

## **On-The-Job Training Policy**

### **Reference:**

Workforce Investment Act of 1998; 20 CFR Parts 663 and 667; WIA Five-Year Integrated State Plan (7/1/2012 through 6/30/2017) Waiver Section; National Emergency Grants policy; Eligibility for Dislocated Workers policy.

### **Background:**

On-the-Job training (OJT) under the Workforce Investment Act is provided under a contract with an employer in the public, private non-profit, or private sector. This training arrangement is an exception to the Individual Training Account (ITA) requirement specified in Section 134. 20 CFR § 663.710(b) requires that employers be reimbursed up to 50% of the wage rate of an OJT participant for the extraordinary costs of providing the training and additional supervision related to the OJT. The statutory maximum reimbursement has been determined to be a deterrent for small employers in Nebraska that had considered OJT as a means to develop workforce skills necessary for growth in their respective industries. In December 2012 the State received waiver approval from the U.S. Department of Labor for the period of July 1, 2012 through June 30, 2017, to allow reimbursement to the employer on 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; and 251 and more employees – standard statutory requirement of 50% reimbursement of the trainee’s wage). A graduated scale of reimbursement will create more incentive for small employers to participate in OJT that achieves high skill, high demand and/or high wage attainment and family sustaining jobs.

### **Action:**

After the 10 day review period, this policy is considered final. Questions and comments should be submitted in writing to Stan Odenthal, [stan.odenthal@nebraska.gov](mailto:stan.odenthal@nebraska.gov).

### **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 wage reimbursement to the employer 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.

### **Pre-Award Reviews**

It is essential to conduct pre-award reviews or employer evaluations prior to executing an on-the-job training contract. Service deliverers shall determine if the employer/training provider is qualified and capable of entering into an agreement to provide on-the-job training. Pre-award reviews should be in written form and part of the OJT contract. Criteria that must be established through the pre-award process includes the following [also, refer to the “Written Assurances” beginning on page 5 of this policy]:

- Whether the employer is 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., verify that employees were not laid off at the previous location as a result of the relocation. *[See Written Assurance #14.]*
- The Employer Size, meaning number of employees currently employed at the local operation where the OJT placements will be made. When substantiating the employer count, 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 ranges (e.g. an employee size range listed as 20-49 in NEworks falls within the 1-50 employee range found 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.
- If the applicant has worked for the employer at any time in the past, and if so, 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.
- The hiring practices of this employer in general, and for this position in particular. *[Note Section 195(4) of the Workforce Investment Act.]*
- If the applicant is related to the employer, or an employee who works for the employer in an administrative or supervisory capacity. *[See Written Assurance #4.]*
- The employer’s rate of employee turnover, and the turnover for this particular position. Contracting with employers who have high employee turnover rates should be avoided.
- If the employer has incurred any layoffs in the past 12 months. Check to be sure no Worker Adjustment and Retraining Notification Act (WARN) notices have been filed. *[See Written Assurance #13.]*
- If the position is full- 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, or for temporary positions that are supplied to employers by temporary employment contractors.
- If the position is covered by a collective bargaining agreement, and if the training is consistent with such agreement. *[See Written Assurance #15.]*

- If there have been any OSHA, wage and hour, or child labor law violations in the past year. *[See Written Assurance #5.]*
- If there have been any substantiated Equal Opportunity complaints. *[See Written Assurance #7.]*
- If there are minimum qualifications for the position, and a written job description is available.
- If the pay and benefits are equivalent to similar positions in the local labor market and/or similar positions with the employer. *[See Written Assurance #2.]*
- If the employer provides worker's compensation or accident insurance. *[See Written Assurance #5.]*
- If the employer's accounting system (especially payroll), personnel system, grievance system, etc., is adequate to administer the contract agreement?
- If the employer is presently disbarred or suspended from receiving federal contracts. *[See Written Assurance #8.]*
- Recontracting is allowable with the same employer and certainly desirable when an employer/training provider has a high success rate of training and placement. However, recontracting 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.
- Reverse referrals are allowed, however, all of the conditions of this OJT policy must be met. A reverse referral occurs when an employer with a hiring need refers an individual to the Career Center for an eligibility determination, and then hires the individual under an OJT training contract.

Service deliverers 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 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 service;
- Complementary resources
- Ability to act as subcontractors

A substantial connection to the local workforce system is an OJT requirement.

### **Supportive Services**

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

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

### **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. 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. Length Of Time The Training Will Be Provided** – The length of OJT in Nebraska shall be based on the 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 should 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 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 contain: 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.

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.

- C. 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. **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. 20 CFR § 663.710(b) states that employers may be reimbursed up to 50% of the wage rate of an OJT participant for the extraordinary costs of providing the training and additional supervision related to the OJT. However, in December 2012 the State received waiver approval from the U.S. Department of Labor to allow reimbursement to the employer on a graduated scale based on the size of the business.

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** – standard 50% reimbursement of the trainee's wage

Official payroll records containing the trainee's hours and wages must be utilized to determine the amount reimbursed to an employer.

Nebraska's current waiver, approved for July 1, 2012, through June 30, 2017, will make OJT a more viable option, especially for small business looking to get started or expand, and will allow them to adapt more rapidly to changes in technology and the marketplace with OJT options uniquely designed to achieve their specific developmental goals.

- E. **Training Outline Listing Work Skills To Be Learned In the Position** – A comprehensive list of work skills the trainee will learn during the contract period is a required part of the contract. Efforts should be made to develop programs which contribute to occupational development, upward mobility, development of new careers, and opportunities for nontraditional employment.
- F. **Other Classroom Training** – An outline of any other separate classroom training may be provided by the employer.
- G. **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 benefit, 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.
- H. **OJT Contracts for Employed Workers** – 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.

- I. **Written Assurances** – OJT contracts must include several standard assurances that are designed to acknowledge a contractor's responsibilities in accepting public funds for training. The 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. [WIA Section 122(h)(1)] However, American Job Centers 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
- Six-month employment retention rate
- Rate of successful completion of On-the-Job Training
- Average Wage of OJT Training Recipients and Wage after his/her training ends (increase or decrease)

The American Job Center 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 American Job Center will include the provider on the list of eligible providers, with accompanying performance information, and disseminate this information through the American Job Center 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 American Job Center's selection of training opportunities.

**Eligible Training Provider List**

Employers participating in the OJT Program will be listed on the State's Eligible Training Provider list on TrainingLink available at <http://traininglink.dol.state.ne.us/>. NEworks will be the source for employer information.