

## **WIOA Incumbent Worker Training (IWT) Policy**

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### **Policy Memorandum 18-05 Change 1**

**Date:** September 11, 2019

**To:** All WIOA Staff and Service Providers

**Purpose:** To provide guidance to staff and contractors (service providers) utilizing incumbent worker training services for eligible clients.

**Rescissions:** Policy Memorandum 18-05 (May 29, 2019)

**References:** Workforce Innovation and Opportunity Act (WIOA) (Public Law 113-128) Sections; 122(h)&(i), 134(d)(4), 134(G)(ii), 134(c)(3)(H), and 194(4); Title 20 Code of Federal Regulations Sections 680.780 – 680.820; Training and Employment Guidance Letter (TEGL) 10-16, Change 1, Subject: Performance Accountability Guidance for WIOA Title I, Title II, Title III and Title IV Core Programs (August 23, 2017); TEGL 19-16: Guidance on Services provided through the Adult and Dislocated Worker Programs under the Workforce Innovation and Opportunity Act (WIOA) and the Wagner-Peyser Act Employment Services (ES) as amended by title III of WIOA, and for Implementation of the WIOA Final Rules (March 1, 2017); California Unemployment Insurance Code Sections 14000-14530; Workforce Services Directive WSD18-10 (PDF), WIOA Training Expenditure Requirement, (January 31, 2019); WSD18-03 (PDF), Subject: Pathway to Services, Referral, and Enrollment (August 29, 2018); WSD17-08 (PDF), Subject: Procurement of Equipment and Related Services (March 14, 2018); WSD16-18 (PDF), Subject: Selective Service Registration (April 10, 2017); WSD16-16 (PDF), Subject: Allowable Costs and Prior Written Approval (February 21, 2017); Workforce Services Directive WSD16-15, Subject: Dislocated Worker Additional Assistance Projects (December 28, 2016); WSD16-13, Subject: Monthly and Quarterly Financial Reporting Requirements (November 28, 2016); WSD16-04, Subject: Rapid Response and Layoff Aversion Activities (July 22, 2016). WSD15-23 (PDF), Subject: Transfer of Funds – WIOA Adult/Dislocated Worker Programs (March 29, 2016); Workforce Services Information Notice WSIN12-31 (PDF), Subject: Assisting Employers in the New CalJOBS (February 15, 2013);

## **Background:**

Incumbent worker training (IWT) provides both employers and workers with the opportunity to build and maintain a quality workforce. The program is designed to meet the needs of an employer or group of employers to retain a skilled workforce or avert layoffs so participants can be promoted within the company and create backfill opportunities for employers. WIOA sets criteria to determine which workers, or groups of workers, are eligible for IWT services and the cost sharing required for IWT projects and employers.

## **Policy:**

### **A. Incumbent Worker Eligibility**

An incumbent worker must:

1. Be a current employee of an eligible employer and have an established employment history with the employer for six months or more;
2. Meet the Fair Labor Standards Act requirements for an employer-employee relationship; and
3. Meet the Selective Service requirements.

There is an exception to the six-month requirement, which is that when 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 six months or more as long as a majority of those employees being trained meet the employment history requirement. (Reference: Title 20 CFR Section 680.780)

An incumbent worker does not have to meet the eligibility requirements for career and training services for adults and dislocated workers under WIOA Title I, unless they are co-enrolled as a participant in the WIOA adult or dislocated worker program and will receive WIOA funded services in addition to the IWT. IWT can also be used for underemployed workers, e.g. workers who would prefer full-time work but are working part-time for economic reasons.

### **B. Employer Eligibility**

The Santa Cruz County Workforce Development Board (SCC WDB) staff or designated review panel will determine whether an employer is eligible for IWT based on, at a minimum:

1. The characteristics of the individuals in the program (e.g. individuals with barriers to employment).
2. The relationship of the training to the competitiveness of the individual and employer.
3. The employer has a valid California Employer Account Number.
4. Other factors the SCC WDB staff or service provider determines appropriate, which may include, but are not limited to, the following:
  - a. The number of employees participating in the training.
  - b. The employees' advancement opportunities, along with wages and benefits (both pre-and post-training earnings).
  - c. The existence of other training and advancement opportunities provided by the employer.
  - d. Credentials and skills gained as a result of the training.
  - e. The number of layoffs averted as a result of the training.

- f. Utilization as part of a larger sector and/or career pathway strategy.
- g. Employer size.  
[Reference: WIOA Section 134(d)(4)(A)(ii) and TEGL 19-16]

The following items will be taken into consideration:

5. Each employer will be informed of the SCC WDB staff's or designated review panel's decision of the employer's eligibility to receive funding for IWT.
6. The SCC WDB staff or designated review panel will provide its rationale/reasoning to support the IWT initiative.
7. The agreement between the SCC WDB and the employer must include documentation that the six-month employment requirement is met.
8. The local IWT policy and documentation for each initiative will be retained at the local level. It is the SCC WDB's responsibility, in partnership with the employer, to ensure all training is completed and certificates of completion are obtained for each trainee and retained locally. This documentation will be subject to monitoring.

### **C. Employer Share/Reimbursements**

Employers participating are required to share in the cost of the training for those individuals in IWT. The employer share is based on the size of the employer and will be at least:

- 10% of the cost for employers with up to 50 employees,
- 25% of the cost for employers with 51 to 100 employees, and
- 50% of the cost for employers with more than 100 employees.  
[Reference: WIOA Section 134(d)(4)(C)-(D)]

The employer's proportionate share for the cost of training may include the employees' hourly wages while attending the training program as well as the cost of the training program (teacher, books and materials, etc.). The employer's contribution may be in cash or in kind, fairly evaluated, and must be tracked and documented in the agreement file. 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 employer 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 the cost. The employer's 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.

The SCC WDB may contribute up to \$10,000 of IWT funds per trainee. In limited circumstances, based on factors including employer size, trainee barriers, availability of funding and other applicable factors, the SCC WDB Director may provide a waiver to provide additional support up to the employer share requirement.

### **D. Performance and Reporting Requirements**

Since eligibility for IWT is determined at the employer level (not the individual level), the Department of Labor (DOL) does not consider individuals in IWT to be a participant in the Adult and/or Dislocated Worker program. Individuals who only receive IWT are not included in the WIOA Adult or Dislocated Worker program performance calculations. However, the DOL requires the SCC WDB and the State to report certain participant and performance data on all individuals participating in IWT. The required information for these individuals is limited to

demographic information, and information necessary to calculate employment in the 2nd and 4th quarters after exit, median earnings in the 2nd quarter after exit, measurable skill gains, and credential attainment. For the purpose of calculating these metrics for IWT-only individuals, the exit date is the last date of training, as indicated in the training contract.

To reduce the reporting burden on employers and the Local Boards, the DOL encourages the collection of Social Security Numbers (SSNs) as part of the training contract with the employer. For all individuals where an SSN is collected, the Employment Development Department (EDD) will conduct a base wage match to obtain their employment and earnings. For those individuals that have a pseudo SSN, it is the Local Board's responsibility to provide supplemental data. Additionally, it is the SCC WDB's responsibility to capture and enter credential information into CalJOBS for each IWT individual.

Note – If the individual in IWT becomes a participant in the Adult or Dislocated Worker program at any point, they are included in performance calculations for the core program that provides additional services.

## **E. CalJOBS**

### *Individuals*

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 CalJOBS, 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 2272 – Incumbent Worker Training Participant to the 308 – IWT activity code.

### *Employers*

The SCC WDB staff must ensure the employer participating in IWT is registered as a preferred employer (recruiting employer) in CalJOBS and that the CalJOBS Activity Code E68 – IWT is added to the employer's account.

## **F. Funding**

IWT is part of a comprehensive business engagement strategy designed to meet the special requirements of an employer (including a group of employers) to upskill current employees. To implement this strategy, SCC WDB may use up to 20% of their total Adult and Dislocated Worker formula allocation to provide IWT. This 20% can only be used for programmatic activities and cannot be used for administrative functions. Since the WIOA defines IWT as a business service, the delivery of IWT does not require the use of Individual Training Accounts nor does the training program have to be listed on the Eligible Training Provider List (ETPL). In addition, an eligible employee participating in this activity is not required to meet the eligibility

requirements for Adult or Dislocated Worker career and/or training services unless they will receive another WIOA funded service in addition to the IWT.

Generally, IWT should be provided to private sector employers, but there may be instances where non-profit and local government entities may receive IWT funds. For example, IWT funds may be used in the health care industry where nursing upskilling opportunities are available in a hospital operated by a non-profit organization. The SCC WDB has the flexibility to determine which strategies and activities are applicable in a given situation, based upon the specific needs, policies, and procedures within the state and Santa Cruz County.

The EDD Workforce Services Branch's Financial Management Unit (FMU) is tasked with keeping track of IWT expenditures to ensure Local Boards do not exceed the 20% allowance for IWT. FMU has updated the expenditure reports the sub-recipients use to include a line item for IWT. Each quarter, FMU compiles a report for the Local Boards that details where they stand in regards to these expenditure levels. An example of the updated expenditure reports can be found as attachments to WSD16-13.

Note – IWT expenditures can be counted toward the training expenditure requirement in Workforce Services Directive WSD18-10. The employer contributions for IWT can be counted as leveraged funds.

## **G. Key Definitions**

*Business/Employer* – A private sector, local government, for profit, or not-for-profit place of business. Business and employer are used interchangeably.

*California Employer Account Number* – An eight-digit payroll tax number issued to a registered employer by the Employment Development Department, also known as the Employer Payroll Tax Account Number, State Employer Identification Number, or state ID.

*Career Pathway* – A combination of rigorous and high-quality education, training, and other services that: aligns with the skill needs of industries in the state or local regions; prepares an individual to be successful in secondary or postsecondary education options, including apprenticeships; includes counseling to support the achievement of education and career goals; includes, as appropriate, education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster; organizes education, training, and other services to meet the needs of an individual in a manner that accelerates educational and career advancement; enables an individual to attain a secondary school diploma or its recognized equivalent, and at least one recognized postsecondary credential; and helps an individual enter or advance within a specific occupation or occupational cluster. [Reference: WIOA Sec. 3(7)]

*Credential or Certificate of Completion* – A recognized postsecondary credential is defined as a credential consisting of an industry-recognized certificate or certification, a certificate of completion of an apprenticeship, a license recognized by the state or federal government, or an associate or baccalaureate degree, as well as graduate degrees for purposes of the Vocational Rehabilitation program as required by Section 103(a)(5) of the Rehabilitation Act of 1973, as amended by Title IV of WIOA. A recognized postsecondary credential is awarded in recognition of an individual's attainment of measurable technical or industry/occupational skills necessary to obtain employment or advance within an industry/occupation. These technical or industry/occupational skills generally are based on standards developed or endorsed by

employers or industry associations. Neither certificates awarded by the SCC WDB nor work readiness certificates are included in this definition because neither type of certificate documents the measurable technical or industry/occupational skills necessary to gain employment or advance within an occupation.

*Eligible Employer* – For an employer to be eligible, the SCC WDB must consider: the characteristics of the individuals in the program (see IWT definition below); the relationship of the training to the competitiveness of an individual and the employer; the employer must have and provide a valid California Employer Account Number; and any other factors the SCC WDB determines appropriate, such as the number of employees trained, the wages and benefits including post training increases and the existence of other training opportunities provided by the employer. [Reference: WIOA Section 134(d)(4)(A)(ii)]

*Employer Share* – The contribution paid by the employer, on behalf of an employee while attending a training program. The employer's share will not be less than one of the following:

- 10% of the cost of training for employers with up to 50 employees,
- 25% of the cost of training for employers with 51 to 100 employees, and
- 50% of the cost of training, for employers with more than 100 employees.

The employer's proportionate share for the cost of training may include the employees' hourly wages while attending the training program as well as the cost of the training program (teacher, books and materials, etc.).

*Follow-up* – Will be performed six months after reported completion of IWT to determine outcomes (i.e., retained employment, advancement, and increased wages).

*Incumbent Worker* – To qualify as an incumbent worker, the individual worker needs to be employed in a situation that meets the Fair Labor Standards Act requirements for an employer-employee relationship, meet Selective Service requirements, and have an established employment history with the employer for six months or more, with the following exception: in the event that the IWT is being provided to a cohort of employees, not every employee in the cohort must have an established employment history with the employer for six months or more as long as a majority of those employees being trained do meet the employment history requirement. An incumbent worker does not have to meet the eligibility requirements for career and training services for Adults and Dislocated Workers under WIOA, unless they are also enrolled as participants in the WIOA Adult or Dislocated Worker Program. (Reference Title 20 CFR Section 680.780 and TEGL 10-16)

*Incumbent Worker Training* – Designed to meet the special requirements of an employer (including a group of employers) to retain a skilled workforce, avert the need to lay off employees by assisting the workers in obtaining the skills necessary to retain employment, and/or providing training that will result in progression on a career pathway and income mobility. It is conducted with a commitment by the employer to retain employees, avert the layoffs of the incumbent worker(s) trained for a period of six months following completion of the training, or promote incumbent workers to higher paying positions. It increases the competitiveness of the employer or employee and/or gives employees the opportunity to progress on their career pathway by providing opportunities to obtain certificates or credentials based on the employers need. (Reference 20 CFR 680.790)

*Qualified Trainer* – A qualified trainer can be provided in-house, by a training agency, or by a third party. Training providers should be California based, unless the training is so unique that a

training provider cannot be found in California. The choice and method of training are determined by the employer. [Reference: WIOA Section 134(d)(4)(C)-(D)]

*Training Method* – The following are types of training methods allowable for IWT:

- *Classroom Training* – Instruction in a classroom setting provided to a group of trainees, conducted by a qualified instructor.
- *Laboratory Training* – Hands-on instruction or skill acquisition under the constant and direct guidance of a qualified trainer. Laboratory training (a.k.a. "Lab") may require the use of specialized equipment or facilities. Laboratory training may be conducted in a simulated work setting or at a productive work setting (a.k.a. Productive Laboratory).
- *Computer-Based-Training* – Training delivered through a computer program at a pace set by the trainee. There is no requirement for delivery by a live trainer and training does not have to be interactive.
- *Video Conference* – Training that is live, interactive instruction provided by a trainer through a video communications session.
- *E-Learning* – Instruction delivered through a web-based system, conducted in a virtual environment utilizing web meeting/webinar.  
[Reference: WIOA Section 134(d)(4)(C)-(D)]

**Action:** All WIOA Staff and Service Providers will comply with the attached IWT policy. This policy memorandum is on-going and effective immediately.

**Inquiries:** Any questions regarding this policy memorandum may be directed to the WDB Director.

**Attachments:** None

This policy authorized by: Workforce Development Board, September 11, 2019