

## INCUMBENT WORKER TRAINING

### EXECUTIVE SUMMARY

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This policy provides guidance and establishes the procedures regarding Incumbent Worker Training (IWT) as part of comprehensive regional sector pathway programs and strategies for developing a skilled workforce and income mobility. This policy applies to all Local Boards and relevant parties, and is effective immediately.

This policy contains no state-imposed requirements.

This directive finalizes Workforce Services Draft Directive Business Engagement – Incumbent Worker Training WSD18-187, issued for comment on July 24, 2018. The Workforce Development Community submitted 34 comments during the draft comment period. A summary of comments, including all changes, is provided as Attachment 1.

Retain this Directive until further notice.

### REFERENCES

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- *Workforce Innovation and Opportunity Act (WIOA)* (Public Law) Sections, 122(h)(i), 134(d)(4), 134(G)(ii), 134(c)(3)(H), and 194(4)
  - Title 20 Code of Federal Regulations (CFR) Sections 680.780 – 680.820
  - Training and Employment Guidance Letter (TEGL) [10-16](#), Change 1, Subject: *Performance Accountability Guidance for Workforce Innovation and Opportunity Act (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 (CUIC)* Section 14000-14530
  - [Workforce Services Directive](#) WSD18-10, *WIOA Training Expenditure Requirement*, (January 31, 2019)
  - WSD18-03, Subject: *Pathway to Services, Referral, and Enrollment* (August 29, 2018)
  - WSD17-08, Subject: *Procurement of Equipment and Related Services* (March 14, 2018)
  - WSD16-18, Subject: *Selective Service Registration* (April 10, 2017)
  - WSD16-16, Subject: *Allowable Costs and Prior Written Approval* (February 21, 2017)
  - 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, Subject: *Transfer of Funds – WIOA Adult/Dislocated Worker Programs* (March 29, 2016)
- [Workforce Services Information Notice](#) WSIN12-31, Subject: *Assisting Employers in the New CalJOBS<sup>SM</sup>* (February 15, 2013)

## BACKGROUND

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Under WIOA, IWT provides both workers and employers with the opportunity to build and maintain a quality workforce, and increase both participants' and employers' competitiveness. IWT is a type of work-based training and upskilling designed to ensure California workers can acquire and develop the skills necessary to avert layoff or increase the skill levels of employees so they can be promoted within the company and create backfill opportunities for employers.

## POLICY AND PROCEDURES

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### Definitions

For the purposes of this Directive, the following definitions apply:

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

*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.

*Eligible Employer* – For an employer to be eligible for IWT services, the Local Board must consider the following:

- Whether the employer can provide a valid California Employer Account Number.
- The characteristics of the individuals in the program (see the IWT definition below).
- The relationship of the training to the competitiveness of an individual and the employer.
- Other factors the Local Board determines appropriate, such as the number of employees trained, 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* – Employers are required to pay for a significant cost of the training for those individuals in IWT. The minimum amount of employer share in IWT depends on the size of the employer.

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

*Incumbent Worker* – To qualify as an Incumbent Worker, the employee must meet the following:

- Be a current employee of an eligible employer and have an established employment history with the employer for six months or more. An individual is not held to the six month employment requirement if the IWT is being provided to a cohort of employees. In this instance, not every employee must meet the employment history requirement as long as a majority of the employees being trained do meet the requirement.
- Meet the Fair Labor Standards Act requirements for an employer-employee relationship.
- Meet the Selective Service requirements.

[Reference: Title 20 CFR Section 680.780]

*IWT* – The following characteristics define IWT:

- 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 provide training that will result in progression on a career pathway and income mobility.
  - Conducted with a commitment by the employer to retain employees, avert the layoff(s) 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.
  - Increases the competitiveness of the employer or employee.
  - 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)

*IWT Allowable Costs* – The Local Boards' share of the cost of training (teacher, books, materials) for the delivery of IWT. This amount excludes the cost of individual wages paid by the employer while the employee is attending/participating in the training. [Reference: WIOA Section 134(d)(4)(C)-(D)]

*Qualified Trainer* – Qualified training 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 is instruction in a classroom setting that is provided to a group of trainees and conducted by a qualified instructor.
- Laboratory training is hands-on instruction or skill acquisition under the constant and direct guidance of a qualified trainer. Laboratory training 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, also known as Productive Laboratory.
- Computer-based training is 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 is live, interactive instruction provided by a trainer through a video communications session.
- E-Learning instruction is delivered through a web-based system, conducted in a virtual environment utilizing a web meeting/webinar.

[Reference: WIOA Section 134(d)(4)(C)-(D)]

### **Eligibility for IWT**

WIOA requires Local Boards to determine an employer's eligibility for participating in IWT in order to evaluate whether training would increase the competitiveness of the employees and/or employers. Eligibility for participation in IWT is based on the following factors:

- The characteristics of the individuals in the program (e.g. individuals with barriers to employment).
- The relationship of the training to the competitiveness of the individual and employer.
- Other factors Local Boards determine appropriate, which may include, but are not limited to, the following:
  - 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.

- Utilization as part of a larger sector and/or career pathway strategy.
- Employer size.

[Reference: WIOA Section 134(d)(4)(A)(ii) and TEGL 19-16]

Additional factors identified by the Local Board must be included in the Local Board's policy and procedures to ensure consistent application for all employers.

For an employer to receive IWT funds, the individual(s) participating in the IWT must meet the following:

- Be employed.
- Meet the Fair Labor Standards Act requirements for an employer-employee relationship.
- Have an established employment history with the employer for six months or more. This may include time spent as a temporary or contract worker performing work for the employer. It should be noted that an individual is not held to the six month employment requirement if the IWT is being provided to a cohort of employees. In this instance, not every employee must meet the employment history requirement as long as a majority of the employees being trained do meet the requirement.

[Reference: Title 20 CFR Section 680.780]

An eligible individual participating in IWT is not required to meet the eligibility requirements for the Adult or Dislocated Worker program, unless they are also co-enrolled as a participant in the WIOA Adult or Dislocated Worker program and will receive WIOA funded services in addition to the IWT.

## **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, Local Boards can use up to 20 percent of their Adult and Dislocated Worker formula allocations for IWT activities. This 20 percent can only be used for programmatic activities, and cannot be used for administrative functions.

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.

Under WIOA, layoff aversion is now a required Rapid Response activity (Title 20 CFR Section 682.330). Local Boards can leverage Rapid Response funds by including IWT as part of a robust layoff aversion strategy for the Local Workforce Development Area (Local Area). Local Boards have 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 Local Areas.

The WIOA defines IWT as a business service, therefore, the delivery of IWT does not require the use of an Individual Training Account or that the training program be listed on the Eligible Training Provider List.

### *Employer Share*

Local Boards are required to establish policies regarding the non-federal share of the cost of IWT. Employers are required to pay for a significant cost of the training for those individuals in IWT. This can be done through cash payments and fairly evaluated in-kind contributions. The wages paid to individuals while in training may include the wages the employer pays to the individual while they are attending the training.

The Local Board must consider the number of employees participating in the training, the wage and benefit levels of the employees (at the beginning and anticipated upon completion of the training), the relationship of the training to the competitiveness of the employer and employees, and the availability of other employer-provided training and advancement opportunities. The minimum amount of employer share in IWT depends on the size of the employer and are as follows:

- At least 10 percent of the cost for employers with 50 or fewer employees.
- At least 25 percent of the cost for employers with 51 to 100 employees.
- At least 50 percent of the cost for employers with more than 100 employees.

[Reference: WIOA Section 134(d)(4)(C)-(D)]

The Local Board's policy must be applied to each employer to ensure consistent determination of the employer's eligibility to receive funding for IWT, and the Local Board's rationale/reasoning to support the IWT initiative.

### *Tracking IWT Expenditures*

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 [WSD18-10](#). The employer contributions for IWT can be counted as leveraged dollars.

### *Documentation*

The Local Board's IWT policy and the documentation for each IWT initiative must be retained by the Local Board. It is the Local Board'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.

### **IWT 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 Local Boards 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 2<sup>nd</sup> and 4<sup>th</sup> quarters after exit, median earnings in the 2<sup>nd</sup> 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 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 Local Board's responsibility to capture and enter credential information into CalJOBS<sup>SM</sup> 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.

## CalJOBS<sup>SM</sup>

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<sup>SM</sup>, 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<sup>SM</sup> 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.

## Employers

Local Area staff must ensure that the employer participating in IWT is registered as a preferred employer (recruiting employer) in CalJOBS<sup>SM</sup>, and the CalJOBS<sup>SM</sup> Activity Code E68 – IWT is added to the employer’s account. For more information about registering an employer into CalJOBS<sup>SM</sup>, please see [WSIN12-31](#).

## INQUIRIES

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If you have any questions, contact Carlos Bravo at (916) 327-5383.

/s/JAIME L. GUTIERREZ, Chief  
Central Office Workforce Services Division

Attachment is available on the internet:

1. [Summary of Comments \(PDF\)](#)
2. [Errata Chronology \(PDF\)](#)