

**WIOA Region #5 (South Central and Southwest)
Policy Letter #2-2017**

Effective Date: September 13, 2017

Last Updated:

Background: This policy sets requirements for Customized Training and On-the-Job Training (OJT), based on WIOA requirements.

Customized Training and On-the-Job Training Program Policy

WIOA Region #5 will follow the policy developed by DEED (attached).

Summary: OJT is a key method of delivering training services to adults and dislocated workers. WIOA provides for State and Local WDB to provide up to 50 percent of the wage rate of the participant to employers for the costs of training while the participant is in the program. OJT contracts may also be entered into with Registered Apprenticeship program sponsors or participating employers in registered apprenticeship programs for the OJT portion of the registered apprenticeship program.

The Governor and Local WDBs have the flexibility under WIOA to increase the reimbursement level to up to 75 percent of the total wage taking into account the following factors:

- The characteristics of the participants taking into consideration whether they are “individuals with barriers to employment” as defined in WIOA sec. 3(24);
- The size of the employer, with an emphasis on small businesses;
- 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
- Other factors the Governor or Local WDB may determine appropriate (e.g. the number of employees participating in the training, wage and benefit levels of the employees (both pre and post participation earnings), and relation of the training to the competitiveness of the participant).

Governors or Local WDBs must document the factors used when deciding to increase the wage reimbursement levels above 50 percent up to 75 percent.

Customized training is designed to meet the specific requirements of an employer or group of employers with the commitment that the employer(s) hire an individual upon successful completion of the training.

Addendum: Local OJT Training Contract and Training Plan attached.

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Multi-Program Administration Requirements

Customized Training and On-the-Job Training (WIOA)

Summary

This policy sets requirements for customized training, including the subcategory of on-the-job training (OJT) based on Workforce Innovation and Opportunity Act (WIOA) requirements.

Relevant Laws, Rules, or Policies

[WIOA Law](#)[Federal Minimum Wage](#)[State Minimum Wage](#)[29 CFR, WIA Final Rules and Regulations](#)[29 CFR, Part 37](#)

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Policy

Background

On-the-Job-Training (OJT) contracts and customized training agreements may be written for unemployed as well as employed program participants. OJT payments to employers are deemed to be compensation for the costs associated with training program participants. OJT payments are also considered to be compensation for the lower productivity of participants during the training period. Overall, customized training is training designed to meet the needs of a specific employer(s). The employer must commit to employ or continue to employ the worker(s) upon successful completion of any form of the customized training. Employers are not required to document the extraordinary costs or the cost of lower productivity associated with OJT.

On-the-Job-Training: Specific Form of Customized Training

OJT must be provided through a written contractual arrangement, an exception to the ITA requirement. OJT contracts may be written with employers in the private sector, the private non-profit sector, and public employers. The OJT contract must identify the occupation, the skills and competencies to be learned, and the length of time the training will be provided. The OJT contract is a training alternative suitable for participants who may prefer a "hands-on" learning environment over a classroom situation. OJT also provides a good incentive for employers to hire and train an individual for an occupation not requiring classroom-situated learning.

The reimbursement to the employer is compensation for the extraordinary costs associated with the training of 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. The OJT participant/employee is considered to be an employee on a "hire-first and train-later" basis. The participant/employee must receive wages and fringe benefits equal to those similarly employed by the employer. The reimbursement is not a wage subsidy. It is a reimbursement of the extraordinary costs of training incurred by the employer in preparing the employee for successful entry level employment. It is expected that the participant/employee will be retained on a full time basis after the reimbursement ends. It is also expected that the participant/employee will continue to receive compensation and benefits commensurate with job performance.

An OJT activity does not preclude a participant trained by one employer from ultimately being placed in a comparable, training-related position with another employer. Nor does it preclude other types of training such as classroom or literacy training in conjunction with the OJT.

An OJT contract is limited to the time required to become proficient in the occupation for which the training is being provided. To determine the appropriate length of the contract, consideration must be given to recognized reference materials such as The

Occupational Information Network (O*NET), the skill requirements of the occupation, the education and skill level of the participant, previous work experience, and the participant's individual employment plan. The contract must specify that the training is being provided to the participant in exchange for the reimbursement of up to 75 percent of the wage rate to compensate the employer for the extraordinary costs associated with training the participant(s). As noted above, employers are not required to document the extraordinary cost actually incurred. The schedule of reimbursement is as follows:

Initially, providers may reimburse employers up to 75 percent of the participant's wages.

As indicated above, the length of training must be determined by an accurate assessment of the job difficulty, the participant's skill and education, previous work experience, discussions with the employer, and the Individual Employment Plan (IEP). The level of difficulty is determined from an assessment of the job description. If the job requires the repair of machinery, the employer and counselor need to determine which, if any, tools the participant needs, the precision required to use the tools successfully, skills needed to diagnose problems, and the training needed to successfully disassemble and reassemble parts. O*NET can be a useful tool in determining the length of training. However, O*NET should not be relied upon exclusively, at the risk of overlooking the needs, skills, and abilities of the participant.

The information gathered is used to design a training outline that becomes the work statement of the contract and is followed as a guide when delivering the training. The information is also used to gauge the reimbursement amount as indicated above. The training outline is also useful for determining whether services contracted for are delivered. Once skills have been identified and a method for measuring them has been established, progress can be determined.

The development of successful training outlines depends on the ability to analyze job duties for skills required to perform specific job functions. While basic skills such as reading comprehension and the ability to perform mathematics may be prerequisites for a successful training outcome, the skills needed to read a precision instrument, analyze a blue print, or assemble a mechanical device may be skills that can only be learned under the instruction of an experienced practitioner while on the job. The training outline is the planning tool that enables a successful training outcome to occur.

The participant's IEP must document how the length of training was determined. The IEP must also include justification for a length of training exceeding what may be considered an appropriate training time based on consideration of reference materials, skills, education, and prior work experience.

Reimbursement does not include hours of non-work such as paid holidays, vacation, sick days, time spent on jury duty, etc. OJT payments to employers may include scheduled pay raises or regular pay increases. Overtime work and jobs paying on the basis of commissions, incentives, or piece-rate are not appropriate for OJT. The purpose of overtime is to make up production shortages where training would not be expected to occur. Commissioned jobs require independence with little time for training other than what might be provided to all employees. Piece-rate assumes the worker has sufficient training to meet the required quota or production rate and that no additional training is required.

A. Contract Provisions

OJT contracts must contain the following provisions:

1. OJT contracts entered into between the Workforce Service Area (WSA), its agent, and an employer must include a provision stating that all costs contained in the contract represent only those costs which are over and above normal recruitment and training expenses of the employer. The costs (extraordinary) for which the employer will be reimbursed (increased material wastage, lost time, and additional supervisory time) must be specified in the contract along with the method used to determine these costs. The exact rate of reimbursement is to be indicated based on the schedule indicated above.
2. OJT contracts must specify:
 - the occupation for which training is to be provided;
 - the number of participants to be trained;
 - the wage rate;
 - the method and maximum amount of reimbursement, including schedule of invoicing;
 - the method and schedule for provider review of participant progress;
 - job description and a training outline including training hours by skill areas or tasks; and
 - separate classroom training or ancillary items that may be needed.

The cost of providing classroom training away from the work site, as well as any ancillary items, or support services should be shown separately.

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

3. OJT contracts are to contain appropriate assurances and certifications including:

- 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 highest of the federal or State minimum wage.
- maintenance, retention, and access to records by WSA, 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);
- 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;
- 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.
- prohibition on displacement;
- prohibition on impairment of existing contracts;
- prohibition on payment of wages to incumbent employees using WIOA funds;
- 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;
- health and safety standards under Federal and State law equally applicable to OJT participants;
- provision of workers compensation;
- non-discrimination and prohibition against sectarian activities;
- prohibition on use of funds to assist, promote, or deter union organizing;
- prohibition against political activity and lobbying;
- provision for union concurrence;
- prohibition on the use of funds for construction except for provision of reasonable accessibility and accommodation;
- prohibition on the use of WIOA Title I funds for foreign travel;
- Minnesota Data Privacy Act;
- Minnesota-Right-to-Know Act;
- Americans with Disabilities Act;
- modification conditions and requirements;
- contract termination conditions; and,
- expenses and activities prohibited under any other Federal, State, or local law or regulation.

B. Eligible Participants

Only participants who have received an assessment and for whom an IEP has been developed may be considered for OJT. An individual referred to the WorkForce Center (WFC) or grantee by an employer may be considered for OJT with the employer only after the individual has met eligibility requirements for intensive services and has received an assessment, and for whom an IEP 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 the Local Board;
2. The reimbursement to the employer follows the above schedule;
3. The contract is not with an employer who fails to provide OJT participants with long-term employment at wages and benefits comparable to those of non-OJT employees. OJT employers who fail to retain OJT participants must provide satisfactory explanation (tardiness, absenteeism, etc.);
4. The contract specifies a training time period required for the participant/employee to gain proficiency in the occupation for which the training is being provided; and,
5. 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 Local Board.

C. Eligible Employers

An employer who does not retain the participant with wages, benefits, and working conditions equal to those provided to other regular employees doing the same work must not be considered for additional OJT contracts. The WSA or grantee organization must be assured that an employed worker was not intentionally hired at a wage less than self-sufficiency for the purpose of securing an OJT contract.

Employment and employee leasing agencies may be eligible for OJT contracts if they meet the requirements as stated above and they provide permanent on-going employment (not probationary, temporary, or intermittent) in a specific occupation and they place employees at the worksite of another employer to perform work for such employer.

Customized Training (General)

Customized training is training:

- designed to meet the special requirements of an employer or a group of employers;
- conducted with a commitment by the employer(s) to employ, or in the case of an incumbent worker, continue to employ, an individual upon successful completion of the training; and,
- for which the employer pays according to the schedule indicated below.

Employers must contribute 50 percent of the cost of the training.

Customized training of an eligible employed individual may be provided for an employer or a group of employers when:

- the employee(s) is/are not earning a self-sufficient wage as determined by Local Board policy;
- the above requirements for customized training are met; and,
- the customized training relates to the introduction of new technologies, introduction to new production or service procedures, upgrading to new jobs requiring additional skills, workplace literacy, or other purposes identified by the Local Board.

The customized training agreement must identify the occupation(s), the skills and competencies to be learned, and the length of time the training will be provided. The agreement must specify that the employer will pay according to the above payment schedule for cost of the training.

As noted above, customized training may be developed for an employer who is hiring new employees as well as those currently employed by the employer. As in the OJT contract, the length of the training must be determined by an assessment of the job difficulty, the participants' skills, education, previous work experience, and discussions with the employer.

Information gathered is used to design a training outline that will become the work statement of the agreement and followed as a guide when delivering the training.

A. Customized Training Agreement Provisions

1. Agreements must specify:

- the occupation for which training will be provided;
- the number of participants to be trained;
- the method and maximum amount of reimbursement;
- job description(s) and a training outline; and
- the cost of any ancillary items or supportive services that may be needed.

2. The cost of any ancillary items or support services should be shown separately.

3. The job description(s) and training outline must be sufficiently specific to permit verification that training was provided in accordance with the agreement.

4. Customized training agreements are to contain appropriate assurances and certifications as specified under the OJT contract provisions.

B. Eligible Participants

Only those individuals who have received an assessment and for whom an IEP has been developed may be considered for training under a customized training agreement. An individual referred to the WFC or grantee organization by an employer, including those who may already employed by the employer, may be considered for training only after meeting eligibility requirements.

C. Eligible Employers

A WSA must not enter into a customized training agreement with an employer who fails to retain individuals, without satisfactory explanation (tardiness, absenteeism, etc), after successful completion of the training. An employer who does not hire or retain the participant/employee with wages, benefits, and working conditions equal to those provided other regular employees doing the same or similarly situated work must not be considered for additional training agreements.

Related Links

[OJT Pre-Award Template](#)

[OJT Contract Template](#)

[Sample OJT Training Outline](#)

Alternate formats such as Braille, audio-visual and large print are available upon request.

**SOUTH CENTRAL WORKFORCE COUNCIL
ON THE JOB TRAINING CONTRACT**

TRAINEE:		FUNDING SOURCE:	
SOCIAL SECURITY NUMBER:			

EMPLOYER:		PROVIDER:	DEED – Job Services
ADDRESS:		ADDRESS:	
PHONE:		PHONE:	
CONTACT:		CONTACT:	

THIS SUBGRANT is entered into between Fairmont Job Service hereinafter called the **PROVIDER** and _____ hereinafter-called the **EMPLOYER**.

WHEREAS: the **PROVIDER** wishes to provide employment and training opportunities to eligible persons, and is authorized under state or federal statute to provide compensation to employers for the extraordinary cost of training eligible persons, and;

WHEREAS: the **EMPLOYER** is willing to employ an eligible person so designated by the **PROVIDER**, provide on-the-job training and receive payment not to exceed fifty (50) percent of wages paid during the period beginning on _____ and ending on _____ (est.)_. The **EMPLOYER** agrees to employ said person upon successful completion of the contract.

NOW, therefore, it is agreed:

1. The **EMPLOYER** is to provide training in accordance with this AGREEMENT, EMPLOYER Obligations (Exhibit C), EMPLOYER Assurances and Conditions (Exhibit D), which are attached and made a part of this agreement.
2. The **STATE** is to provide reimbursement in accordance with the **PROVIDER** Assurances (see below).
3. The total obligation of the **PROVIDER** for all reimbursement to the **EMPLOYER** under this sub-grant shall not exceed \$ _____.

REIMBURSEMENT DETAIL:

Training period allowed:	() hours (approximately weeks)
Reimbursement Summary:	() hours X 50% of \$00.00(hrly wage) (\$00.00) = \$0000.00
Invoices submitted:	Monthly or at End of Contract (circle choice)

The following tax identification numbers are true and correct:

MN ID# _____ FED. ID# _____
If sole proprietor, Social Security # _____

This information may be used in the enforcement of Federal and State tax laws. Supplying these numbers could result in action to require you to file State tax returns and pay delinquent State tax liabilities. This Agreement will not be approved unless these numbers are provided. These numbers will be available to Federal and State tax authorities and State personnel involved in the payment of State obligations.

PROVIDER:	Job Service	EMPLOYER:	
SIGNATURE:		SIGNATURE:	
TITLE:	Job Counselor	TITLE:	
DATE:		DATE:	

EXHIBIT A

TRAINING OUTLINE
ON-THE-JOB TRAINING

TRAINEE NAME:		SSN:	
TRAINING TITLE:			

EMPLOYER NAME:	
TRAINING LOCATION:	

JOB DESCRIPTION:

SKILLS TO BE LEARNED:

1)	
TRAINER:	HOURS:

TRAINER:	HOURS:

TRAINING OUTLINE

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TRAINER:	HOURS:

EXHIBIT B

PROVIDER ASSURANCES

The **PROVIDER** or its agent agrees to:

1. Reimburse the **EMPLOYER** only for the hours of training time completed during each invoice period.
2. Reserve the right to review all **EMPLOYER** records necessary to validate the provision of training as stated herein.
3. Provide the **EMPLOYER** with an invoice procedure and assure that reimbursement will be made for training accepted and approved by the **STATE** within thirty (30) days of receipt of properly certified invoice from the **EMPLOYER**.
4. Reserve the right to terminate this agreement without notice if the training conditions are not met. The State shall also have the right to terminate this agreement on seven (7) days' notice in the event funds obligated to it from the **STATE** or **UNITED STATES DEPARTMENT OF LABOR** are either withdrawn or withheld. The contract may be canceled by either the **STATE** or the **EMPLOYER** at any time, with or without cause, upon thirty (30) days' written notice to the other party. In the event of such cancellation **EMPLOYER** shall be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.
5. Modify this agreement if jointly agreed upon by the **STATE** and **EMPLOYER** and reduced to writing.

EXHIBIT C

EMPLOYER OBLIGATIONS

The Employer Agrees To:

1. Comply with all applicable laws, rules, regulations and guidelines governing the training under this Contract.
2. Comply with all the provisions of the **Americans with Disabilities Act of 1990 (ADA)** and all other laws and rules with respect to employee's accessibility issues.
3. Provide continuous supervision and instruction through a qualified instructor. The **EMPLOYER** agrees to provide all necessary supplies, equipment, materials, clerical, services and supervision required to achieve satisfactory training. The **EMPLOYER** warrants that the wage provided represents the prevailing wage of similarly situated employees.
4. Provide Workers' Compensation protection for the **TRAINEE** or accident and liability insurance coverage equal to such protection.
5. Provide and pay for all benefits and working conditions at the same level and to the same extent as it would for other employees doing the same type of work.
6. Keep accurate records of the **TRAINEE's** wages and hours of training. Time, attendance and payroll records will be retained by the **EMPLOYER** for six (6) years from the end of the contracted period.
7. Shall neither assign nor transfer any rights or obligations under this contract without the prior written consent of the **PROVIDER**.
8. Comply with all applicable child labor, fair labor, health, safety, environmental standards, including the Minnesota Right to Know Act.
9. Notify the **PROVIDER** prior to termination of the **TRAINEE** to give the **PROVIDER** an opportunity to resolve the problem and retain the **TRAINEE**.
10. Employ the **TRAINEE** as a regular full time employee, if they satisfactorily complete the training, and at a rate of pay not less than the contracted and prevailing wage.
11. Employ the person without terminating, layoffs, infringing on the promotional opportunities or reducing the working hours, wages, non-overtime hours or benefits of other employees.
12. Repay funds if it is determined that the terms of this contract were not carried out due to willful disregard for the contract terms, or gross negligence. No such funds shall be paid without notice of and opportunity for a fair hearing.

EXHIBIT D

EMPLOYER ASSURANCES AND CERTIFICATIONS

The Employer assures that:

1. The subgrant will not impair existing contracts for service or collective bargaining agreements or result in substitution of program funds for other funds in connection with work that could otherwise be performed.
2. No person shall be employed under this subgrant to replace a job or remain on a job affected by a labor dispute involving a work stoppage.
3. Funds received under this contract are necessary to train a person who would not have been hired without these funds and represent only those costs which are over and above the normal training, recruitment and supportive service expenses of the Trainee.
4. It is not in violation of any state or federal labor laws or on any debarment or suspension list.
5. Trainee will not be employed on the construction, operation, or maintenance of any facility used for sectarian instruction or as a place for religious worship.
6. It shall not hire any individual with funds available under this contract who is an immediate family member of any person or persons serving in an administrative capacity for the Employer, or acts as an immediate supervisor over that person hired. Immediate family is defined as wife, husband, son, daughter, mother, father, brother, sister, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt uncle, niece, nephew, step-parent, or step-child.
7. It will comply with the provision of the Minnesota Right-to-Know Act of 1983 which requires employers to evaluate their work places for the presence of hazardous substances or agents to which employees are exposed.
8. The rate of pay shall not be less than the applicable state or federal minimum wage law. The rate of pay shall also be at the prevailing wage rate for similar inexperienced workers in similar positions employed by the same employer, or the wage rates required by an applicable collective bargaining agreement, or the prevailing wage rate established by the Secretary of Labor in accordance with the Davis-Bacon Act
9. Financial records will be retained for a period of six(6) years from date of final expenditure report, except:
 - a. In the case of non-expendable property (if any), the three years' retention period begins from the date of disposal of the property;
 - b. In the case of audit question, records must be retained beyond the above period until the audit question is resolved.
10. The Provider will be notified prior to termination of the Employee while covered under this agreement to allow program counselors the opportunity to settle the problem in an effort to retain the employee whenever possible.

11. The Trainee will be retained by the Employer in accordance with its normal employment policies upon satisfactory completion of this agreement and has not terminated previous contracted employees without just cause.
12. It will comply with the provisions of the Civil Rights Act of 1964 as amended by the Equal Employment Opportunity Act of 1972, and 1974, the Rehabilitation Act of 1973 as amended, the Wage Discrimination Act of 1967 and 1975 as amended and the Equal Pay Act of 1963 and shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, national origin, disability, age, marital status, public assistance status, criminal record or place of residence.
13. It will comply with all applicable business licensing, taxation and insurance requirements.
14. It shall adhere to all applicable state or federal laws, regulations, policies and procedures.
15. Funds received under this contract will not be used to assist in relocating all or any part of the Employer's establishment.
16. Should this position be covered under a collective bargaining agreement, the written concurrence of bargaining agent has been obtained.
17. Overtime work hours and jobs paying on the basis of commissions, incentives, or piece-rate are not covered by OJT. Reimbursement does not include hours of non-work such as paid holidays, vacation, sick days, time spent on jury duty, etc. OJT payments to employers may include scheduled pay raises or regular pay increases.
18. It will comply with the provisions of the Hatch Act which limits the political activity of employees.
19. Prohibition against association with union organizing.
20. All OJT's will comply with TEGL 13-15 dated February 23, 2016. The training reimbursement percentage will be applied to maximum hourly wage rate of \$23.23 (MN state cap).

COLLECTIVE BARGAINING AGENT CONCURRENCE:

This position is covered by a Collective Bargaining Agent. Yes No

Union Organization: _____

Concurs Does not concur Has no opinion with the activities proposed in this contract.

IN WITNESS WHEREOF: the parties here to have executed this SUBGRANT as of the last date which appears below.

Signature of Collective Bargaining Agent

Title

Date