

INCUMBENT WORKER TRAINING POLICY

EXECUTIVE SUMMARY

The purpose of this policy is to provide guidance regarding Incumbent Worker Training (IWT). IWT is designed to meet the specific requirements of an employer or group of employers to retain a skilled workforce or avert the need to lay off employees, and is conducted with a commitment by the employer to retain (or avert the layoff of) the incumbent worker(s) trained. Incumbent worker training must increase the competitiveness of the employer or employee.

To qualify as an incumbent worker, the worker must be at least 18 years of age and employed full time, meet the Fair Labor Standards Act requirements for an employer-employee relationship, and have an established employment history with the employer for 6 months or more, unless the incumbent worker is part of a training cohort in which a majority of those being trained meet the employment history requirement. An incumbent worker does not have to meet the eligibility requirements for career and training services under WIOA unless the worker is enrolled as a WIOA participant.

Local Workforce Development Areas (LWDAs) may reserve and use no more than 20 percent of WIOA Adult and Dislocated Worker funds allocated to the local area to pay for the Federal share of the cost of providing incumbent worker training. Employers participating in incumbent worker training are required to pay the non-Federal share of the cost of providing training to their incumbent workers, which may range from 10% to 50% depending on employer size.

To determine the eligibility of an employer to receive funding, the MCWDB shall take into account various factors to evaluate whether training would increase the competitiveness of the employees or both the employees and the employer, which may include: the characteristics of the individuals in the program, such as basic skills deficiencies; the number of employees participating in the training; the pre- and post-training wage and benefit levels of those employees; utilization as part of a larger sector and/or career pathway strategy; and employer size.

REFERENCES

Workforce Innovation and Opportunity Act (WIOA) Section 134 (d) (4)
20 CFR 680.780 through 680.840
Training and Employment Guidance Letter: WIOA 19-16

PROCEDURAL GUIDANCE

I. Incumbent Worker Eligibility

20 CFR 680.780 specifies that to qualify as an incumbent worker, the incumbent worker needs to be employed, meet the Fair Labor Standards Act requirements for an employer-employee relationship, and have an established employment history with the employer for 6 months or more, with the following exception: In the event that the incumbent worker training is being provided to a cohort of employees, not every employee in the cohort must have an established employment history with the employer for 6 months or more as long as a majority of those employees being trained do meet the employment history requirement. All employees participating in incumbent worker training must meet the eligibility requirements below:

- At least 18 years of age;
- A citizen of the United States or a non-citizen whose status permits employment in the United States;
- Males born on or after January 1, 1960 must register with the selective service system within 30 days after their 18th birthday or at least before they reach the age of 26;
- Meet the Fair Labor Standards Act requirements for employer-employee relations and have an established employment history with the employer for 6 months or more (which may include time spent as a temporary or contract worker performing work for the employer receiving IWT funds); and
- Existing workers must be currently employed full-time with the participating employer.

Incumbent Worker participants must meet the eligibility requirements above. An incumbent worker participant does not have to meet the eligibility requirements for career and training services for adults and dislocated workers under WIOA, unless they also are enrolled as a participant in the WIOA Adult or Dislocated Worker program. As such, they are not included in calculations for the State performances measures. LWDA's are, however, required to input data into CalJOBS on individuals who receive incumbent worker training, including characteristics, services and outcomes.

II. Employer Eligibility

1. For the purpose of determining the eligibility of an employer to receive funding, the MCWDB shall take into account factors that help to evaluate whether training would increase the competitiveness of the employees or both the employees and the employer, consisting of: a) the characteristics of the individuals in the program; b) the relationship of the training to the competitiveness of the employees or both the employees and the employer; and c) such other factors as the MCWDB may determine to be appropriate, which may include:
 - the number of employees participating in the training;
 - the wage and benefit levels of those employees (at present and anticipated upon completion of the training);
 - the existence of other training and advancement opportunities provided by the employer;
 - layoffs averted as a result of the training;
 - utilization as part of a larger sector and/or career pathway strategy
 - employer size
2. IWT should be provided for private sector employers; however, non-profit and local government entities may be recipients of IWT funds.
3. Employers must be in operation at least twelve months and employ at least five full-time employees, be financially viable and current on all state and federal tax obligations.
4. Any employer that has received payments under previous on-the-job training, customized training or IWT and that exhibited a pattern of failure to provide workers continued, long term employment as

regular employees with wages and working conditions at the same level and to the same extent as similarly situated employees is ineligible to enter into further WIOA IWT contracts.

5. In considering an employer's eligibility for an IWT contract, LWDA's should consider the employer's past history with IWT, OJT and customized contracts, financial stability, history of layoffs, relocation and labor disputes as well as occupational and industry outlooks.
6. The MCWDB shall conduct an employer pre-award review checklist containing requirements of WIOA 683.260 and TEGL 19-16.

III. Employer Non-Federal Share/Employer Reimbursements

1. WIOA Section 134 (d) states that employers participating in IWT shall be required to pay for the non-Federal share of the cost of providing the training to incumbent workers of the employers. The MCWDB shall establish the non-Federal share of such cost (taking into consideration such other factors as the number of employees participating in the training, the wage and benefit levels of the employees (at the beginning and anticipated upon completion of the training), the relationship of the training to the competitiveness of the employer and employees, and the availability of other employer-provided training and advancement opportunities.
2. The employer non-Federal share is dependent on the size of the employer and shall not be less than:
 - a. 10 percent of the cost, for employers with 50 employees or less;
 - b. 25 percent of the cost, for employers with more than 50 employees but not more than 100 employees; and
 - c. 50 percent of the cost, for employers with more than 100 employees.
3. Employer size is based on the number of employees currently employed at the local operation where the incumbent worker training placements will be made. Employer size is determined by the number of employees at the time of the execution of the incumbent worker training contract. This applies to all employers, including employers with seasonal or intermittent employee size fluctuations. Employers must provide documentation that indicates employer size. If multiple employer sites exist within an LWDA, employer agreements may be limited to physical locations within the LWDA area, or the LWDA may develop one agreement with multiple locations, training descriptions and budgets.
4. The non-Federal share provided by an employer may include the amount of the wages paid by the employer while the worker is attending training, equipment purchased for training, curriculum development expenses, travel and lodging costs, etc. The employer may provide the share in cash or in kind, fairly evaluated. The employer non-Federal share must not be calculated using any other Federal funds, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs.
5. The business will be required to calculate its actual non-federal share as a part of the application for training funds and at the conclusion of the training, should the non-federal share not meet the limits, the funds could potentially have to be repaid. Official payroll records, time and attendance records, invoices for equipment purchased, etc. must be utilized to determine the amount of the employer's share of cost.
6. Employer cost share contributions must be tracked and documented in the contract file and recorded on the Financial Status Report. In addition, the methodologies for determining the value of in-kind contributions must be documented in the contract file and conform to cost sharing requirements at 2 CFR 200. 306 and 2 CFR 2900.8.
7. No WIOA funds shall be used for Incumbent Worker wages per section 181 (b) (1).

IV. Employer Contract Requirements

1. IWT is provided based on a formal, written contract with the employer or group of employers that is signed prior to the initiation of training with a copy given to the employer(s).
2. Priority will be given to incumbent worker training contracts which: a) Provide training in one of the LWDA's Priority Sectors; b) The individual has the opportunity for upward mobility into a higher-paying job classification; c) The employer indicates an interest or potential to "back-fill" entry level positions with WIOA participants; and d) The individual's hourly wage is no less than \$14.00/hour and the position provides fringe benefits.
3. Incumbent worker training shall be limited to the period of time required for the individual (s) to become proficient in the skills for which the training is being provided. In determining the appropriate length of an IWT contract, consideration should be given to the skill requirements of the occupation and the academic and occupational skill level of the individual. LWDA's shall utilize ONET SVP skills training requirements in addition to an assessment of the individuals past skill and experience to justify the length of training.
4. Incumbent Worker training contracts shall not be written to provide skills for seasonal, temporary or intermittent employment.
5. IWT training may incorporate work-based, classroom and other training activities approved under WIOA to meet employer skill requirements. The employer or an intermediary may provide the training.
6. The IWT contract should address at a minimum: a) Employer documentation of the six month work history requirement b) Maximum allowable costs of training; c) Employer commitment to retain the individual as a full time employee with the same wages, benefits, hours and working conditions; d) Hourly wage of the individual; e) Length of training required; f) Description of occupations involved, skill(s) and competencies to be provided and learned; g) Assessment and identification of the individuals skills gaps; h) Performance measures outcome requirements; i) A provision for termination for lack of funds or recapture of overpayments, lack of individual attendance or failure of employer to comply with initial or upgraded employment requirements; j) A provision for maintaining and providing records for LWDA, state and federal monitoring and review, and k) Employer Assurances, as listed below.

V. Employer Assurances

The Employer agrees to adhere to the following provisions:

1. 20 CFR 680.790 specifies that the training be conducted with a commitment by the employer to retain or avert the layoffs of the incumbent workers trained.
2. WIOA Section 134 (d) and 20 CRF Section 680.820 specify that employers participating in IWT shall be required to pay the non-Federal share of the cost of providing training to incumbent workers. The amount of non-Federal share depends upon factors such as the number of employees participating in the training, the wage and benefit levels of the employees (at the beginning and anticipated upon completion of training), the relationship of the training to the competitiveness of the employer and employees and the availability of other employer provided training and advancement opportunities.
3. 20 CFR Section 680.830 specifies that funds provided to employers for incumbent worker training must not be used to directly or indirectly assist, promote or deter union organizing.
4. 20 CFR Section 680.840 specifies that WIOA funds may not be used to directly or indirectly aid in filling of a job opening which is vacant because the former occupant is on strike, or is being locked out in the course of a labor dispute, or the filling is otherwise an issue in a labor dispute involving a work stoppage.

5. 20 CFR Section 683.260 specifies that WIOA funds must not be used for incumbent worker training for employees of any business or part of a business that has relocated from any location in the US until the company has operated at that location for 120 days, if the relocation has resulted in any employee losing their job at the original location.
6. 20 CFR Section 683.270 specifies that a participant in a WIOA program activity must not displace (including a partial displacement such as a reduction in the hours of non-overtime work, wages of employment benefits) any currently employed employee (as of the date of the participation).
7. 20 CFR Section 683.270 specifies that a WIOA program or activity must not impair existing contracts for services or collective bargaining agreements. When the program or activity would be inconsistent with a collective bargaining agreement, the labor organization and employer must provide written concurrence before the activity begins.
8. 20 CFR Section 683.270 also specifies that a participant may not be employed in or assigned to a job if: (1) any other individual is on layoff from the same of any substantially equivalent job; (2) 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 created with the WIOA participant; (3) the job is created in a promotional line that infringes in any way on the promotional opportunities of currently employed workers as of the date of the participation.
9. 20 CFR Section 683.275 specifies that individuals employed in activities under WIOA 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.
10. 20 CFR WIOA Section 683.275 specifies that individuals employed in programs and activities under WIOA 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.
11. 20 CFR Section 683.280 specifies that health and safety standards established under federal and State law otherwise applicable to working conditions of employees are equally applicable to working conditions of participants engaged in programs and services under WIOA. To the extent that a State workers' compensation law applies, workers' compensation must be provided to participants in program and activities under WIOA on the same basis as the compensation is provided to other individuals in the State in similar employment.
12. WIOA Section 181 (b)(1) specifies that no WIOA funds shall be used to pay the wages of incumbent employees during their participation in economic development activities provided through a statewide workforce development system.
13. WIOA Section 188 specifies that no individual shall be excluded from participation in, denied employment in the administration of or in connection with any such program or activity because of race, color, religion, sex in a WIOA program or activity solely because of the status of the individual as a participant.
14. WIOA Section 188 specifies that no participants shall be employed to carry out the construction, operation or maintenance of any part of a facility that is used or to be used for sectarian instruction or as a place for religious worship with the exception of maintenance of facilities that are not primarily use for instruction or worship and are operated by organizations providing services to WIOA participants.
15. The Employer must comply with 29 CFR 38.10 (d) (e) (f). As provided in 20 CFR §38.3(b), 29 CFR part 32, subparts B and C and appendix A, which implement the requirements of Section 504 pertaining to employment practices and employment-related training, program accessibility, and reasonable accommodation, have been incorporated by reference. Employers, employment agencies, or other entities covered by Titles I and II of the ADA should be aware of obligations imposed by those titles. See 29 CFR part 1630 and 28 CFR part 35. Similarly, recipients that are also employers covered by the anti-discrimination provision of the Immigration and Nationality Act should be aware of the obligations imposed by that provision.

See 8 U.S.C. 1324b.

16. 2 CFR 200. The Employer agrees that no individual in a decision-making capacity will engage in any activity, including the administration of the IWT contract supported by WIOA funds, if a conflict of interest, real or apparent, is present. A conflict of interest may arise in the event that an employee under this contract is an immediate family member (or partner) of an individual engaged in a decision-making capacity with the LWDA, the MCWDB, the employer or an organization that has a financial or other interest in the firm or organization selected for the contract. Immediate family is defined as husband, wife, son, son-in-law, daughter, daughter-in-law, mother, mother-in-law, father, father-in-law, brother, brother-in-law, sister, sister-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparents, grandchild, half-brother, half-sister, first cousin or individual residing in the same household. In the event of a potential conflict of interest, the employer will notify the LWDA in writing.

17. WIOA Section 194 (5) No person or organization may charge an individual a fee for the placement or referral of the individual in or to a workforce investment activity under this title.

18. WIOA Section 194 (13) Services, facilities or equipment funded under WIOA may be used, as appropriate, on a fee-for-service basis, by employers in a local area in order to provide employment and training activities to incumbent workers – (A) when such services, facilities or equipment are not in use for the provision of services for eligible participants under this title; and (B) if such use for incumbent workers would not have an adverse effect on the provision of services to eligible participants under this title; and (C) if the income derived from such fees is used to carry out the programs authorized under this title.

INQUIRIES

If you have questions please contact staff at (831) 796-6434. This policy is posted on the WDB website located at: www.montereycountywdb.org/policies/

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