

Capital Region Workforce Partnership (CRWP)
Workforce Development Board (WDB)
Workforce Innovation and Opportunity Act (WIOA) Service Policy #SP114
Work Experience and Transitional Jobs for Adults and Dislocated Workers

References:

Workforce Innovation Opportunity Act (WIOA); Final Rules, U.S. Department of Labor (DOL), Employment and Training Administration (ETA), {20 CFR §680.150, §681.180, §681.190, §681.195, §680.530, §680.830, §681.840, , and §681.900).

U.S. Department of Labor (DOL), Employment and Training Administration (ETA), Training and Employment Guidance Letter (TEGL) #19-16, Dated March 1, 2017

Fair Labor Standards Act Advisor. U.S. Department of Labor (DOL).

Effective Date: March 14, 2024; replaces March 8, 2018 Version

Background and Purpose

The Workforce Innovation and Opportunity Act (WIOA) allows for work-based learning activities such as internships, work experiences and transitional jobs that are linked to careers as an available individualized career service. These activities are valuable to those without a strong attachment to the workforce as they can assist individuals in establishing a work history, demonstrating success in the workplace, and developing skills that lead to unsubsidized, stable employment at a living wage. The purpose of this policy is to set the local guidelines by which such work-based learning activities will be provided.

I. Work Experience

A. Policy

The WIOA defines work experience as “a planned, structured learning experience that takes place in a workplace for a limited period of time. Work experience may be paid or unpaid, as appropriate. A work experience may take place in the private for-profit sector, the non-profit sector, or the public sector. Labor standards apply in any work experience where an employee/employer relationship, as defined by the Fair Labor Standards Act or applicable State law. A Work Experience opportunity may be provided as an individualized career service to enrolled Adults and Dislocated Workers who have met any priority of service requirements that may be in place.

Work experience may be provided, where determined as appropriate through the Individual Employment Plan development process, for eligible program participants for whom one or more of the following conditions exist:

- the individual has no previous work history,
- the individual has had no work history within the past five years, and/or
- the individual is otherwise eligible for WIOA individualized career and is in need of this service to assist

them in preparing for participation in another appropriate training service or activity or to successfully obtain and retain unsubsidized employment.

This type of work experience activity is intended to provide training and skill development in the skills necessary to successfully obtain and retain employment, including punctuality, attendance, communication, team work, dependability, and task completion, and is not required to provide training in technical or job specific skills. There is no requirement that the individual will be retained by the worksite following the successful completion of this type work experience activity.

The workplace must be with a legal business and/or employer that meets all basic requirements to operate in Virginia.

Work experience activities shall not reduce the worksite's current employee's work hours, displace current employees or create a lay-off of current employees, impair existing contract or collective bargaining agreements, and/or infringe upon the promotional opportunities of current employees as defined in the Fair Labor Standards Act.

Work experience activities should be aligned with WDB-identified target industries, or those which are otherwise identified as currently in demand or with growth potential based on labor market intelligence.

While the employer is under no obligation to offer regular employment to the participant subsequent to the conclusion of the work experience/internship program, it is hoped that the activity will result in providing employers with a pool of trained employees with direct experience from which to fill future positions and reduce recruitment costs.

The internship or work experience will be guided by a Worksite Agreement, an agreement between the WIOA service provider, the host employer worksite, and the WIOA participant, which will specify the occupational and employability competencies the participant will achieve in the work experience, the relationship and responsibilities of all parties, the evaluation process that will outline the progress of the participant at certain intervals, the training plan for the participant, and other necessary requirements

B. Requirements

Work Experience Assessment, Duration and Training Plan

The service provider shall ensure that the work experience plan for the participants is appropriate based on their career interest of choice (when feasible), labor market research and comprehensive assessment of abilities and aptitudes as documented in the file. The Training Plan should have measurable benchmarks and clearly indicate how this activity is going to help the customer move on to unsubsidized employment and/or training. The customer file must also include periodic evaluation of the customer's participation and learning during the work experience, including information about any incentive payments made and the learning that took place.

The duration of the work experience program should generally not exceed 520 hours in one program year, but can be increased with a strong written justification and approval by program director. The determination of the duration of the activity should be based on the academic and/or occupational competencies the WIOA participant needs to develop or refine and must be specified in the Training Plan. A WEX Training Plan allows service providers to monitor and evaluate the activity and it serves as a baseline when establishing whether the needs of the WIOA participant and the employer's expectations of training and development have been met.

Development of Work Experience Sites

The service provider must make every effort to verify worksites will provide participants with a high-quality experience. The vetting process could include proof of a business license, registration with the Virginia State Corporation Commission, a regulatory body, etc.

Once an employer has been identified, there must be an initial safety observation and Worksite Agreement between the service provider and the employer that articulates the learning that is to take place (job description/work objective), the length of the activity and the academic and/or occupational competencies to be obtained. The Worksite Agreement must be completed and signed prior to the start of the WEX. The WEX Agreement must also contain a list of tools, uniform and safety equipment. Additionally, the service provider must provide documentation that the employer and participant received formal training plan and requirements of this policy.

Work Experience Participant Classification, Funds and Payments

Work Experience should meet the definition of Trainees under the FLSA. Whether trainees are employees of an employer under the FLSA will depend upon all of the circumstances surrounding their activities on the premises of the employer. If all of the following criteria apply, the trainees or students are not employees within the meaning of the Act:

- 1. The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school;**
- 2. The training is for the benefit of the trainees or students;**
- 3. The trainees or students do not displace regular employees, but work under close supervision;**
- 4. The employer that provides the training receives no immediate advantage from the activities of the trainees or students and, on occasion, his operations may even be impeded;**
- 5. The trainees or students are not necessarily entitled to a job at the conclusion of the training period;**
and
- 6. The employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training.**

If the WIOA participant cannot meet these parameters, a work-based learning activity other than work experience should be pursued.

If incentives are offered by the service provider using WIOA funds, WIOA customers will receive incentives at a level equal to or greater than the prevailing minimum wage in Virginia. Hours associated with incentives must be documented and validated by the participant and worksite signatures. The program must have documentation to verify that the participant received the incentive associated with such hours or work validated by the worksite. If participants receive the incentives in the form of a check, the WDB strongly encourages the service provider to ensure participants are not using check cashing services that utilize predatory lending practices.

II. Transitional Jobs

A. Policy

Under WIOA, Transitional Jobs are a type of work-experience local workforce development boards can offer as an individualized career service. Transitional jobs are time-limited, wage-paid work experiences that are subsidized up to 100 percent. These jobs can be in the public, private, or nonprofit sectors and are only available for individuals with barriers to employment who are chronically unemployed or who have an inconsistent work history, as determined by the local board. Transitional jobs provide individuals with work experience and an opportunity to develop important workplace skills within the context of an employee-employer relationship, in which the WIOA service provider is most often the Employer of Record.

No more than 10% of the area's adult and dislocated worker funds may be used to support transitional jobs.

Definition of Key Terms

The term "Transitional Job" (TJ) means paid work experience that:

- a) Is time limited and subsidized;
- b) Is in the public, private, or nonprofit sector;
- c) Is provided to individuals with barriers to employment who are chronically unemployed or have an inconsistent work history;
- d) Is combined with comprehensive employment and supportive services; and
- e) Is designed to help participants establish a work history, demonstrate success in the workplace, and develop the skills that lead to entry into and retention in unsubsidized employment.

The term individual with a "barrier to employment" means a member of one or more of the following populations:

- a) Displaced homemakers
- b) Low-income individuals
- c) Indians, Alaska Natives, and Native Hawaiians
- d) Individuals with disabilities, including youth who are individuals with disabilities
- e) Older individuals, i.e. those aged 55 or older
- f) Ex-offenders or Returning Citizens
- g) Homeless individuals
- h) Youth who are in or have aged out of the foster care system
- i) Individuals who are English language learners, individuals who have low levels of literacy, and individuals facing substantial cultural barriers
- j) Eligible migrant and seasonal farmworkers
- k) Single parents (including single pregnant women)
- l) Long-term unemployed individuals
- m) Recipients of public assistance

Individuals with "chronic unemployment" or an "inconsistent work history" are those who:

- 1) Have been unemployed for 13 weeks or longer;
- 2) Were unemployed at least 26 of the past 52 weeks; or
- 3) Have held three or more jobs in the past 52 weeks and are currently unemployed or underemployed.

"Host sites" are defined as a for-profit or non-profit organizations, government organizations, or educational institutions that provide a TJ placement. Host sites must provide day-to-day supervision of the TJ participant while on site.

B. Requirements

A Transitional Job (TJ) may be provided as an individualized career service to enrolled Adults and Dislocated Workers who have met the priority of service requirements.

TJ must be combined with comprehensive career services and supportive services.

TJ placements should contribute to the occupational development and upward mobility of participant.

Per WIOA regulations (20 CFR 683.200(g)), “no individual may be placed in an employment activity if a member of that person’s immediate family is directly supervised by or directly supervises that individual.” For the purpose of this policy, the term “immediate family” includes a spouse, child, son-in-law, daughter in-law, parent, mother-in-law, father-in-law, sibling, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, and grandchild.

TJ must be time limited (no more than 6 months and preferably 8 to 12 weeks) and require at least fifteen (15) but not more than forty (40) hours of work per week.

TJ activities should be aligned with WDB-identified target industries, or those which are otherwise identified as currently in demand or with growth potential based on labor market intelligence.

All TJ placements must pay at least the prevailing minimum wage. The total cost per participant for a TJ will be set contractually. Per participant cost levels will take into consideration both participant wages and supportive services.

While the employer is under no obligation to offer regular employment to the participant subsequent to the conclusion of the TJ, it is hoped that the activity will result in providing employers with a pool of technically trained employees from which to fill future positions and reduce recruitment.

Transitional Jobs will be guided by a Worksite Agreement, an agreement between the WIOA service provider, the host employer worksite, and the WIOA participant, which will specify the occupational and employability competencies the participant will achieve in the work experience, the relationship and responsibilities of all parties, the evaluation process that will outline the progress of the participant at certain intervals, the training plan for the participant, and other necessary requirements.

It is preferable that a cohort model be employed in the use of transitional jobs, as cohorts allow for a form peer-support that has proven effective to participants in terms of confidences, shared experiences, encouragement that staff alone can’t provide and better overall success.

Eligibility Requirements

Participant Eligibility:

For an individual to qualify for TJ under WIOA guidelines, he/she will:

1. Have enrolled in WIOA Adult or Dislocated Worker programs;
2. Have participated in assessment activities that support a TJ activity;
3. Be chronically unemployed or have inconsistent work history as defined above.

Targeted populations for transitional jobs could include individuals who are long-term unemployed, ex-

offenders, parents ordered to pay child support, individuals who are currently receiving or have exhausted TANF benefits, and individuals with disabilities.

Employer Eligibility

Potentially eligible employers able to participate as a TJ placement site include: private-for-profit businesses, private non-profit organizations, and public sector employers. An employer will NOT be eligible to participate as a WIOA TJ placement site if:

1. The employer has any other individual on layoff from the same or substantially equivalent position.
2. The TJ would infringe upon the promotion of or displacement of any currently employed worker or a reduction in their hours.
3. The same or a substantially equivalent position is open due to a hiring freeze.

The employer is a private for-profit employment agency, i.e. temporary employment agency, employee leasing firm or staffing agency.

Signed By:

A handwritten signature in blue ink, appearing to read "Brian H. Davis", is written over a horizontal line.

Director