

5320POL On-the-Job Training

Effective Date: November 2021

Last Modified: January 2022

This policy provides local guidance on the implementation of Workforce Innovation and Opportunity Act (WIOA) funded OJT opportunities for eligible Adult, Dislocated Worker and Youth program participants. OJT opportunities provide structured training for participants to gain the knowledge and skills to lead to stable employment and competencies for the position they are hired into. OJT is a training option for Employers to train new employees on the specific knowledge or skills essential to the full and adequate performance of the job.

1. **OJT opportunities occur through a contractual agreement between the Employer and OJT Service Provider.**
2. **OJT is a hire-first program. The WIOA participant begins their OJT as a full-time employee of the contracted Employer, who provides the on-site training and long-term unsubsidized employment upon completion of the OJT.**
3. **OJT may be sequenced with other WIOA program services, such as work experience or training.**
4. **Participant Eligibility:**
 - a. Meet WIOA Adult, Dislocated Worker or Youth eligibility requirements prior to OJT implementation
 - b. Development of a full Individual Employment Plan (IEP) with WIOA case worker
 - c. Participants who have received funding through an ITA, cohort or other WIOA funded training are also eligible to be considered for an OJT.
 - d. OJT may be provided for enrolled participants who are either employed or unemployed.
5. **Employed participants requirements include:**
 - a. The employee is not earning a self-sufficient wage or wage comparable to or higher than wages from previous employment; AND
 - b. The OJT must provide training for the introduction of new technologies, new production, or new service procedures; or upgrading to a new job that requires additional skills.
6. **Employer Eligibility**
 - a. The OJT employer must be registered with the Internal Revenue Service (IRS) and have an account with the Washington State Employment Security Department for Unemployment Insurance and carry Worker's Compensation Insurance.
 - b. The employer must be financially solvent and have an adequate payroll record keeping system
 - c. Employer must not have undergone a significant layoff within the past 120 days, as defined by WARN act.
 - d. The employer must not have workers currently in an employer-instigated layoff status or be involved in a labor dispute.
 - e. When an employer refers one of their employees (a reverse referral) to a WIOA program for On-the-Job Training, an OJT contract cannot be written until all of the program enrollment requirements are met.

- f. OJT employees may not work on the construction, maintenance or operation of any facility that is used exclusively for religious or ideological activities or goals, or in a position that is designed to further religious or ideological goals.
- g. OJT contracts cannot be entered into with an employer who has exhibited a pattern of failing to provide OJT 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.
- h. The employer must not discriminate in training or hiring practices because of any protected status under State or Federal law, including but not limited to race, color, sex, age, national origin, religion, disability, political beliefs or affiliations, and veterans' status.

7. Occupational Eligibility

- a. The OJT position is an in-demand occupation as defined by WIOA Section 3(23) and ESD labor market data; or in a "balanced" or "declining" industry, if there are compelling reasons (e.g., evidence of long-term viability of the employer) justifying the placement OJT candidate with the employer.
- b. The employer is current in unemployment insurance and workers compensation taxes, penalties, and/or interest or related payment plan.
- c. Compensation for the occupation must be at the same rate, 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.
- d. Occupations not eligible for OJT contract and participation:
 - i. Those that require minimal training.
 - ii. Jobs where the principal source of income is tips, commissions, or piecework.
 - iii. Jobs that are intermittent or seasonal in nature.
 - iv. Self-employment
- e. Occupation eligibility documentation must be included in OJT contract and participant file.

8. The OJT Contract: Every OJT opportunity will include a contract (agreement) with the OJT employer and a training plan for the employee.

- a. The contract must include:
 - i. Requirements of WIOA rules and regulations,
 - ii. Occupation, skills, and competencies to be learned, and
 - iii. Length of time the training will be provided.
- b. The participant is considered an employee of the employer according to the Fair Labor Standards Act.
- c. Positions that receive a 1099 form are considered self-employed worker or independent contractor, which does not qualify for OJT.
- d. An OJT agreement will not displace any currently employed worker or alter current workers' promotional opportunities. Nor will an OJT agreement be made with an employer who has terminated any regular employee or otherwise reduced the workforce to hire OJT employees.
- e. Contracts with an employer who has previously exhibited a pattern of failing to provide OJT employees with continued long-term employment are prohibited.
- f. The OJT agreement must not impair existing contracts for services or collective bargaining agreements. When an OJT agreement would be inconsistent with a collective bargain, the appropriate labor organization and the OJT employer must provide written concurrence before the OJT can begin. Additionally, the OJT agreement may not assist, promote nor deter union organizing.

9. Cost per Participant

- a. OJT Contracts may not exceed a total reimbursement amount of 50% and up to 75% (with OWDC pre-approval) of the maximum gross wage rate of the WA State OJT Wage Cap.
- b. When determining wage rate, the following is required to be taken into consideration:
 - i. The characteristics of the participant(s) with an emphasis on barriers to employment.
 - ii. The size of the employer with an emphasis on small businesses (i.e., employers with fewer than 250 employees).
 - iii. The quality of employer-provided training (e.g., an industry-recognized credential, advancement opportunities).
 - iv. The number of participants the employer agrees to sponsor.
 - v. The wage and benefit level of the participant (both during and after completion of the OJT).

10. Determining training duration-specific vocational preparation (SVP)

- a. Training will be limited to the period required for an OJT employee to become proficient in the position related to the training plan. The OWDC limits the training duration to no more than twenty-six (26) weeks or 1,040 hours.
- b. Training duration is negotiated with the employer based on the skills that need to be learned to perform the job at a level comparable to an employee who would be hired without the need for OJT. The rationale for the training may also consider:
 - i. Accommodations required pursuant to federal regulations including the Americans with Disability Act.
 - ii. The program's available funding and ability to adequately case manage an OJT.

11. Monitoring and Reporting

- a. Monitoring is to be completed periodically for each separate OJT contract written with the employer.
- b. Monitoring will include a 360-degree review, defined as:
 - i. On-site visitations including supervisor/participant interviews, a review of time and attendance and other reimbursement-related documentation A determination of whether the delivery of training is in accordance with the training outline/statement of work.
 - ii. Verification of:
 - a. Time and attendance with invoices.
 - b. Contracted wage rate vs. wages paid.
 - c. The start date of employment vs. start date of the training specified in the OJT contract.
 - d. Progress review to determine whether planned skills are being acquired as outlined in the training and schedule documentation.
- c. Monitoring contains both compliance and qualitative aspects to:
 - i. Determine the quality of the training and the progress of the trainee by visiting worksites and observing the actual work being accomplished.
 - ii. Verification that the training specified in the contract is the same as that being accomplished
 - iii. Monitor and review pay records to ensure the prevention of unauthorized payment
 - iv. Investigate fully any complaints received from participants suggesting the possibility of fraud

- d. As part of the regular internal monitoring effort, the LWDB will sample OJTs and review the file and where possible make site visits to ensure contract compliance. If during the monitoring an issue arises, LWDB has authority to remove participants from the site and suspend or terminate agreements.
- e. Service providers are responsible for reporting participant and expenditure activities to LWDB and require OJT employers to report regularly in detail so that deadlines are met.
- f. Time and attendance documentation must be maintained in participant file and available for OWDC review.
- g. WorkSource Specialists must be aware of proper incident reporting procedures and utilize if the situation warrants. Record keeping requirements are covered in the OJT agreement.

REFERENCES

Building the Next Generation On-the-Job Training Toolkit, Training and Employment Notice [TEN 41-10](#)

Data Integrity and Performance Policy and Handbook, [WorkSource System Policy 1020 \(Rev2\)](#)

Eligibility Policy and Handbook, [WorkSource System Policy 1019 \(Rev10\)](#)

In-demand Industry Sector or Occupation, Workforce Innovation and Opportunity Act Final Law H.R. 803 (113-128) [3\(23\)](#)

On-the-Job Reimbursement Above 50 Percent to 75 Percent, [Workforce Innovation and Opportunity Act Policy 5606](#)

OJT Wage Caps and Reimbursement Rate Waivers for Job Driven, Dislocated Worker Training, and Sector Partnership National Emergency Grants (NEGs), Training and Employment Guidance Letter, [TEGL 13-15](#)

Work-Based Training, Code of Federal Regulations Title 20 Chapter V-I1, Part 680 Subpart F, [20 CFR §680.700-730](#)

Worker Adjustment and retraining notification, Code of Federal Regulations Title 20, Chapter V, Part 639, [20 CFR §639.1](#)