

SFWIB ON-THE-JOB TRAINING (OJT) POLICY

I. OF INTEREST TO

The On-the-Job Training (OJT) Policy should be of interest to members of the South Florida Workforce Investment Board (SFWIB), SFWIB staff, Contractors (Service Providers), Training Vendors, Businesses, Job Seekers, and Employees in Region 23 (Miami-Dade and Monroe counties).

II. SUBJECT

On-the-Job Training (OJT)

III. PURPOSE

The purpose of the OJT Policy is to provide all SFWIB stakeholders with parameters regarding the use of formula training funds through OJT agreements. As seen in the Agency for Workforce Innovation (AWI) Final Guidance 00-009, OJT is a required component of the SFWIB Training Master Plan.

IV. STATUTORY AUTHORITIES

Workforce Innovation and Opportunity Act (WIOA), Public Law (Pub. L.) 113-125 enacted July 22, 2014, supersedes Public Law 105-220, Workforce Investment Act of 1998 (WIA)

Florida Statutes, Title XXXI, Chapter 445, Workforce Innovation Act of 2000

V. BACKGROUND

The WIOA includes OJT as one of its approved training services. SFWIB provides OJT services via an agreement with a business (public, private non-profit or private for-profit), Service Provider, and an eligible participant. Through OJT, businesses may receive funding to assist in offsetting the extraordinary costs of hiring and training a new employee.

VI. DEFINITIONS

A. *On-the-Job Training (OJT)*

Section 3 (44) of WIOA defines On-the-Job Training 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 a percentage of the wage rate for a participant(s), except as provided in section 134(c)(3)(H), for the extraordinary cost 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. Conflict of Interest

1. The SFWIB will not favor a referral from and/or to a member of the SFWIB over another business in the community. OJT placements shall be made based upon what will be most beneficial to the participant.
2. The SFWIB shall be notified whenever the OJT Agreement is connected to a SFWIB member, Service Provider or employee.
3. Service Providers are prohibited from recommending an agreement or making OJT referrals to businesses who are members of their immediate family or members of families of other Service Provider staff or SFWIB staff.
4. The contracted OJT business shall not hire a participant who is a relative (member of the family) of the business. Relative is defined as: father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister. (Section 112.3135, Florida Statutes)

C. Credentials

Credentials include, but are not limited to, a high school diploma, including special diplomas; GED or other recognized equivalents; post-secondary degrees/certificates; recognized skill standards such as occupational completion points (OCP); licensure or industry-recognized certificates; and, successful completion of OJT and Customized Training.

D. Reverse Referrals

A reverse referral is when the business has identified someone they would like to hire but the individual has demonstrated skills deficiency related to the position's requirements. A business may refer a job applicant to the Service Provider for potential OJT enrollment. In the case of reverse referrals, the candidate must schedule an eligibility determination and assessment appointment with a Service Provider and must be eligible for WIOA as a dislocated worker or adult. The Service Provider must utilize normal eligibility assessment and enrollment procedures.

Participant's eligibility must be determined prior to employment; no pre-hires or period of employment prior to the execution of an OJT agreement and participant training plan are acceptable.

VII. ELIGIBILITY

A. Business

Prior to entering into an agreement for OJT services with a business, the Service Provider shall ensure that the business is eligible.

Businesses that meet the following criteria are considered eligible and may, subject to available funding, enter into an OJT agreement:

1. Located in the State of Florida;
2. Hold valid business tax receipt (formally an occupational license) and/or zoning permit;
3. Maintains Workers Compensation Insurance (if applicable);
4. Active business as verified by Florida Department of State Division of Corporations (www.sunbiz.org);
5. Business has operated at current location for at least 120 days.

B. Participant

Participants (adult and dislocated workers) that meet the following criteria may, subject to available funding, receive OJT through an executed agreement:

1. Eligible under one of the SFWIB funded programs: WIOA Youth, WIOA Adult, WIOA Dislocated, TANF, Refugee, etc.
2. Not fully skilled in the chosen occupation, is in need of Training Services, and has the skills and qualifications to successfully complete the OJT.
3. Under the WIOA, has received individualized services, which include career planning.

A participant in a registered apprenticeship who is employed as part of that arrangement, may receive OJT and must be treated as other OJTs provided for employed workers as described in § 680.710 under the WIOA.

On-the-Job Training may be provided in same manner as described in § 680.700 under the WIOA for an unemployed participant in a registered apprenticeship.

VIII. OJT AGREEMENT

A. Conditions

1. Participants may not commence training and businesses may not hire prior to the execution of the OJT agreement. The agreement is executed when signed by all required parties, i.e., Service Provider, business, and participant.
2. The following three sections must be pre-negotiated and included in the OJT agreement:
 - a. Percent of Reimbursement;
 - b. Timeframe for achievement of competencies. The timeframe must include the maximum number of hours for which reimbursement will be provided; and
 - c. Intervals at which the business will be reimbursed.
3. The appropriate signatory for the business shall be either the owner where the business is incorporated; a partner where the business is a partnership; or an officer if the business is a corporation. Corporations sometimes designate signatories other than their officers. In such instances, written authority transferring signatory responsibilities must be obtained by the individual responsible for developing the agreement.

4. Service Providers are responsible for reviewing the agreement with both the business and the participant prior to execution to assure that the business and participant wholly understand and are familiar with the requirements of the agreement.
5. The participant's attainment of competencies must be routinely documented by the business and Service Provider, and placed in the participant's file.
6. OJT may be sequenced with, or accompanied by, other types of training, as applicable under the law.
7. Businesses shall establish and maintain records with respect to all matters covered by the OJT agreement. Businesses shall retain such records for at least five (5) years from the date of final payment, or until all related federal and state audits or litigation is completed, whichever is later. Businesses shall allow public inspection of all documents, papers, letters or other materials made or received by the business in conjunction with the OJT agreement, unless the records are exempt under federal or state law.
8. The Business agrees to comply with the provisions of the Certification Regarding Lobbying, Certification Regarding Debarment, Suspension and Other Matters, Public Entity Crime, Florida Clean Indoor Air Act and the Certification regarding a Drug-Free Workplace.
9. The OJT business shall comply with the nondiscrimination and equal opportunity provisions of federal or state law.
10. An OJT agreement may be entered into through a registered apprenticeship program for training participants. OJT agreements shall be with the employer, and may be used to support the OJT portion of the apprenticeship program which may involve both classroom and on-the-job instruction.

B. Duration

1. An OJT agreement shall be limited to the period of time required for a participant to become proficient in the occupation for which the training is being provided. In determining the appropriate length of the agreement, consideration should be given to the skill requirements of the occupation, the academic and occupational skill level of the participant, prior work experience, and the participant's career plan.
2. OJT agreements shall not exceed six months of training unless there is documented justification and written approval from the SFWIB Executive Director.
3. The OJT duration caps at six months
4. An OJT agreement may be written or extended beyond the initial periods under the following conditions:

- a. A barrier to skills attainment is identified during training, which was not evident during the assessment.
- b. The participant has been unable to master the skills within the agreement's time frame.
- c. The training plan measures used during the assessment to identify participant's skills proficiencies prove to be inadequate based upon business evaluation after participant is placed on the job.
- d. There is an upgrade in the participant's job description from that developed upon entry into training, in which case the ending wage for the participant should be increased from the wage identified upon entry into training.

C. Compensation

- 1. Reimbursement for wages under an OJT agreement is based on the hourly wage rate and applicable percentage rate for competencies/skills in the training outline in accordance with the Law. For purposes of the provision of OJT under this policy, an employer may be reimbursed an amount of the wage rate of a participant for the extraordinary costs of providing the training and additional supervision related to the OJT.
- 2. The reimbursement level may be in an amount of up to 75% percent of the participant's hourly wage and may be based on a number of factors, including:
 - i. Company size
 - ii. The characteristics of the participants (WIOA sec.134(c)(3)(H)(ii)(I)), including whether the OJT contract leads to employment for individuals with barriers to employment
 - iii. Quality of employer-provided training and advancement opportunities
 - iv. Wage and benefit level of the employee both before and after OJT completion, and relation of training to the competitiveness of the participant.
 - v. Retention of employees from previous OJT agreements

The following reimbursement amounts will be permitted:

- a. **Up to 75 percent** of the participant's wage rate for companies with 50 or fewer employees when hiring at an SVP Level of three or greater; and/or
- b. Companies that have between 51-250 employees where one of the following applies:
 - i. Hire participants with special characteristics such as barriers to employment as defined in WIOA sec. 3(24).
 - ii. Provide quality training and advancement opportunities to the participant taking into consideration whether the training is in an in-demand occupation that may lead to an industry-recognized credential; training in relations to the competitiveness of the participant; and wage and benefit levels of the employees (both at present and after completion). The participant must be hired at an SVP Level of three or greater, reference Prohibitions, Section XI (4) of this policy.
 - iii. Provide a wage and/or benefit level increase at the completion of the training.

- iv. Businesses who have retained employees in previous OJT agreements.
- c. **Up to 60 percent** of the participant's wage rate for employers with 51-250 employees that do not hire from the special groups and the parameters as outlined above.
- d. **Up to 50 percent** of the participant's wage rate for employers with 251 or more employees that do not hire from the special groups and the parameters as outlined above.

The Service Provider must document the factors used to validate the increase in wage reimbursement levels above 50 percent up to 75 percent.

3. Eligible Service Providers may not execute OJT agreements exceeding a total possible business compensation of \$7,500 per participant without prior written SFWIB approval.
4. Participants employed under an OJT agreement shall be compensated by the business at the same rates, (including periodic increases) as similarly situated employees. In no event, however, shall OJT participants be paid less than the higher of the minimum wage specified under the Fair Labor Standards Act of 1938, as amended or the applicable state or local minimum wage.
5. Participants employed under a SFWIB OJT agreement shall receive the same fringe benefits and be subject to the same working conditions granted to regular employees under the same or similar occupational title.
6. Payments to a business under an OJT agreement shall not exceed any program specific guidelines and limitations, for the costs of providing the training and additional supervision related to the training.
7. OJT payments may not be based on overtime, shift differential, premium pay and other non-regular wages paid by the business to participants.
8. Businesses may not pay OJT participants in cash.
9. Businesses shall submit certified payroll records, as part of the invoicing process, in order to receive the applicable reimbursement.
10. Businesses will be reimbursed by Service Providers. The final reimbursement shall be made upon the completion of the last competency and when proper documentation has been provided. Reimbursement should coincide with the business' pay period. The reimbursement amounts will be based upon the relevant funding stream requirements and any waivers at the time of the agreement. As seen in Section X of this policy, Service Providers may submit a written request to the SFWIB Executive Director to approve an exception to the reimbursement process.

IX. GRIEVANCES AND APPEALS

Service Providers shall advise participants of their right of appeal using either the business' grievance procedures, or those of the SFWIB, if previously agreed with the business. If a business elects to use its own grievance procedures, the business must agree to provide information to SFWIB as to actions taken under those procedures. If the participant is not satisfied with the outcome after using the business' grievance procedures, then he/she may elect to file a grievance with SFWIB under the SFWIB grievance procedures.

X. EXCEPTIONS

Exceptions to this policy, or any part thereof, must be approved in writing by the SFWIB Executive Director.

XI. PROHIBITIONS

1. Participants shall not be employed to carry out the construction, operation, or maintenance of any part of any facility that is used or to be used for sectarian instruction or as a place for religious worship (except with respect to the maintenance of a facility that is not primarily or inherently devoted to sectarian instruction or religious worship, in a case in which the organization operating the facility is part of a program or activity providing services to participants).
2. OJT agreements shall not be written for part-time employment. Proof of full-time employment shall be established and documented by the business. Whether the participant is categorized as full-time shall be verified by the Service Provider. Service Providers may submit a written request to the SFWIB Executive Director for an exception to this rule prior to execution of an OJT agreement.
3. OJT agreements shall not be written for jobs with a Specific Vocational Preparation (SVP) of two or under, except for participants who have a documented disability for whom such a placement would be appropriate or where written justification is provided to and approved by the SFWIB Business Services Manager. Documentation shall indicate the appropriateness of training and why the training is necessary to obtain the skills for the job. Lack of prior work history or non-English speaking are not to be considered disabilities for the purpose of complying with this provision, but may justify placement into a job with a low SVP.
4. The Service Provider shall not enter into agreement with a business who has previously 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.
5. No officer, employee, agent, or representative of the Business or Service Provider may charge a participant a fee for the placement or referral of such individuals in or to a training funded under an OJT agreement or amendments thereof.

6. A participant in a program or activity authorized under title I of WIOA must not displace (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits) any currently employed employee (as of the date of the participation).
7. An OJT funded agreement must not impair existing contracts for services or collective bargaining agreements. When a program or activity authorized under Title I of WIOA would be inconsistent with a collective bargaining agreement, the appropriate labor organization and employer must provide written concurrence before the agreement is initiated.
8. An OJT participant may not be employed in or assigned to a job if:
 - a. Any other individual is on layoff from the same or any substantially equivalent job;
 - b. 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 so created with the OJT participant; or
 - c. The job is created in a promotional line that infringes in any way on the promotional opportunities of currently employed workers.
9. OJT funds shall not be used for any political activity, lobbying of federal, state or local legislators, or to promote or oppose unionization.
10. OJT funds may not be used to directly or indirectly assist, promote or deter union organizing.
11. OJT participants shall not be placed in a home-based business.
12. OJT funds shall not be used to encourage or induce a business, or part of a business, to relocate from any location in the United States, if the relocation results in any employee losing his or her job at the original location.