



COUNTY OF LOS ANGELES
WORKFORCE DEVELOPMENT, AGING
AND COMMUNITY SERVICES
WORKFORCE DEVELOPMENT
PROGRAMS DIRECTIVE



DATE: 08/23/2021

NUMBER: WDP D21-05

Incumbent Worker Training – Amendment

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.

This directive supersedes WIOA WDP D20-01 *Incumbent Worker Training*.

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);
- 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 bizdev@wdacs.lacounty.gov. All IWT Contracts must be consulted with the Economic and Business Development (EBD) 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 six (6) months or more as long as the simple majority of those employees being trained do meet the employment history requirement.
- Must register with CalJOBSSM;
- May agree to enroll as a participant in the WIOA adult or dislocated worker program; and
- 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 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; and
- 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), with prior written approval from WDACS – EBD Regional Workforce Development Manager.

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 (citing the LAEDC Reporting) 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. The employer itself, in some circumstances, may also be considered as a training provider, if the training is so specific and no alternative is available.

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 CalJOBSSM 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.

Payment for training can be structured in such a way as to make the payment of services easier and equitable for all parties (AJCC Partner, Employer and Training Provider). This includes direct payments and shared costs, etc. This arrangement must still adhere to the Employer Cost Share Policy as listed below.

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 like Employee Training Panel (ETP) (i.e., 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.

Program Required Documentation

AJCCs that participate in the IWT program shall use WDACS approved contracts and forms in administering the training and case management of the program. Each IWT file should include the following:

- Incumbent Worker Contract (Attachment I - Form 001 Revised 07/26/2021)
- Incumbent Worker Training Plan (Attachment II)
- Trainee Progress Report(s) (Attachment III)
- Trainee Attendance Record(s)
- Trainee Certificate of Completion (Attachment IV – Form 002 07/21)
- Copies of Applicable Skills Progressions and Licensure / Certificate Attainment
- Copies of All Fiscal Documentation / Payment(s)

Updated versions of applicable documentation is attached to this Directive. Older / outdated paperwork should not be used in the setting up and creation of IWT programs. For further questions, please contact your Regional Workforce Development Manager(s).

CalJOBSSM

All recipients of IWT must be reported to the United States Department of Labor (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 (Attachment V).

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.

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 bizdev@wdacs.lacounty.gov.

Isidro Villanueva

**Isidro Villanueva, Program Director, Economic and Business Development
Workforce Division**

Los Angeles County Workforce Development, Aging, and Community Services

ATTACHMENTS:

- I. IWT Contract
- II. IWT Training Plan
- III. IWT Progress Report
- IV. IWT Certificate of Training
- V. Help Sheet No. 35 – Entering IWT Data on CalJOBS