



## EMPLOY MILWAUKEE POLICY 20-03 ON THE JOB TRAINING

### EMPLOY MILWAUKEE POLICY: 20-03

### SUBJECT: ON THE JOB TRAINING

**ISSUANCE DATE:** 12/3/20

**EFFECTIVE DATE:** 12/3/20

### REFERENCES:

**20 CFR § 680.730, § 680.740 AND § 680.750.**

#### POLICY SCOPE

- EMPLOY MILWAUKEE AGENCY
- WIOA WDA 2 SYSTEM
- WIOA TITLE I-B PROGRAM(S)
  - ADULT PROGRAM
  - DISLOCATED WORKER PROGRAM
  - YOUTH PROGRAM
- NON-WIOA PROGRAMS

## I. BACKGROUND

On-the-Job Training (OJT) can be an effective tool in assisting participants who, after receiving basic and individualized career services, have been unsuccessful in obtaining or retaining employment that allows for self-sufficiency. This form of training is an exception to the requirement under WIOA to establish an Individual Training Account (ITA) for eligible individuals to finance training services. OJT funds may be used to support placing participants in a Registered Apprenticeship program and can be combined with ITA funds to do so. OJT is defined as paid training by an employer that is provided to a participant while engaged in productive work.

## II. PURPOSE

An OJT:

- Provides knowledge or skills essential to the full and adequate performance of the job;
- Typically provides reimbursement to the employer of up to 50% of the wage rate of the participant (under limited circumstances may be increased to 75%), for the extraordinary costs of providing the training and additional supervision related to the training; and
- Is limited in duration to the time required for the participant to become proficient in the occupation for which the participant is being trained, taking into account the skill requirements of the occupation, the academic and occupational skill level of the participant, the prior work experience of the participant, and the service strategy of the participant.

Payments made to employers are considered to be reimbursements for the extraordinary costs of training, including lower productivity, which are over and above normal training that would be provided to non-WIOA eligible new hires. Extraordinary costs are defined as the difference between the costs of training and the productivity associated with employing WIOA participants to costs associated with others similarly employed. Employers are not required to document such extraordinary costs.

## III. POLICY

The following guidelines are designed to assist staff in developing an OJT position. These guidelines will also assist in meeting the federal regulations which require that, to be allowable, costs incurred in the OJT contracting process must be necessary and reasonable.

### **A. Identification of On-the-Job Training Need**

An OJT contract is appropriate when the participant lacks the skills necessary to obtain or retain employment with that specific employer. The need for any OJT should also be identified in the Individual Employment Plan (IEP) wherein the participant's interests, abilities, and needs are identified.

### **B. Selection of Participants for OJT**

An individual must receive at least one staff assisted career service, such as development of an Individual Employment Plan (IEP) with a Career Planner. The individual must also have been unsuccessful in obtaining or retaining employment that allows for self-sufficiency. In addition, the case file must contain a determination of need for training services as identified in the IEP, comprehensive assessment, or through any other staff assisted career service received.

In most cases, on-the-job training is not an appropriate activity for youth participants under age 18. However, per 20 CFR 681.800, Employ Milwaukee (EMI) will choose to use this service strategy for eligible youth when it is appropriate based on the needs identified by the objective assessment of an individual youth participant.

*An individual referred to the program by an employer (reverse referral) may be considered for OJT with the employer if the following conditions are met:*

1. The individual has not already been offered the job;
2. The individual lacks the skills necessary for the job;
3. Because of the lack of skills, the employer will only hire the individual under an OJT contract;
4. The job is open to any qualified applicant; and
5. The individual has met eligibility requirements for staff assisted career services and has received an assessment, and for whom an Individual Employment Plan has been developed.

*OJT contracts may be written for eligible employed workers when:*

1. The employed individual is not earning a self-sufficient wage as determined by EMI or is employed in a temporary job that will come to an end; and
2. The OJT relates to the introduction of new technologies, new products or service procedures, upgrading to new jobs that require new skills, workplace literacy, or other purposes identified by the EMI.

Individuals who have completed formal training via an Individual Training Account (ITA), but are at risk of not achieving employment within 90 days of training completion, may be considered for OJT if it creates an opportunity for a positive outcome.

### **C. Selection of Employers for OJT**

Prior to the selection of an employer for OJT participation, a pre-award review must be conducted to ensure that the business, or part of the business, has not relocated from another location in the U.S., if the relocation resulted in any employee losing his or her job at the original location.

Prior to committing funds for OJTs, staff will utilize an "OJT Checklist" to evaluate potential OJT employers (i.e., business size, length of time in business, type of business, percentage of workforce to be OJTs, previous OJT participation, adequacy of personnel and accounting systems, etc.). This can assist in determining if the OJT experience will be of good quality, the employer is able to provide the training, and trainees will be retained into permanent employment that offers good pay and benefits, with opportunities for career advancement.

Potentially eligible employers able to participate in OJT contracting include private-for-profit businesses, private non-profit organizations, and public sector employers. Staffing agencies may be eligible for OJT contracts if all other requirements are met and they provide permanent on-going employment (not probationary, temporary, or intermittent) at their respective business.

*An employer will not be eligible to receive WIOA OJT training reimbursements if:*

1. The employer has a history of failing to provide WIOA participants with continued long- term employment with wages, benefits, and working conditions that are equal to those provided to other employees who have worked a similar length of time and who are doing the same type of work.
2. There is not a reasonable expectation of continuing employment in the occupation being trained for.
3. The employer is not in compliance with applicable assurances and certifications.

*In addition:*

1. WIOA OJT is not an entitlement program for employers. The decision to enter into an OJT contract with an employer is at the discretion of EMI.
2. Reimbursements for OJT are not intended to be wage subsidies to employers for normal hiring and training of employees; rather they are intended for extraordinary costs of training WIOA participants. Some of these costs include more intense supervision, above average material wastage, abnormal wear on tools, down time, and a lower rate of production.
3. Payments made are reimbursement for regular "straight" time; for actual hours worked with no overtime premium, holiday pay, vacation, sick days, time spent on jury duty, or fringe benefits included.
4. OJT payments to employers may include scheduled pay raises or regular pay increases, comparable to similarly situated non-OJT employees.
5. Participants under WIOA OJT contracts shall comprise no more than 25% of the employer's employees. However, EMI may make exceptions for a higher percentage on a case-by-case basis either for a particular employer or industry sector. A high percentage of OJTs at a single employer calls into question whether the funds are being used for business development/subsidy without which the business would not exist/be sustainable. One requirement of OJT is to assess the participant's skills against the requirements of the job. If all/most of the trainees are OJT, it would be difficult to assess. In addition, the quality of training and supervision for a large number of OJT positions would be questionable.

#### **D. Occupational Eligibility**

OJT is allowable for occupations which are consistent with the participant's capabilities, are in demand occupations which will lead to employment opportunities enabling the participant to become economically self-sufficient and which will contribute to the occupational development and upward mobility of the participant on a career pathway. Consideration will 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.

*Occupations selected for OJT shall meet, at the time of completion or per company policy, the following:*

1. Full time permanent positions (minimum of 32 hours per week);
2. All participants shall be provided 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. This will include unemployment compensation where the employer is normally required to provide such coverage to its employees; and
3. The position provides the participant benefits per company policy which have a monetary value (i.e., insurance, paid leave, profit sharing) other than those required by law.

*Occupations under which individuals may not be placed under an OJT contract include, but are not limited to the following:*

1. Occupations depending on commission as the primary income source.
2. Professional occupations for which the trainee already possesses a license (e.g., real estate agent, insurance agent, bartender, etc.).
3. Occupations dependent on tips or gratuities as the primary income source.
4. Occupations which provide for only temporary or intermittent employment.

5. A low-skilled occupation that would generally require little or no training (i.e., less than six weeks), which is considered to be the normal training period for any new employee.

Generally, consideration of high turnover jobs should be avoided. In certain situations, where the returns on investment, potential earnings, or needs of the specific customer warrant it, such opportunities may be acceptable.

#### **E. Content of the OJT Contract**

*OJT contracts will specify:*

1. Occupation for which training is to be provided;
2. Name of the participant to be trained;
3. Immediate supervisor's name;
4. Wage rate;
5. Method and maximum amount of reimbursement;
6. Beginning and ending dates of the contract;
7. Job description and a training plan including training hours by skill areas or tasks;
8. Special health or safety equipment or precautions required, if any;
9. Special tools or uniforms required, if any, and whether or not the employer will supply them;
10. Any costs associated with reasonable accommodations for individuals with disabilities;
11. Modification conditions and requirements; and
12. Contract termination conditions.

*OJT contracts will contain appropriate assurances and certifications including:*

1. Compensation for the participant 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 less than the higher of the federal or State minimum wage.
2. Provision of benefits and working conditions at the same level and extent as other employees of similar longevity and doing the same type of work. This will include unemployment compensation coverage where the employer is normally required to provide such coverage to employees. The employer must also secure worker's compensation or other insurance coverage for work-related injury of trainees.
3. Maintenance, retention, and access to records by the EMI, State, and Department of Labor personnel to support the training activity and associated reimbursements, i.e., time and attendance records, payroll records, invoice and reimbursement documents, and other information necessary to respond to monitoring reviews or audits (documentation of extraordinary costs are not required).
4. Prohibition on the use or proposed use of WIOA funds as an inducement to a business or part of a business to relocate if the relocation results in any employee losing his/her job at the original location.
5. Prohibition on the use or proposed use of WIOA training funds on any business or part of a business that has relocated from any location in the U.S., until the company has operated at the new location for 120 days, if the relocation resulted in any employee losing his/her job at the previous location.
6. No currently employed worker shall be displaced by the OJT participant including a partial displacement such as a reduction in the hours of non-overtime work, wages, or employment benefits. The employer also agrees that no OJT participant shall be placed into a position that is currently vacated by an employee who is on layoff, involved in a work stoppage or on strike, or is open due to a hiring freeze, or into a position in which the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the intention of filling the vacancy so created by hiring the eligible worker. The employer further agrees that this contract does not infringe in any way upon the promotional opportunities of current employees.
7. No OJT contract shall impair: (a) existing contracts for services; or (b) existing collective bargaining agreements, unless the employer and labor organization concur in writing with respect to any elements of the proposed activities which affect such agreement.
8. Assurance that adequate supervision will be provided at all time while the trainee is on the job site.
9. Health and safety standards under Federal and State law are equally applicable to OJT

participants.

10. The employer must comply with civil rights law and regulations, including nondiscrimination.
11. Prohibition on the use of WIOA funds to directly or indirectly assist, promote or deter union organizing or engage in political activities (including lobbying) during work hours.
12. No officer, employee or other agent of the employer shall recommend hiring, decide hiring, establish salary/wage rate, or provide preferential supervisory treatment with respect to a trainee who is a member of the officer's, employee's or agent's immediate family.
13. Prohibition on being employed in the construction, operation or maintenance of any facility that is used for religious instruction or worship.
14. Prohibition on the use of funds for construction except for provision of reasonable accessibility and accommodation.

#### **F. Determining Length of OJT Contract**

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. The amount of training hours needs to take into account the skill requirements of the occupation, the academic and occupational skill level of the participant, prior work experience, the participant's individual employability plan, job accommodations that may be required, and discussions with the employer. The contracted training hours cannot include those types of training normally provided by the employer for new employees such as orientation to the job/business, safety procedures, etc. In addition, consideration must be given to recognized reference materials such as ONET which includes the Specific Vocational Preparation (SVP) system.

Generally, OJT contracts will not be done for less than six weeks or more than six months. Jobs that need less than six weeks training usually require no appreciable levels of training beyond periods of orientation that an employer would be expected to cover as part of their normal costs of doing business. Jobs that require more than six months of training to prepare a person for successful entry level employment will be reviewed on a case by case basis.

#### **G. Developing the Training Plan**

The OJT contract must include a copy of the job description and training plan. The job description and training plan, including skills to be learned on the job and the time necessary to learn each skill, must be sufficiently specific to verify that training was provided in accordance with the contract.

*The following guidelines apply:*

1. Activities (the work statement) must be described clearly to show that the employer is obligated to conduct training.
2. Skills to be learned (measurable) should be separately listed with estimated training times for each.
3. Training times must be reasonable.
4. Training times must be geared to both the complexity of the job and the abilities of the trainee and in accordance with the SVP system.
5. Consideration must be given to recognized reference materials, such as ONET.
6. The training outline must identify the job title of the person(s) responsible for the training.
7. The training outline must include measurement and evaluation procedures.
8. The trainee, supervisor, and/or trainer should be knowledgeable about the training plan.
9. Consideration of reasonable accommodation(s), such as providing materials in an alternative format.
10. Identification of supportive services necessary for the individual to succeed.
11. The training site is accessible for individuals with disabilities and/or other special needs.

#### **H. Employer Reimbursement**

WIOA provides that occupational training may be provided through an OJT contract with an employer in exchange for wage reimbursement up to 50% for the extraordinary costs of providing the training and additional supervision related to the OJT. EMI will typically reimburse the employer at the 50% reimbursement rate.

However, as prescribed in 20 CFR §680.730, EMI may increase employer reimbursement rate to 75% when taking into account the following factors:

1. Whether the participants are "individuals with barriers to employment," as defined in WIOA sec. 3(24);
2. The size of the employer, with an emphasis on small businesses (typically small is defined as less than 250 workers);
3. The quality of employer-provided training and advancement opportunities, for example if the OJT contract is for an in-demand occupation and will lead to an industry-recognized credential; and
4. Other factors the Local Board may determine to be appropriate, which may include the number of employees participating, wage and benefit levels of the employees (both at present and after completion), and relation of the training to the competitiveness of the participant.

The factors used when deciding to increase the wage reimbursement levels above 50% up to 75% must be documented. The appropriate program funds must be used for the appropriate WIOA-eligible population: OJT may be provided to low-income adults with WIOA Adult funds, and to dislocated workers with WIOA dislocated worker funds. OJT provided with statewide funds must serve WIOA eligible individuals.

## IV. PROCEDURES

### Monitoring

*The WDB has policies and procedures in place to ensure that:*

1. The training plan has measurable indicators of performance.
2. Evaluation of those indicators will occur to determine if skills identified in the training plan have been acquired.
3. Onsite visit(s) and other monitoring are conducted during the course of the OJT to determine compliance with WIOA requirements, including section 188, progress toward completion of the training plan and to resolve issues for the employer and/or participant.

Monitoring will ensure that the participant is receiving the training contracted for at the wages in the OJT contract, and that the participant is not required to engage in activities prohibited by WIOA. Employer records will be reviewed to assure that the participant is receiving proper wages and that the employer is withholding taxes and paying workers compensation (or equivalent) insurance.

### Automated System Support for Employment and Training (ASSET) and Efforts to Outcomes (ETO) Reporting

1. All participants will be recorded in the ASSET and ETO databases.
2. In ASSET, the OJT service can be found in the Manage Services Menu. For Adults and Dislocated
3. Workers, the service is a Training Service. For Youth, the service is on-the-job training.
4. In ETO, when the training record is entered, OJT should be selected. If the employer/provider is not listed in the drop down menu, a request should be made to the EMI data department to add it.

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**REVISIONS:** N/A

**BOARD APPROVAL DATE:** 12/3/20

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