

CITY OF SANTA ANA
WORKFORCE DEVELOPMENT
Policy Bulletin #33
Subject: Incumbent Worker Policy-DRAFT
Date: TBA

I. PURPOSE

This Incumbent Worker Training (IWT) Policy Bulletin provides the Santa Ana Workforce Development Area and its associated America's Job Center of California (AJCC) with the criteria to determine which businesses, workers, or group of workers, are eligible for IWT services, and the requirements of providing IWT, including the cost sharing requirements.

II. REFERENCES

- Workforce Innovation and Opportunity Act (WIOA) Public Law 113-128;
- WIOA Section 134(d)(4);
- WIOA Regulations at 20 CFR Parts 680.780 through 680.820;
- Training and Employment Guidance Letter (TEGL) 19-16;
- Employment Development Department (EDD) Directive on Incumbent Worker Training WSD19-01;
- EDD Directive on WIOA Training Directive Expenditure Requirement WSD18-10

III. BACKGROUND

IWT is listed among the allowable training services under WIOA section 134(d)(4). IWT is designed, to meet the special needs of an employer, group of employers, or industry group to retain a skilled workforce, and avert the need to lay off employees. It assists workers in obtaining the skills necessary to retain employment, or to increase skill levels of employees so promotion within the company can occur and consequently create backfill opportunities for less-skilled employees.

IV. POLICY

Under Section 134(d) (4) of WIOA, up to 20 percent of adult and dislocated worker funds can be used to provide for the federal share of the cost of providing training. IWT may be used to meet the needs of a specific employer or group of employers to promote the competitiveness of employers, employees, or industries, increase retention opportunities, increase career advancement opportunities and create backfill opportunities for WIOA participants.

It is the policy of the Santa Ana Workforce Development Board (SAWDB) that an IWT may be provided based on the following factors:

- The increase in competitiveness of the employee and employer;
- The characteristics of the participants in the program (e.g. "individuals with barriers to employment" (WIOA section 3(24));
- The number of employees participating in the training;
- The employees' advancement opportunities along with wages and benefits (both pre- and post-training earnings);
- Credentials and skills gained as a result of the training;
- Layoffs averted as a result of the training;

- Utilization as part of a larger sector and/or career pathway strategy including older youth;
- Employer size and industry sector.

Prohibitions-

- 20 CFR 680.840 clarifies that there is an explicit prohibition on the use of work-based training funds which includes IWT, in assisting, promoting, or deterring union organizing activities.
- 20 CFR 683.270 prohibits displacement of regular, unsubsidized employees by participants. This section includes the layoff rule, has extensive anti-displacement provisions and affirms the primacy of collective bargaining agreements.
- 20 CFR 683.275 Prohibits employers from treating trainees differently from regular employees; covers pay, safe work conditions and fringe benefits 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.
- 20 CFR 683.280 addresses workplace health, safety standards, and workers' compensation.
- 20 CFR 683.285 includes nondiscrimination and equal opportunity provisions and forbids employment or training in sectarian activities.
- 20 CFR 683.255 offers additional guidance on prohibition of sectarian activities.
- 20 CFR 683.260 prohibits business relocation assistance.

V. PROCEDURES

A. Employee Eligibility- For an employee to receive IWT funds, the AJCC must determine and document that the individual(s) receiving training are:

- Employed by the participating firm for at least 20 weekly hours;
- Meet the Fair Labor Standards Act requirements for an employer-employee relationship at the time of the employer's application (<http://www.dol.gov/whd>);
- Have an established employment history with the employer for six (6) months or more on the date of employer's application. This may include time spent as a temporary or contract worker performing work for the employer;

****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 the simple majority of those employees being trained do meet the employment history requirement.

CalJOBS-Must register with CalJOBS;

- May agree to enroll as a participant in the WIOA adult or dislocated worker program;
- Must meet Selective Service requirements.

B. Employer Eligibility- For an employer to receive IWT funds, the AJCC must determine and document that:

- The training improves the labor market competitiveness of the employer and employees;
- The employer must be in business within Santa Ana for more than 120 days prior to the application date;
- The employer demonstrates financial responsibility by providing its State and Federal Tax return within the last two years;
- The employer must not have laid off workers within 180 days to relocate to California from another state;
- The employer must be current in unemployment insurance and workers' compensation insurance, penalties, and/or interest or related payment plan;
- Must agree to the data collection provisions of WIOA or any other local, state, and federal requirement in this regard for the period of training and beyond as required thereafter;
- Must agree to furnish information needed for retention services, as required under WIOA.

****Note:** Generally, IWT should be provided to private sector employers; however, there may be instances where non-profit and local government entities may be the recipients of IWT funds (TEGL 19-16).

Eligible Occupation Sectors for Training- All IWT must be in an in-demand occupations within priority and/or high-growth industry sectors as identified by the WDB within Orange County. These sectors currently include, but are not limited to, the following:

- Healthcare
- Construction
- Global Trade and Logistics
- Advanced Manufacturing
- Leisure and Hospitality
- Information Technology

If outside the above-listed sectors, permission can be granted upon approval from SAWDB.

Training Providers-

The employer shall select a training provider that best suits the training needs of the employer. Trainers may be public or private professional trainers, equipment vendors, or subject matter experts. The training providers should be California-based, unless the training is so unique that the training provider cannot be found in California.

IWT may be provided through Individual Training Agreements (ITAs) or through contracts for training services. If the training is provided through an ITA, all requirements of the ITA must be met. If the IWT training provider is contracted, the contract must be established through proper procurement procedures.

Training providers without adequate experience and performance, accreditation (including accredited instructors), curricula that lead to industry-accepted credentials, high placement rates, and/or high completion/graduation rates, shall not be considered.

Training Activities-

The IWT shall be coordinated by the AJCC in conjunction with the employer(s) or other involved entities for the purpose of assisting those workers in obtaining training and the skills necessary to retain employment or avert layoffs.

Training may be conducted by the employer or by a training or educational institution on behalf of the employer. All IWT programs must demonstrate substantial involvement of the employer which includes a plan for curriculum development, training delivery, and performance monitoring. Training may take place at the employer's own facility, at a public or private training facility, or at a combination of sites that best meet the needs of the employer. Additionally, remote training may be considered in appropriate circumstances as determined by the SAWDB.

Credentials and/or certificates of completion issued by the trainer must be provided for each employee and uploaded to participant's case file in CalJOBS along with all training activities within two (2) weeks of training completion.

Allowable Training Costs- It is the policy of the WDB that the costs of IWT program should be inclusive of all legitimate costs to the business that are necessary to allow for the provision of such IWT program services. The following are the allowable training costs:

- Training/Course registration
- Textbooks/course materials used 100% for the training activities
- Tuition costs for training courses or programs
- Expendable materials and supplies directly related to training
- Instructor/trainer salaries

The above list is not intended to be all-inclusive, as there may be other legitimate costs that can be substantiated by the business as necessary to allow for the provision of training services. The AJCC should consult with their Regional Workforce Development Managers to assess the eligibility of costs not listed above.

Maximum Cost Limit-

The maximum amount to be provided under this program is \$4,000.00 per trainee.

****Note:** Exceptions may be considered. The following will be reviewed and taken into account: number of employees participating in the training, the wage and benefit levels of the employees, the relationship of the training to the competitiveness of the employer and employees, and the availability of other employer-provided training and advancement opportunities will be considered. Where appropriate, the AJCC should attempt to leverage other available resources.

Employer Share of Costs-

Employers participating in IWT are required to pay for a share of the cost of providing the IWT. The participating employer may provide its share through both monetary payment and fairly evaluated in-kind contributions (e.g. training materials, facility, and equipment). In-kind contributions and corresponding monetary value must be detailed in the IWT contract. The wages paid to individuals while in training may be considered as a source of matching funds. If the participating employees are represented by a labor union that has a training fund, their investment can be leveraged as employer contribution. Other types of leveraged funding (i.e. ETP, grants) may also qualify as employer contribution.

The minimum amount of employer share in the IWT costs shall be negotiated on a case by-case basis, but in no case can be, less than the minimums set in, WIOA sec. 134(d)(4)(D) which are based on the size of the employer:

- At least 10 percent of the cost of the training for employers with 50 or fewer employees;
- At least 25 percent of the cost of the training for employers with 51 to 100 employees;
- At least 50 percent of the cost of the training for employers with more than 100 employees.

****Note:** Although training may be requested by a single employer or group of employers, payments must be disbursed to a single entity and there shall be only one fiduciary party to the agreement.

IWT expenditures can be counted toward the training expenditure requirement in EDD Directive on WIOA Training Expenditure Requirement WSD18-10. The employer contributions for IWT can be counted as leveraged dollars.

CalJOBS- All recipients of IWT must be reported to DOL, regardless of whether they become a participant in one of the other WIOA programs. Individuals who participate in IWT must be registered in CalJOBSSM, and do the following:

- Title I – Workforce Development application with an Incumbent Worker eligibility date entered. The application and eligibility requirements for the IWT eligibility is truncated and requires minimal information.
- On the Eligibility Summary tab of the Title I application:
 - Set “Incumbent Worker Eligibility” to yes.
 - Add the appropriate IWT grant code, then select [Finish] to save the application.
- CalJOBS Activity Code 308 – IWT should be added to the application and associated to the appropriate funding stream for the duration of the IWT. If utilizing WIOA formula funds, staff must associate grant code 2284 – Incumbent Worker Training Formula to the 308 – IWT activity code.
- A local grant code may be required when inputting into CalJOBS,
- Local Area staff must ensure that the employer participating in IWT is registered as a preferred employer (recruiting employer) in CalJOBS, and the CalJOBS Activity Code E68 – IWT is added to the employer’s account to track the activity and expenditures. For more information about registering an employer into CalJOBS, please see WSIN12-31.

VI. ACTION

Bring this policy to the attention of all staff and relevant parties.

VII. INQUIRIES

If you have any questions regarding this policy, please contact Administrator at 714-565-2621.