the same type of work.[[13]](#footnote-13)

### *JDNEG On-the-Job Training Contract Requirements*

In order to establish an OJT contract under the JDNEG program, the following three elements are required: 1) an On-the-Job Training Pre-Award Application; 2) an On-the-Job Training Contract, including Written Assurances; and 3) an On-the-Job Training Plan.

### *On-the-Job Training Pre-Award Application*

The On-the-Job Training Pre-Award Application is part of the OJT contract, and the first step in the OJT contracting process. Each employer must complete the On-the-Job Training Pre-Award Application (see Attachment A) prior to signing an OJT contract. Based on the On-the-Job Training Pre-Award Application, the Nebraska Department of Labor (NDOL) JDNEG staff members shall determine if the employer/training provider is qualified and capable of entering into a contract to provide OJT. The On-the-Job Training Pre-Award Application must be (i) signed by an authorized employer representative and the JDNEG staff member and (ii) approved by the NDOL manager. The On-the-Job Training Pre-Award application is for valid a one-year period. The On-the-Job Training Pre-Award Application will be reviewed annually, and must be completed prior to the On-the-Job Training Contract being signed by all parties.

The On-the-Job Training Pre-Award Application criteria includes the following:

* *New or established business*. Determine whether the employer is a new or established business. If the company has operated at its current location less than 120 days and the company relocated from another area in the U.S., it must be verified that employees were not laid off at the previous location as a result of the relocation.[[14]](#footnote-14)
* *Employer size*. When substantiating the employer size (number of employees currently employed at the local operation where the OJT placement will be made), the most current Labor Market Information (LMI) may be a source to consider. LMI may be obtained from NEworks. Local employer site information, including an employee size range for each local operation, is available in NEworks through data provided by Infogroup. The employee size range from NEworks is acceptable to the extent the entire size range fits within the OJT employer reimbursement sliding scale. Employer size is determined by the number of employees at the time of the pre-award review. This applies to all employers, including employers with seasonal or intermittent employee-size fluctuations.
* *Employer hiring practices*. Review of the hiring practices of the employer in general and for the OJT position in particular.[[15]](#footnote-15)
* *Rate of employee turnover*. Assessment of the employer’s rate of employee turnover in general and the rate of turnover for the OJT position in particular. Contracting with employers who have high employee turnover rates should be avoided.
* *Employer layoffs*. Establish if the employer has experienced any employee layoffs during the past 12 months. Verify that no Worker Adjustment and Retraining Notification Act (WARN) notices have been filed.[[16]](#footnote-16)
* *Job characteristics*. Determine if the position is full-time or part-time, and if permanent, temporary, or seasonal. Contracts shall not be established for positions that do not or cannot have a trainer or supervisor present. Contracts will not be considered for temporary or seasonal positions. Contracts may be established for part-time OJT based on the needs of the participant.
* *Collective Bargaining Agreement*. Determine if any of the positions at the company are covered by a collective bargaining agreement and whether the OJT is consistent with such agreement.[[17]](#footnote-17)
* *Labor law compliance*. Determine if there have been any OSHA, wage and hour, or child labor law violations in the past year.[[18]](#footnote-18)
* *Equal opportunity compliance*. Determine if there have been any substantiated Equal Opportunity complaints against employer.
* *Types of positions and minimum qualifications*. Identify the types of positions and the minimum qualifications for the positions that the employer has available for OJT.
* *Employee pay and benefits*. Determine if the pay and benefits are equivalent to similar positions in the local labor market and/or similar positions with the employer.[[19]](#footnote-19)
* *Employer Insurance*. Establish that the employer carries workers’ compensation or accident insurance.[[20]](#footnote-20)
* *Employer business systems*. Determine if the employer’s accounting system (especially payroll), personnel system, grievance system, etc., are adequate to administer the OJT contract obligations.
* *Federal contract eligibility*. Determine if the employer is presently disbarred or suspended from receiving federal contracts.[[21]](#footnote-21)

### *On-the-Job Training Contract*

OJT contracts are effective for one year or until all On-the-Job Training Plans initiated under the OJT contract are completed, whichever is later. The On-the-Job Training Pre-Award Application for the employer desiring an OJT must be completed or on file prior to the OJT contract being signed. Please note, if additional training plans are initiated after the end date of the OJT contract, a new On-the-Job Training Pre-Award Application and OJT contract must be completed prior to a new On-the-Job Training Plan being approved and signed.

The OJT contract is a non-financial agreement established between the Nebraska Department of Labor and the employer which establishes that the employer agrees to adhere to the terms, conditions, and written assurances set forth in the OJT contract (see Attachment B). All OJT contracts shall be procured in accordance with all applicable federal, state and local procurement policies and at a minimum shall contain or address the following information:

1. **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 must preserve all trainee payroll, fringe benefits, and personnel records (including time and attendance sheets normally kept by the employer for employees) for three 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 three-year period until the litigation, audit findings or claim has been resolved.
2. **Written Assurances**. OJT contracts must include several standard assurances that are designed to acknowledge an employer's responsibilities in accepting public funds for training. The assurances should address these issues:
   1. At the end of the OJT 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 OJT contract. Retention will be subject to the employer’s right to terminate the participant for normal business or personnel reasons.
   2. Individuals in OJT 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.[[22]](#footnote-22)
   3. Funds provided to employers for OJT must not be used to directly or indirectly assist, promote or deter union organizing.[[23]](#footnote-23)
   4. No individual in a decision-making capacity shall engage in any activity, including participation in the selection, award, or administration of a contract supported by JDNEG or WIOA funds if a conflict of interest would be involved.[[24]](#footnote-24)
   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.[[25]](#footnote-25)
   6. The trainee will not conduct political or sectarian activities while under the provisions of the OJT contract.[[26]](#footnote-26)
   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 WIOA Title I-B financially-assisted program or activity.[[27]](#footnote-27)
   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.[[28]](#footnote-28)
   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.[[29]](#footnote-29)
   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 participation).[[30]](#footnote-30)
   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 WIOA 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.[[31]](#footnote-31)
   14. The OJT 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.[[32]](#footnote-32)
   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.[[33]](#footnote-33)
   16. The employer 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.[[34]](#footnote-34)
   17. If the applicant has worked for the employer at any time in the past, and if so, the dates and circumstances

### *On-the-Job Training Plan*

The On-the-Job Training Plan is Attachment C of the contract. The On-the-Job Training Plan identifies the financial and training obligation between the Nebraska Department of Labor and the participating employer. The OJT Plan is specific to each JDNEG participant. However, multiple On-the-Job Training Plans can be implemented under a single OJT contract during the one-year term of the OJT contract.

JDNEG staff may refer eligible clients to the employer for consideration of hiring at their company or the employer may refer potential hires to a JDNEG staff member to determine program eligibility before the employer hires the individual under the OJT contract and develops an On-the-Job Training Plan.

The On-the-Job Training Plan must address the following information:

1. **Occupation(s) for which training is to be provided.** Training will be provided only for those occupations or companies that identify themselves as part of the manufacturing or transportation, distribution, and logistics industries.
2. **Length of time the training will be provided**. The length of OJT in Nebraska shall be based on a skill-gap assessment and 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 must be documented by taking into consideration:

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

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

* **Industries**: Competency Model Clearinghouse ([www.CareerOneStop.org/CompetencyModel](http://www.CareerOneStop.org/CompetencyModel)) includes competency models for bioscience, construction, automation, and more.
* **Occupations**: O\*NET OnLine (<http://online.onetcenter.org>) occupational competency profiles containing tasks, knowledge, skills, abilities, detailed work activities.
* **Certification Finder**: ([www.careerinfonet.org/certifications\_new/default.aspx](http://www.careerinfonet.org/certifications_new/default.aspx)) includes certifications for hundreds of occupations.
* **Career Planning**: Nebraska Career Connections provides assessments for Career Interests, Skills Confidence and Work Values. ([www.nebraskacareerconnections.org](http://www.nebraskacareerconnections.org))

In most instances in Nebraska, the Nebraska Career Connections assessments shall be used; however, the other tools listed above are acceptable.

The duration of an OJT contract 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 OJT Plan, 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.[[35]](#footnote-35)

1. **Wage rate to be paid to the trainee**.Individuals in OJT 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 may not be lower than the higher of the federal or state minimum wage.[[36]](#footnote-36)
2. **Rate of reimbursement to the employer**. OJT 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 while in OJT.[[37]](#footnote-37)

For OJT employer reimbursement, 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
* 251 and more employees – up to 50% reimbursement of the trainee’s wage

Official payroll records containing the participant’s hours and wages must be utilized to determine the amount reimbursed to an employer. In order to be reimbursed for training costs, employers must submit reimbursement requests with supporting documentation no more frequently than monthly and no less than quarterly.

OJT reimbursements are made based on actual hours worked at the regular base rate per hour. Hourly reimbursements will not be made on overtime pay rates, shift differential pay rates, premium pay rates, and other non-regular wages paid by the employer to the participant. Also, reimbursement cannot be based upon non-work time such as illness, holidays, worksite downtime or other events during which no training occurs.

1. **Training outline listing work skills to be learned in the position.** A comprehensive list of work skills the participant will learn during the training period is a required part of On-the-Job Training Plan. Efforts should be made to develop programs which contribute to occupational development, upward mobility, development of new careers, and opportunities for nontraditional employment.
2. **Other classroom training**.An outline of any other separate classroom training may be provided by the employer. Please note, if the employer pays for the PJT participant’s classroom training during the training period, the employer will be reimbursed for such payments up to the amount specified in the On-the-Job Training Plan, provided such classroom training is not normally provided to regular employees.

## **Supportive Services**

Supportive services shall be provided, as necessary and in accordance with state policies, and may include, but are not limited to the following:

* linkages to community services;
* assistance with transportation costs;
* assistance with child care and dependent care 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.

## **Performance Information**

The JD NEG staff members must collect performance information on employers and individuals participating in the on-the-job training. At a minimum, this performance information should include:

* data on placement of the participant at end of the OJT contract;
* six-month employment retention rate;
* rate of successful completion of OJT;
* average wage of OJT participants; and
* participant wage after the participant’s OJT ends (increase or decrease).

The JDNEG Program Coordinator will determine whether employers meet acceptable performance levels for the above criteria. If an employer has a high success rate of training and placement, the employer is eligible to renew the OJT Contract for another year. However, re-contracting will not be entered into with the employers who have received payments under pervious On-the-Job Training Plans 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 the other employees working a similar length of time and doing the same type of work.

## **Employer Reimbursements Rates based on Federal Guidance:**

Transition from WIA to WIOA temporarily adjusted the On-the-Job Training reimbursement rate for employers. The impacted time periods and resulting rates of wage reimbursement for employers occurred as follows:

1. July 1, 2014 – June 30, 2015: A sliding scale was utilized for employer reimbursements, based on the State’s existing WIA waiver allowing for such a scale:

* 1 – 50 employees – up to 90% reimbursement of the trainee’s wage
* 51 – 250 employees – up to 75% reimbursement of the trainee’s wage
* 251 and more employees – up to 50% reimbursement of the trainee’s wage

1. July 1, 2015 – September 30, 2015: Based on guidance provided in TEGL 2-15, Attachment 2, no sliding scale for employer reimbursements was utilized. All new On-the-Job Training Plans started during this time period were developed with an employer reimbursement rate of up to 50% of the trainee’s wage.
2. October 1, 2015 – end of grant period: Based on guidance provided from US DOL, the sliding scale that was originally approved for use under WIA waivers was re-instituted. Under WIOA,[[38]](#footnote-38) employers may be reimbursed up to 50 percent of the wage rate of an OJT participant, and up to 75 percent using the criteria in 20 CFR § 680.730, for the extraordinary costs of providing the training and additional supervision related to the OJT. However, pursuant to the transition authority in WIOA Section 503(b), the U.S. Department of Labor (Department) is permitted to allow the states that received the 2014 Job Driven National Emergency Grants (JD NEGs) and the 2013 Dislocated Worker Training National Emergency Grants (DWT NEGs) to use a reimbursement rate that is higher than the rate permitted under WIOA.  The Department has determined that recipients of these grants can use higher OJT reimbursement rates for the obligated and unobligated PY 2013 and PY 2014 funds.  To prevent significant disruption in the JD NEGs and DWT NEGs, the Department has elected to apply this transition authority to the JD NEGs and DWT NEGs to allow the continuation of former WIA OJT reimbursement rates as described in Training and Employment Notices 38-12 and 29-13 and identified in each state’s grant agreement. Therefore, as of October 1, 2015 employers providing JDNEG OJT to WIOA participants shall be reimbursed according to a graduated scale based on the size of the business:

* 1 – 50 employees – up to 90% reimbursement of the trainee’s wage
* 51 – 250 employees – up to 75% reimbursement of the trainee’s wage
* 251 and more employees – up to 50% reimbursement of the trainee’s wage

## **Monitoring and Oversight**

JDNEG staff members must monitor training, invoice and reimbursement systems. Participant obligations and expenditures will be monitored through a Participant Obligations spreadsheet. Employers shall be required to maintain an internal supporting documentation system in accordance with OJT contract record requirements.

# **Disclaimer:**

This policy is based on NDOL’s reading of the statutes along with the Notice of Proposed Rulemaking and additional guidance released by the Department. This policy may be subject to change as additional federal regulations and TEGLs are released. This policy is not intended to be permanent and should be viewed as a placeholder until final federal regulations are released in early 2016.

**Job-Driven National Emergency Grant**

Nebraska Department of Labor

ON-THE-JOB TRAINING PRE-AWARD APPLICATION

*\*This application is valid for one year from the date of signature*

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| |  |  |  |  | | --- | --- | --- | --- | | **Does your company go by any other names?**  **If so, list & provide their locations.** |  |  |  | |  |  |  | |  |  |  | |
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| |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | --- | | **1) What Business Sector is your company?**  Private  Private Non Profit | **2) How long has the company been in this area?**  **\_\_\_\_\_\_\_** years | | **3) Is the company being sold, closed, relocated or merging with another company?**  Yes  No | | **4) Number of employees at the above location:**  1 – 50 employees  51 – 250 employees  Over 251 employees | | | **5) Is Worker’s Compensation Coverage Provided?**  Yes  No | Policy Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Insurance Company: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | | | | | **6) Is your company presently disbarred or suspended from receiving Federal Contracts?**  Yes  No  If Yes, Explain: ­­­­­­­ | | **7) Have there been any OSHA, wage and hour, or child labor law violation in the past year?**  Yes  No  If Yes, Explain: | | **8) Have there been any NEOC or EEOC complaints or litigation filed against this company in the last 5 years?**  Yes  No  If Yes, Explain: | | | | **9) Have there been any lay-offs in the past 12 months?**  Yes  No  If Yes, Explain | | | **10) What has been the employee turnover rate in the past 12 months?** | | | | | |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **11) Is your company up to date on paying Unemployment Insurance (UI) Tax?**  Yes  No | **12) Have you used a staffing agency in the last 12 months?**  Yes  No | | **13) How many new hires do you anticipate making in the next 2 years?**  **\_\_\_\_\_\_\_ Employees** | **14) Do you have sufficient equipment, materials, and supervisory time & expertise to provide necessary training?**  Yes  No |
| **15) What job titles or job descriptions will be filled in the next two years?** |  | | | | |
| **16) What licenses or entry certifications do your workers need?** |  | | | | |
| **17) Are any of the jobs covered by a collective bargaining agreement?** | Yes  *If yes, provide a “concurrence letter” from the union(s).*  No | | | | |
| **18) Is the pay of any job based upon commissions, tips, piecework, or incentives?**  Yes  No | | **19) Is there a base wage that commissions, tips piecework or incentives are added to?**  Yes  No | | **20) If yes, to either question 18 or 19, what entry earnings may be expected?**  **$\_\_\_\_\_\_\_\_\_\_\_** | | |
| **21) Do you have a payroll system that records all paychecks and amounts with federal and state tax withholdings?**  Yes  No | | **22) Does your company offer fringe benefits to your employees?**  Yes  No | | **23) If you offer fringe benefits, identify when these are available to new hires.** | | |
| **24) Has your company relocated from another labor market in the US within the last 120 days, leaving any workers behind?**  Yes  No | | **25) If yes to question 24, please provide the date that production of goods or services began at the new location:** | | **26) Has your company filed a WARN notice in the past year?** If yes, list the locations of the facilities affected by the WARN.  Yes  No | |

I certify that the above information is, to the best of my knowledge, true and accurate.

|  |  |  |
| --- | --- | --- |
|  |  |  |
| *Company Representative(Signature)* |  | *JDNEG Staff Member(Signature)* |
| *Company Representative Name & Job Title (Print)* |  | *JDNEG Staff Member (Print)* |
| *Date* |  | *Date* |
| **NDOL OFFICE USE ONLY:** |  |  |
|  |  |  |
| **APPROVED**  **DENIED** | **REASON:** |  |
|  |  |  |

*NDOL Manager (Signature) Date*

**Job-Driven National Emergency Grant**

**On-the-Job Training Contract and Assurances**

**THIS IS A CONTRACT between the Employer and the Nebraska Department of Labor (Service Provider) for the on-the-job training (OJT) activity.**

|  |  |  |
| --- | --- | --- |
| **EMPLOYER:** |  | |
| Mailing Address: |  | |
| City, State, ZIP: |  | |
| Federal I.D. Number: |  | |
| Contact Name: |  | |
| Title: |  | |
| Telephone: |  | |
| Email Address: |  | |
| Location of Training Worksite: | |  |
| Products or Services: | |  |
| Type of Company  [check all that apply]: | Public Entity  Individual  Nonprofit Corporation  Partnership  For Profit Corporation  Other: | |

Funding is made available to assist businesses in training and retaining a skilled, productive workforce.

This Contract is effective on (date) and shall remain in effect through (date), or until all OJT Training Plans initiated under this Contract are completed, whichever is later.

The Employer will be reimbursed for a percentage of each Trainee’s regular wages (as defined in the Job-Driven National Emergency Grant On-the-Job Training Policy) in accordance with the individual’s OJT Training Plan during the training period. The OJT Training Plan must be approved prior to the beginning of the Training Period. Please note, if an OJT Training Plan was not initiated prior to the end date of this contract, (date), a new On-the-Job Pre-Award Application and OJT contract must be completed.

**On-the-Job Training Contract and Assurances**

1. Employer intends to retain the Trainee in the occupation and at the wage rate provided by this Contract after the end of the Training Period, subject to the Employer's right to terminate the Trainee for normal business or personal reasons.

2. The individual signing this Contract on behalf of the Employer is an authorized agent and certifies that all information contained in this Contract relevant to the Employer is correct.

3. The Employer will provide Workers Compensation Insurance (unless the Employer is exempt) for the Trainee and will abide by federal and state health and safety standards and other conditions of employment established under state and federal law.

4. The Trainee shall be compensated at the same rate as similarly situated employees or trainees (including periodic increases). Wages paid will be at least the hourly rate indicated by the OJT Training Plan, and the Trainee will be subject to the same working conditions and receive the same fringe benefits as other employees similarly employed.

5. If the Employer pays for Trainee classroom training during the training period, the Service Provider will reimburse the Employer for such payments up to the amount specified in the training plan, provided the classroom training is not normally provided to regular employees.

6. The Trainee should not be terminated by the Employer without prior notice to the Service Provider. A reasonable opportunity should be provided to the Trainee to improve job performance.

7. The Employer agrees that no Trainee shall be hired into or remain working in any position when any other employee on lay-off or has been bumped with recall rights to a substantially equivalent position within the business or organization.

8. The Employer is financially solvent on the date of this Contract and, under current projections, will remain financially able to meet the obligations of this Contract.

9. The Trainee will not perform political or sectarian activities during the work or training time specified by this Contract.

10. The Employer will not discriminate against any Trainee on the basis of race, color, national origin, religion, age, sex, handicap, political affiliation, or belief.

11. No member of the Trainee's immediate family is engaged in an administrative capacity for the Employer or will directly supervise the Trainee. Immediate family is defined as the Trainee's spouse, children, parents, grandparents, grandchildren, siblings, or persons in the same relationship to their spouse.

12. The Trainee cannot have worked for the employer at any time in the past.

13. The Employer or Service Provider may terminate this Contract at any time for convenience by giving a signed written notice of intent to terminate to the other party.

14. The Employer certifies that the Employer or its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation this Contract by any federal department or agency.

15. All 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.

16. The Employer agrees to submit accurate time and attendance, payroll, and other records to support reimbursement.

17. The Employer assures that funds provided to them for OJT must not be used directly or indirectly to assist, promote, or deter union organizing.

18. No individual in a decision-making capacity shall engage in any activity, including participation in the selection, award, or administration of a contract supported by Workforce Investment Act of 1998 (WIA) or Workforce Innovation and Opportunity Act of 2014 (WIOA) funds if a conflict of interest would be involved.

19. This Contract shall terminate should it be declared void or unenforceable by final order of a court of competent jurisdiction.

20. The Employer is in compliance with state and local laws regarding taxation and licensing.

21. E-Verify Statement:

A. New Employee Work Eligibility Status. Employer is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

B. Attestation of Citizenship or Qualified Alien Status. If Employer is an individual or sole proprietorship, Employer must complete the United States Citizenship Attestation Form, attached hereto.  If Employer indicates on such attestation form that he/she is a qualified alien, he/she agrees to provide the US Citizenship and Immigration Services documentation required to verify his/her lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program. Employer understands and agrees that lawful presence in the United States is required and he/she may be disqualified or this Contract may be terminated if such lawful presence cannot be verified as required by *Neb. Rev. Stat.* §4‑108.

22. Records and Accounts:

A. Access to Records. Employer shall maintain and shall permit the Service Provider and its federal partners access to its personnel for purposes of interviews and discussions related to such records, to inspect and copy portions of its books, files, records, purchase orders, invoices, vouchers, payroll records, accounts, or other primary source documents and data compilations as is deemed necessary by Service Provider to determine whether Employer is properly perform­ing here­under, complying with all terms, conditions, and provisions herein, and that the funds are being uti­lized, expended appropriate­ly, and in accordance with this Contract. It is understood and agreed that all such records shall be maintained locally and will be made available for inspection and copying during normal business hours upon ten days’ written notice.

B. All records referenced in this Contract and all records pertaining to the activities to occur under this Contract shall be retained for a period of three years from the term­ina­tion of this Contract or until all litigation, claims or audit findings involving the records or this Contract have been finally resolved, whichever is later.

23. Restriction on Use of Funds:

A. No funds hereunder shall be used for any partisan activity or to further the election or defeat of any candidate for public office; nor shall they be used to provide services to or the employment or assignment of personnel in a manner supporting or resulting in the identifi­cation of pro­grams/projects conducted or operated pursuant to this Contract with:

1. Any partisan or nonpartisan political activity or any other political activity associated with a candidate, or contending faction or group, in a public election or party office; or

2. Any activity to provide voters with transportation to polls or similar assistance in connection with an election; or

3. Any voter registration activity.

B. Employer assures that no federal appropriated funds have been paid or will be paid on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any member of congress, an officer or employee of congress or an employee of a member of congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with this federal contract, grant, loan, or cooperative agreement, Employer shall fully comply with the provisions of 31 U.S.C. §1352. Employer shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

C. Due to possible future reductions in state and/or federal appropriations, the Service Provider cannot guarantee the continued availability of funding for this Contract notwithstanding the consideration stated above. In the event funds to finance this Contract become unavailable either in full or in part due to such reductions in appropriations, the Service Provider may terminate this Contract or reduce the consideration upon notice in writing to Employer. Said notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. The Service Provider shall be the final authority as to the availability of funds. The effective date of such termination of agreement or reduction in consideration shall be specified in the notice as the date of service of said notice or the actual effective date of the state and/or federal funding reduction, whichever is later. Reductions shall not apply to payments made for services satisfactorily completed prior to said effective date. In the event of a reduction in consideration, Employer may cancel this Contract as of the effective date of the proposed reduction upon the provision of advance written notice to the Service Provider.

24. The Employer will not violate any of the conditions of this Contract or any applicable federal, state or local law. The Employer must comply with Child Labor Laws if employing youth age 14-17 (please see *www.youthrules.dol.gov* for full Child Labor Law requirements). If a violation occurs and results in a liability to the state, the local Workforce Development Board, or the Service Provider, the Employer agrees to reimburse the program in an amount equal to the resulting liability.

25. The Employer will provide a drug free workplace as defined by the Drug Free Workplace Act of 1988 (PL 100‑890).

26. Employer acknowledges that this Contract must be operated in compliance with civil rights laws and statutes, and any implementing regulations, and warrants and assures that:

A. Employer complies, as applicable to it, with Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination in Employment Act of 1975, the Americans with Disabilities Act of 1990, the Nebraska Fair Employment Practice Act, the Nontraditional Employment for Women Act, and the Workforce Investment Act of 1998 (29 CFR 37).

B. No person shall be discriminated against by Employer on the basis of race, color, religion, sex, national origin, age, political affiliation or belief, or status as a qualified person with a disability.

C. No person or beneficiary will be discriminated against by Employer on the basis of his/her citizenship/status as a lawfully-admitted immigrant authorized to work in the United States, or to participate in any WIA Title I or WIOA Title I-B financially-assisted program or activity.

D. No person shall be excluded from participation in, denied benefits of, or otherwise be subjected to discrimination under any program or activity by Employer for which he/she receives federal financial assistance.

**I ACCEPT AND AGREE** to abide by all of the above conditions and any and all On-the-Job Training Plans executed by the parties hereto, each of which is a part of this Contract and incorporated herein by reference. I certify that the decision to participate in the Job-Driven National Emergency Grant is based on the extraordinary cost of training and upon execution of this Contract by the parties set forth below.

Employer Representative Title Date

NDOL Management Staff Date

Collective Bargaining Agent’s Signature Title Date

Collective Bargaining Unit Local #

**Job Driven National Emergency Grant**

Nebraska Department of Labor

**ON-THE-JOB TRAINING PLAN**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Trainee Information** | |  | **Worksite Information** | | | |
| Participant’s Name: |  |  | Company Name: |  | | |
| Job Title: |  | Location: |  | | |
| SOC Code: |  | Supervisor’s Name: |  | | |
| Length Of Training: | *Hours* | Phone Number: |  | | |
| Email Address: |  | | |
| Start Date: |  | Reimbursement Rate: | % | Hourly Wage: | *$* |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Training Reimbursement** | | | | | | |
| **Total OJT Training Hours:** |  | **Hourly Wage:** |  | **Reimbursement Rate** |  | **Total OJT Amount to be Reimbursed** |
|  | **x** |  | **x** | **%** | **=** |  |

**SIGNATURES**

Funding for training is authorized when the employer, the JDNEG staff member, the participant, and the union representative (if applicable) signs this OJT Training Plan. All on-the-job training agreement terms, conditions, and assurances apply to this training plan.

|  |
| --- |
| **Is the Trainee’s immediate family engaged in an administrative capacity for the Employer or will they directly supervise the Trainee?** *(Immediate family is the Trainee’s spouse, children, parents, grandparents, grandchildren, siblings, or persons in the same relationship to their spouse)*  Yes  No |
| **Has the Trainee worked for this employer at any time in the past?**  Yes  No |
| **Will you be providing classroom training to the trainee?**  Yes  No |
| *If yes, identify the classroom training needed specifically for the trainee and the estimated cost.* |

Participant Date

Employer Representative Title Date

JDNEG Staff Member Date

NDOL Management Staff Date

Collective Bargaining Agent’s Signature Title Date

**Trainee Skill Gaps:** Identify the skills the trainee does not currently possess, but needs in order to become proficient in the job.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The columns labeled **Training Tasks** and **Training Method** will be completed by the JDNEG staff member in coordination with the employer at the time of hire, while the columns labeled **Attainment of a Skill** and **Supervisor’s Initials** will be completed at the end of the On-the-Job Training and should be submitted with the final reimbursement request.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Training Tasks** | | **Training Method** | **Attainment of Skill** | **Supervisor’s Initials & Date** |
|  | |  | Yes  No |  |
|  | |  | Yes  No |  |
|  | |  | Yes  No |  |
|  | |  | Yes  No |  |
|  | |  | Yes  No |  |
|  | |  | Yes  No |  |
|  | |  | Yes  No |  |
|  | |  | Yes  No |  |
|  | |  | Yes  No |  |
|  | |  | Yes  No |  |
|  | |  | Yes  No |  |
|  | |  | Yes  No |  |
|  | |  | Yes  No |  |
|  | |  | Yes  No |  |
|  | |  | Yes  No |  |
|  | |  | Yes  No |  |
| **Training Methods** | **Description** | | | |
| Demonstration (D) | Trainer demonstrates how to perform task. | | | |
| Supported Practice (SP) | Trainer works with the trainee and/or watches the trainee practice task | | | |
| Independent Work (IW) | Trainee works alone and trainer checks the final product | | | |
| Resources (R) | Trainee uses charts, manuals, seminars, etc. | | | |
| Other – Specify (O) |  | | | |

1. WIOA Section 3(15) [↑](#footnote-ref-1)
2. WIOA Section 3(15)(A) [↑](#footnote-ref-2)
3. WIOA Section 3(15)(B) [↑](#footnote-ref-3)
4. WIOA Section 3(15)(C) [↑](#footnote-ref-4)
5. WIOA Section 3(15)(D) [↑](#footnote-ref-5)
6. As defined in 10 U.S.C. § 101(d)(1) [↑](#footnote-ref-6)
7. As defined in 10 U.S.C. § 991(b) [↑](#footnote-ref-7)
8. As defined by 38 U.S.C. § 101(16) [↑](#footnote-ref-8)
9. WIOA Section 3(16) [↑](#footnote-ref-9)
10. As defined by 10 U.S.C. § 101(d)(1) [↑](#footnote-ref-10)
11. WIOA Section 3(15)(E) [↑](#footnote-ref-11)
12. In making the determination if an applicant is unlike to return to a previous industry or occupation, it is important to recognize that data may be collected by looking at either (i) the industry in which the individual previous worked or (ii) the specific occupation. For example, if an individual previously worked as a welder, supporting documentation could be gathered looking at the occupation (welding) or the industry (manufacturing). Using data collected from either occupation or industry is sufficient. Documentation of both is not required. All data collected should be reflective of the industry or occupation in the area the participant resides or previously worked. [↑](#footnote-ref-12)
13. WIOA Section 194(4) [↑](#footnote-ref-13)
14. WIOA Section 181(d)(2); see also Written Assurance 2.n. of this Policy. [↑](#footnote-ref-14)
15. See WIOA Section 194(4) [↑](#footnote-ref-15)
16. See Written Assurance 2.m. of this Policy [↑](#footnote-ref-16)
17. See Written Assurance 2.n. of this Policy [↑](#footnote-ref-17)
18. See Written Assurance 2.e. of this Policy [↑](#footnote-ref-18)
19. See Written Assurance 2.b. of this Policy [↑](#footnote-ref-19)
20. See Written Assurance 2.e. of this Policy [↑](#footnote-ref-20)
21. See Written Assurance 2.i. of this Policy [↑](#footnote-ref-21)
22. WIOA Section 181(b)(5) [↑](#footnote-ref-22)
23. WIOA Section 181(b)(7) [↑](#footnote-ref-23)
24. 20 CFR § 679.430 [↑](#footnote-ref-24)
25. WIOA Section 181(b)(4) [↑](#footnote-ref-25)
26. WIOA Section 194(6) [↑](#footnote-ref-26)
27. WIOA Section 188(a)(1) [↑](#footnote-ref-27)
28. 41 U.S.C. § 8102 [↑](#footnote-ref-28)
29. 40 U.S.C. § 3142 [↑](#footnote-ref-29)
30. WIOA Section 181(b)(1) [↑](#footnote-ref-30)
31. 20 CFR § 683.270(c) [↑](#footnote-ref-31)
32. WIOA Section 181(d)(2) [↑](#footnote-ref-32)
33. 20 CFR § 683.270(b) [↑](#footnote-ref-33)
34. Neb. Rev. Stat. § 4-114 [↑](#footnote-ref-34)
35. 20 CFR § 680.700(c) [↑](#footnote-ref-35)
36. WIOA Section 181(a)(1) [↑](#footnote-ref-36)
37. 20 CFR § 680.720 [↑](#footnote-ref-37)
38. WIOA Sections 3(44) and 134(c)(3)(H)(i); 20 CFR §680.720(b) [↑](#footnote-ref-38)