



COUNTY OF LOS ANGELES WORKFORCE DEVELOPMENT, AGING AND COMMUNITY SERVICES



WORKFORCE DEVELOPMENT PROGRAMS DIRECTIVE

DATE: August 12, 2020

NUMBER: WDP D20-01

Incumbent Worker Training

EXECUTIVE SUMMARY

This Incumbent Worker Training (IWT) directive provides the Los Angeles County America's Job Centers of California (AJCCs) with the criteria to determine which businesses, employers, workers, or group of workers, are eligible for IWT services, and the requirements of providing IWT, including the cost sharing requirements.

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;
Workforce Development, Aging, Community Service's (WDACS) Directive on Individual Training Agreements WDP19-34;
EDD Directive on WIOA Training Directive Expenditure Requirement WSD18-10.

BACKGROUND

IWT is listed among the allowable training services under WIOA section 134(d)(4). With the commitment of the employer to continue to employ an individual after successful completion of training, 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 can be used to assist 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.

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 IWT. On June 12, 2020, the Los Angeles County Workforce Development Board (WDB) formulated a training policy that deliberately advances low wage workers through skills improvement

as a mechanism for Los Angeles County's regional economic growth and authorized up to the maximum allowed percentage as per WIOA. 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 WDB 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);
 - Note: The suggested average wage movement to consider for IWT is 20% (twenty percent) from the participant's current wage.
- The existence of other training and advancement opportunities provided by the employer;
- Credentials and skills gained as a result of the training;
- Layoffs averted as a result of the training;
- The increase of both the employers and employees labor market competitiveness;
- Utilization as part of a larger sector and/or career pathway strategy including older youth;
- Employer size and industry sector.

PROCEDURE

The AJCC seeking to conduct IWT with a participating employer must inform their Regional Workforce Development Manager of their intent to utilize IWT, in writing via email to bservices@wdacs.lacounty.gov. All IWT Contracts must be consulted with the EDB Workforce Development Regional Managers for the proper allocation of Training Funds and ensure adherence to this policy.

The AJCC is responsible for verifying the eligibility of both parties and ensuring all parties understand their responsibilities.

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

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 Los Angeles County 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 data collection in Launchpad and related business needs assessment;
- 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 Los Angeles County. These sectors currently include, but are not limited to, the following:

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

If outside the above-listed sectors, permission can be granted upon approval from Regional Workforce Development Manager.

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. (WDACS Directive on ITA WDP19-34.) 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 Regional Workforce Development Manager.

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.

Note: 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.

CalJOBSSM

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.
- CalJOBSSM 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 CalJOBSSM,
- Local Area staff must ensure that the employer participating in IWT is registered as a preferred employer (recruiting employer) in CalJOBSSM, and the CalJOBSSM 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 CalJOBSSM, please see WSIN12-31.

Launchpad

BSR staff must ensure that the employer participating in IWT is documented in Launchpad and the **EDD Activity Code E68 – Incumbent Worker Training** is added to the employer’s account to track the business services.

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.

ACTION

AJCC must ensure that the policies and procedures described herein are communicated throughout the operations, management and governance structure of the contractor organization and that this Directive is appropriately maintained until further notice.

INQUIRIES

Inquiries regarding this directive and the policies and procedures described herein should be directed to bServices@wdacs.lacounty.gov.



**Caroline Torosis, Program Director, Economic and Business Development
Workforce Division**

Los Angeles County Workforce Development, Aging, and Community Services



COUNTY OF LOS ANGELES WORKFORCE DEVELOPMENT



INCUMBENT WORKER TRAINING (IWT) CONTRACT

SECTION 1: Contact Information

Complete the contact information for the employer.

Employer Name:	Contact Name:	E-mail:
Employer Address:	Telephone:	Fax:

Complete the contact information for the coordinating AJCC.

AJCC Name:	Contact Name:	E-mail:
AJCC Address:	Telephone:	Fax:

SECTION 2: Participant Information

Complete the contact information and wage information for the IWT participant.

Participant Name:	CalJOBS ID #:	Telephone:
E-mail:	Job Title:	Total Training Hours:
Start Date:	End Date:	Hourly Wage:
Reimbursement Rate: %	Maximum Reimbursement: \$	WIOA Enrollment: Y or N

SECTION 3: IWT Agreement

This Incumbent Worker Training (IWT) Agreement is between [INSERT EMPLOYER NAME], herein after referred to as the Employer, and [INSERT AJCC NAME], herein after referred to as the AJCC. Both parties agree to the terms and conditions set forth within this contract. The contract term commences on [INSERT START DATE] and terminates on [INSERT END DATE].

SECTION 4: General Terms and Conditions

4.1 CONTRACT PURPOSE

The purpose of this contract is to establish the general terms and conditions under which the AJCC may refer individual Workforce Innovation and Opportunity Act (WIOA) participants (“the participant”) to the Employer to enable the WIOA participants to take part in an IWT as that term is defined under WIOA.

4.2 IWT DEFINITION

In accordance with Title 20 of the *Code of Federal Regulations* (CFR) §680.790, and the *Workforce Innovation and Opportunity Act* (WIOA) §134(d)(4), the term “incumbent worker training” means training by an employer that is provided to a paid participant while engaged in productive work. This training will:

- a. Increase the competitiveness of the employee or employer, by providing the skills necessary to retain employment, or to increase skill levels of employees so promotion within the company can occur. The average wage movement to consider shall be 20% (twenty percent).
- b. Be designed to meet the special requirements of the employer (including a group of employers) to retain a skilled workforce or avert the need to lay off employees by assisting the workers in obtaining the skills necessary to retain employment.
- c. Be conducted with a commitment by the employer to retain or avert the layoffs of the incumbent worker(s) trained.
- d. Be provided by employers who:
 - I. Are a business located within the Los Angeles County’s Workforce Development Area for more than 120 (one hundred twenty) days prior to the application date.
 - II. Provide their State and Federal Tax return within the last two (two) years.
 - III. Did not lay off workers within 180 (one hundred eighty) days to relocate to California from another state.
 - IV. Are current in unemployment insurance and workers’ compensation insurance, penalties, and/or interest or related payment plan.
 - V. 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.
 - VI. Agree to data collection in Launchpad and related business needs assessment.
 - VII. Agree to furnish information needed for retention services.
- e. Be provided to employees who:
 - I. Are employed by the participating firm for at least 20 (twenty) weekly hours.
 - II. 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>).
 - III. 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. 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.
 - IV. May agree to enroll as a participant in the WIOA adult or dislocated worker program.

4.3 TRAINING

4.3.1 Employer agrees to develop a training plan for the IWT participant that includes competencies needed to improve the labor market competitiveness of the employer and employees.

4.3.2 All IWT must be in an in-demand occupations within priority and/or high-growth industry sectors as identified by the Los Angeles County Workforce Development Board within the Los Angeles County Workforce Development Area. These sectors include:

- a) Healthcare
- b) Construction
- c) Global Trade and Logistics
- d) Advanced Manufacturing
- e) Biotechnology
- f) Leisure and Hospitality
- g) Entertainment and Information Technology

4.4 FISCAL

4.4.1 The maximum IWT amount to be provided by AJCC under this program is \$4,000.00 (four thousand dollars) per trainee, per training.

4.4.2 Employer agrees to pay for of the cost of providing the IWT, as detailed in the IWT Directive (WDP20-01).

4.4.3 The participating employer may provide its share through both monetary payment and fairly evaluated in-kind contributions (e.g. training materials, facility, and equipment). If the participating employer plans to use in-kind contribution(s) to satisfy all or part of this condition, the in-kind contribution(s) and the corresponding monetary value must be detailed in Section 5 In-Kind Contribution.

4.4.4 The wages paid to individuals while in training may be considered as a source of matching funds.

4.4.5 The costs of IWT shall 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 allowable training costs:

- a) Training/Course registration
- b) Textbooks/course materials used 100% (one hundred percent) for the training activities
- c) Tuition costs for training courses or programs
- d) Expendable materials and supplies directly related to training
- e) Instructor/trainer salaries

4.4.6 The minimum amount of employer share in IWT depends on the size of the employer and are as follows:

- a) At least 10% (ten percent) of the cost of the training for employers with 50 (fifty) or fewer employees.
- b) At least 25% (twenty-five percent) of the cost of the training for employers with 51 (fifty-one) to 100 (one hundred) employees.
- c) At least 50% (fifty percent) of the cost of the training for employers with more than 100 (one hundred) employees.

4.4.7 AJCC shall reimburse Employer on a [INSERT REIMBURSEMENT FREQUENCY] basis in an amount not to exceed total reimbursement for extraordinary costs of training to be provided by the Employer to the participant.

4.4.8 Employer agrees that records which are directly related to the IWT contract are subject to review, monitoring, and audit by the AJCC, the County of Los Angeles, the State and/or the federal government, at any time and without prior notice to the employer.

4.5 EMPLOYER ASSURANCES

4.5.1 Employer agrees to submit quarterly progress reports and invoices as a condition of reimbursement.

4.5.2 Employer shall provide adequate insurance coverage to protect against legal liability arising out of IWT activity.

4.5.3 Employer shall preserve all IWT Employee payroll records, fringe benefits and personnel records in the participant's employee file for the time period required by law.

4.5.4 Employer agrees to maintain adequate time and attendance, payroll, and other records to support amounts reimbursed under the IWT contract.

4.5.5 Employer verifies that the IWT will relate to the introduction of new technologies, introduction to new production or service procedures, or is an upgrade to a new job that requires additional skills, and that the IWT experience will provide the IWT participant with additional wages, hours or benefits upon completion. The average wage movement to consider shall be 20% (twenty percent) from the participant's current wage.

4.5.6 Employer certifies that the company is financially solvent on the date of this contract, and the Employer's best projection is that they will remain financially able to meet contract obligations at the end of the training period, including IWT participant's retention.

4.5.7 Employer agrees that wage and labor standards will be adhered to and to pay the IWT participant at the same rates, including increases, and benefits as employees who are situated in similar jobs. Such rates shall be in accordance with applicable law, but in no event less than the higher rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 or the applicable state or local minimum wage law (WIOA §181(a)(1)(A)) currently \$15.00 effective July 1, 2020.

4.5.8 Conditions of employment and training will be in full accordance with all applicable federal, state, and local laws and ordinances (including but not limited to anti-discrimination, labor and employment laws, environmental laws or health and safety laws).

4.5.9 Employer certifies that the IWT will not impair existing agreements for services or collective bargaining agreements and that either it has the concurrence of the appropriate labor organization as to the design and conduct of an IWT, or it has no collective bargaining agreement with a labor organization that covers the IWT position (20 CFR §683.270).

4.5.10 Employer assures that they have not been debarred or suspended in regard to federal funding (29 CFR §97.35).

4.5.11 Employer further assures that IWT funds will not be used to assist, promote or deter union organizing (20 CFR §680.840, and WIOA §181(b)(7)).

4.5.12 Employer certifies that no member of the IWT participant's immediate family is engaged in an administrative capacity for the Employer, or will directly supervise the IWT participant. For the purpose of this contract, immediate family is defined as spouse, children, parents, grandparents, grandchildren, brothers, sisters or person bearing the same relationship to the IWT participant's spouse (20 CFR §683.200).

4.5.13 Employer assures that the IWT participant(s) will not 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 (29 CFR §683.255).

4.5.14 Employer assures that the IWT participant has not been hired into or will remain working in any position when any other person is on layoff from the same or a substantially equivalent job within the same organizational unit or has been bumped and has recall rights to that position, nor if the IWT is created in a promotional line that infringes on opportunities of current employees (20 CFR §683.270).

4.5.15 Employer shall refrain from treating trainees differently from regular employees. Employer shall cover pay, safe work conditions including COVID-19 protocols 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 §683.275).

4.6 ADDITIONAL TERMS

4.6.1 Employer must submit final report within two (2) weeks of IWT completion and meet all terms of this agreement to be eligible for future IWT contracts. The final report is to be submitted to bservices@wdacs.lacounty.gov.

4.6.2 IWT contract is subject to modification or termination due to actions taken by the federal, state, or local governments that result in a frustration of contract purpose. Such actions include, but are not limited to, withdrawal of WIOA funding by the United States Congress, or the failure by the United States Congress to reauthorize WIOA program activities.

SECTION 5: Training Provider Information

Complete the contact information for the training provider.

Trainer Name(s):	Affiliation:	E-mail:
Address:	Telephone:	Fax:

SECTION 6: In-Kind Contribution

In-Kind Contribution Description	Monetary Value

SECTION 7: Signatures

I hereby agree to all the terms and conditions in this IWT Agreement.

Authorized Signatures

Employer Signature

AJCC Signature

Date

Date

Print Name

Print Name

Title

Title