

# **THE MISSISSIPPI PARTNERSHIP WORKFORCE DEVELOPMENT AREA**

## **ON-THE-JOB TRAINING POLICY**

Revised July 1, 2016

**THE MISSISSIPPI PARTNERSHIP WORKFORCE DEVELOPMENT AREA  
WORKFORCE INNOVATION AND OPPORTUNITY ACT  
ON-THE-JOB TRAINING POLICY**

**I. SCOPE AND PURPOSE**

- A. On-the-job training (OJT) is defined at WIOA Section 3(44) as 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 reimbursement to the employer of up to 50 percent of the wage rate of the participant, except as provided in section 134(c)(3)(H), 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.
- B. In certain instances, Individual Training Accounts (ITAs) and On-the-Job training may be used sequentially or concurrently to provide training to an individual. There must be close coordination between the providers of these services. They must ensure that there is no duplication of training services, and that these services are based on the training needs of the individual as documented in the individual's Individual Employment Plan (IEP).
- C. OJT is one of the options open to persons needing further assistance to find appropriate employment.

This policy shall provide the framework for WIOA Funds utilized for OJT.

**II. ON-THE-JOB TRAINING CONTRACTS**

- A. Employer Eligibility
  - 1. Any public, private non-profit, or private employer can receive an OJT Contract. No firm or industry in violation of local, state, or federal labor laws is eligible for training assistance nor will a proposal be approved if it is determined that abnormal conditions, such as a strike, a lockout or other similar conditions exist at the establishment or any of its affiliates within the state.
  - 2. No WIOA funds will be used to fund an establishment which has been suspended or barred from doing procurement business with any agency of the Executive Branch of government. Any employer who receives funds under an OJT contract will provide immediate written notice if at any time the employer or its subsidiaries learn that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
  - 3. Past performance of employers who have received payments under previous OJT contracts will be reviewed. No OJT contract will be entered into with an employer who has exhibited a pattern of failing to provide OJT participants with continued long-term employment with wages, benefits, and working conditions that are equal to those provided to regular employees who have worked a similar length of time and are doing the same type of work.

4. WIOA funds will not be used for OJT in an establishment, which has relocated within the past 120 days, when such relocation or location has resulted in an increase in unemployment in the original United States location. The establishment, which has relocated and caused unemployment as a result, must be operational for at least 120 days in the new location before it can be considered for OJT.
5. As a general rule, no more than 50% of a company's workforce may be enrolled in OJT at any one time. Waivers to this policy may be extended where economic circumstances such as major plant expansions or start-ups exist. The training of an individual in circumstances where there is a sole proprietor may be allowed if the employer can demonstrate that sufficient training and supervision will be afforded the OJT employee/trainee. The Mississippi Partnership Workforce Development Area will ensure that waivers for major plant expansions or start-ups will not cause a long-term disproportionate share of the employer's workforce to be OJT participants. In these instances, monitoring will be conducted on the initial participants as they complete their training so that the proportion of OJT participants returns to within the 50% provision.
6. The employer must attest that there are no known pre-existing factors that will cause OJT funded positions to experience a lay-off within 9 months of completion of training. If OJT funded positions experience a lay-off within 9 months of completion of the training, the Mississippi Partnership reserves the right to investigate to determine if the company officials acted in bad faith in order to receive OJT reimbursements and negotiate return of all or a portion of the cost of retraining laid-off OJT workers.
7. Non-major impact employers – If a non-major impact employer is locating to the Mississippi Partnership Local Workforce Development Area, the fiscal agent has the authority to obligate OJT funds for such an employer. A non-major impact employer is defined as an employer that will be creating less than 1,000 jobs or has less than a \$100 million investment.
8. State agencies will not be eligible to receive funds under an OJT Agreement.

B. Occupational Eligibility

1. The following jobs are ineligible to receive OJT assistance:
  - a. Occupations that have an SVP of 2 will be closely examined to determine if assistance with training is needed in that occupation;
  - b. Periodic seasonable occupations;
2. Training shall be only for occupations for which there is a demand in the area served or in another area to which the participant is willing to relocate, and consideration in the selection of training programs may be given to training in occupations determined to be in sectors of the economy which have a high potential for sustained demand or growth.
3. The Mississippi Partnership Workforce Development Area will strive to provide OJT in occupations which contribute to occupational development, upward mobility, development of new careers, and overcoming sex stereotyping in occupations traditional for the opposite sex.

4. OJT participants shall not be employed on the construction, operation, or maintenance of any facility, as is used or to be used for sectarian instruction or as a place for religious worship.
5. There will be consultation with organized labor when the position is covered by a collective bargaining agreement.
6. The actual training may take place outside the Mississippi Partnership Workforce Development Area if prior approval is granted by the area's fiscal agent.
7. No OJT contract will be written for jobs with a training duration of less than 160 hours, or more than 1040 hours.
8. Full-time employment – Contracts must be written only for full-time positions, set at 35 hours per week as defined by the Bureau of Labor Statistics, except as outlined in the following section (Section 10);
9. Contracts will not be written for less than \$7.25 an hour wage unless employability skills are learned during training that the individual can use to reach a self-sufficient wage. Such employability skills shall be documented in the participant file.
10. The maximum amount of reimbursement allowable under an OJT contract is \$15.00 an hour, regardless of compensation rate.
11. Exceptions for New Industry

Realizing that some flexibility in hours of operation in the initial phases of opening a new industry may be necessary, the Mississippi Partnership allows the following exceptions:

- a. Although contracts must be written only for full-time positions, set at 35 hours per week as defined by the Bureau of Labor Statistics, new industry may be granted an exception.
- b. If an exception is granted to a new industry to employ individuals in training that is initially for less than the 35 hour work week, the employer must ensure that the employment of that individual is in fact full-time employment, and that employment at the completion of the training will meet the minimum number of hours.
- c. If a new industry is granted this exception, the OJT service provider must closely monitor the contract, and carefully track individuals who have completed the training to ensure full-time employment is being provided to those individuals.
- d. Contracts with employers who fail to provide full-time employment for individuals who have completed training should not be renewed.

#### C. Pre-Award Review

The pre-award review required before an OJT contract is written with a new employer must include the following:

1. Names under which the establishment does business;
2. The name, title, and address of company official authorized to sign the OJT Contract.
3. Whether WIOA assistance is sought in connection with past or impending job losses at other facilities.

4. Whether wage payments can be easily verified; and
5. Worker's compensation or equivalent coverage permitted by Mississippi law.

D. Labor Concurrence

Where collective bargaining agreements exist with the employer, written concurrence by the appropriate union is required and an original letter of concurrence is to be attached to each OJT contract. If no written response is received within 30 days after written notification to the collective bargaining agent, the contract may proceed.

III. SPECIFICATIONS

A. OJT Participant Eligibility

OJT staff is required to ensure that any WIOA customer enrolled in OJT meet the following requirements:

1. In order to receive OJT services, participants must follow the guidelines of the Smart Start Career Pathway as approved by the fiscal agent and the Mississippi Partnership Local Workforce Development Board.
2. Persons must have been determined by the one-stop operator, after an interview, evaluation, or assessment, and career planning:
  - a. Unlikely or unable to obtain or retain employment that leads to economic self-sufficiency or wages comparable to or higher than wages from previous employment through career services;
  - b. To be in need of training services; and
  - c. To have the necessary skills and qualifications to successfully participate in the selected program of training services.
2. Prior to placing an individual in training, the case manager must provide the following:
  - a. Interview
  - b. Evaluation or Assessment
  - c. Career Planning
3. Employed individuals must not be earning a self-sufficient wage, currently \$21.56 an hour, at entry into OJT.
4. Participants shall not be trained for occupations in which they possess prior experience unless it can be documented that circumstances exist to justify an exception. For example:
  - a. The OJT relates 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.
  - b. Experience was gained prior to significant changes in occupational skill requirements, technological advances, and licensing/certification requirements.

B. OJT for Current Employees

OJT may be used to advance the skills of current employees when such training is necessary due to:

1. Introduction of new technologies;
2. Introduction of new production or service procedures through cross-training to retain existing workers; or

3. Employee being up graded to a new job that requires additional skills and/or knowledge.

C. OJT Upgrades

In order for an occupation to qualify for a job upgrade in on-the-job training for an employed individual, certain conditions must be met:

1. The job upgrade must be to a new job that requires additional skills and abilities that the individual does not possess from prior work experience or training, and
2. These additional skills and abilities must be documented in that individual's training outline, and detailed procedures must be written in the training outline to evaluate that individual's mastery of the skills that are learned.

D. Contract Terms

OJT contracts should, at a minimum:

1. Identify the occupation, skills, and competencies to be learned;
2. Specify the length of training time provided;
3. Define what constitutes successful completion of training;
4. Identify the percentage rate used for reimbursement to the employer; and
5. Contain reference required assurances.

E. Evaluation of Employer and Trainee Progress

Services providers should regularly, at a minimum of monthly, evaluate approved OJT contracts. Evaluation requires a meeting with the employer and the trainee(s) to review work performance and/or training progress. In addition, the OJT evaluator should review payroll records.

F. Priority of Service

1. Veterans: Should a priority of service become necessary for determining allocation of OJT funds, veterans as described by the Jobs for Veterans Act will receive priority status when all eligibility and competitive factors required by law are met and equal.
2. Adults: Since funds allocated to the local area for adult employment and training services are limited, priority shall be given to individuals enrolled in WIOA under the adult program who are recipients of public assistance, other low income individuals, and basic skills deficient individuals enrolled in WIOA under the adult program for intensive and training services. A Priority of Service Rating Sheet must be completed for each adult who is requesting training services from the Mississippi Partnership. Scoring on this rating sheet will determine the priority that these individuals will receive in accessing training funds. If no waiting list exists, those persons who receive any points on the rating scale must immediately receive appropriate WIOA Title I adult Career or Training services. *(Note: Priority of service is not applicable to dislocated workers.)*

IV. SPECIAL ASSURANCES

The special assurances are included as an attachment and address the following areas:

A. General program requirements;

- B. Benefits;
- C. Labor standards; and
- D. Nondiscrimination.

V. 50% REIMBURSEMENT EXCEPTION

The WIOA Section 134(c)(3)(H) allows for The Mississippi Partnership Local Workforce Board to increase the OJT reimbursement rate up to 75% in certain circumstances when taking into account the following factors:

- A. The characteristics of the participants taking into consideration whether they are “individuals with barriers to employment” as defined in Section 3(24);
- B. The size of the employer, with an emphasis on small businesses;
- C. The quality of the employer-provided training and advancement; and
- D. Such other factors as the local board, may determine to be appropriate, which may include the number of employees participating in the training, wage and benefit levels of those employees (at present and anticipated upon completion of the training), and relation of the training to the competitiveness of a participant.

OJT service providers must receive written approval from the fiscal agent before utilizing this waiver.

I. CONFLICT OF INTEREST

Please refer to Mississippi Partnership Conflict of Interest Policy which ensures that representatives of organizations entrusted with public funds do not personally profit. The OJT program is subject to this policy.

II. PROCEDURES

The Fiscal Agent shall adopt and WIOA adult, dislocated worker and NEG service providers shall comply with procedures describing how OJT services are justified, documented, and paid out.

III. EFFECTIVE DATE

This policy is effective July 1, 2016.

Attachment: On-the-Job Training Special Assurances

## **ON-THE-JOB TRAINING POLICY SPECIAL ASSURANCES**

### **I. GENERAL PROGRAM REQUIREMENTS**

- A. WIOA funds shall only be used for OJT activities which are in addition to those which would otherwise be available in the area in the absence of such funds.
- B. Funds provided under the WIOA shall not be used to duplicate facilities or services available in the area (with or without reimbursement) from Federal, State, or local sources, unless the plan established that alternative services or facilities would be more effective or more likely to achieve performance measures.
- C. No person or organization may charge an individual a fee for the placement or referral of such individual in or to a training program under the WIOA.
- D. WIOA funds shall not be used to provide financial assistance for any program which involves political activities.
- E. No funds available under WIOA shall be used for employment generating activities, investment in revolving loan funds, capitalization of businesses, investment in contract bidding resource centers, economic development activities, or similar activities, that are not directly related to training for eligible individuals under WIOA. No funds under WIOA shall be used for foreign travel. Section 181(e)

### **II. BENEFITS**

- A. A trainee shall receive no payments for training activities in which the trainee fails to participate without good cause.
- B. Individuals employed in activities authorized under the WIOA shall be paid wages which shall not be less than the highest of:
  - 1. The minimum wage under section 6(a)(1) of the Fair Labor Standards Act of 1938,
  - 2. The minimum wage under the applicable State or local minimum wage law, or
  - 3. The prevailing rates of pay for individuals employed in similar occupations by the same employer. Section 181(a)(1)(A)

### **III. LABOR STANDARDS**

- A. Health and safety standards established under Federal and State law, otherwise applicable to working conditions of employees, shall be equally applicable to working conditions of participants. With respect to any participant in a program conducted under the WIOA who is engaged in activities which are not covered by health and safety standards under the Occupational Safety and Health Act of 1970, the Secretary shall prescribe, by regulation, such standards as may be necessary to protect the health and safety of such participants. Section 181(b)(4)
- B. To the extent that a State workers' compensation law is applicable, workers' compensation shall be provided to participants on the same basis as the compensation is provided to other individuals in the State in similar employment. To the extent that such law is not applicable, each recipient of funds under the WIOA shall secure insurance coverage for injuries suffered by such participants, in accordance with regulations prescribed by the Secretary. Section 181(b)(4)
- C. All individuals employed in subsidized jobs 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. Section 181(b)(5)



- D. No currently employed worker shall be displaced by any participant (including partial displacement such as a deduction in the hours of non-overtime work, wages, or employment benefits.) Section 181(b)(2)(A)
- E. A specified activity shall not impair an existing contract for services or collective bargaining agreement, and no such activity that would be inconsistent with the terms of a collective bargaining agreement shall be undertaken without the written concurrence of the labor organization and employer concerned. Section 181(b)(2)(B)
- F. No participant shall be employed or job opening filled:
  - 1. When any other individual is on layoff from the same or any substantially equivalent job [181(b)(3)(A)] , or
  - 2. When 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 a participant whose wages are subsidized under the WIOA. Section 181(b)(3)(B)
- G. No jobs shall be created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed individuals. Section 181(b)(3)(C)
- H. Each recipient of funds under the WIOA shall provide to the Secretary assurances that none of such funds will be used to assist, promote, or deter union organizing. Section 181(b)(7)
- I. Interested members of the public, including representatives of businesses and labor organization, shall be provided an opportunity to submit comments to the Secretary with respect to programs and activities proposed to be funded under Subtitle B. Section 181(b)(6)
- J. In no case shall an individual who is fully skilled in an occupation be placed in OJT in that occupation.

#### IV. NONDISCRIMINATION

- A. No recipient under WIOA may discharge or in any other manner discriminate against a participant or against any individual in connection with the administration of the program involved, or against any individual because such individual has filed any complaint or instituted or caused to be instituted any proceeding under or related to WIOA, or has testified or is about to testify in any such proceeding or investigation under or related to WIOA, or otherwise unlawfully denied to any individual a benefit to which that individual is entitled under the provisions of WIOA or other Department of Labor regulations. The Department of Labor, within thirty days, will take action or order such corrective measures, as necessary, with respect to the recipient or the aggrieved individual, or both. Section 184(f)
- B. For the purpose of applying the prohibitions against discrimination on the basis of age, under the Age Discrimination Act of 1975, on the basis of disability under Section 504 of the Rehabilitation Act, on the basis of sex under Title IX of the Education Amendments of 1972, or on the basis of race, color, or national origin under Title VI of the Civil Rights Act of 1964, programs and activities funded or otherwise financially assisted in whole or in part under WIOA are considered to be programs and activities receiving Federal financial assistance. Section 188(a)(1)
- C. No individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any program because of race, color, religion, sex, national origin, age, disability, or political affiliation or belief. Section 188(a)(2)