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Workforce Investment Act (WIA) Transmittal Letter No. 17

To: Local Elected Officials, WIA Local Workforce Investment Boards, Fiscal Agent, Administrative Entities, and One-Stop Operators

From: Barbara E. Riley, Director

Subject: Work Experience for Adults and Dislocated Workers

**I. Purpose**

This communication provides guidance on paid and unpaid work experience for the adult and dislocated worker programs under Title I of the Workforce Investment Act (WIA). WIA administrative entities should convey this guidance to subrecipients and other entities that provide WIA activities and services.

**II. Effective Date**

Immediately

**III. Background**

Under the Workforce Investment Act of 1998, paid and unpaid work experience is an allowable activity for the adult and dislocated worker employment and training programs.

**IV. Guidance Statements**

Work experience is intensive services under WIA. Work experience is a planned, structured learning experience that takes place in a workplace setting for a limited period of time. Work experience may be paid or unpaid. Work experience must be clearly distinguishable from public service employment.

Work experience functions as a workplace-values activity for the acquiring of behavioral competencies and specific occupation or job skills. It is a strategy for participants who have little or no work experience in situations where an employer can offer a meaningful experience. Although an employer may also receive some benefit from work experience in the form of work being done or recruiting a potential new employee, the primary goal is to benefit the participant.

The use of work experience should be based on an assessment and service strategy identified in an individual employment plan (IEP).

Work experience may include, but not be limited to:

- Instruction in employability skills or generic workplace skills such as those identified by the Secretary's Commission on Achieving Necessary Skills (SCANS);
- Exposure to various aspects of an industry;
- Progressively more complex tasks;
- Internship and job shadowing;
- The integration of basic academic skills into work activities;
- Supported work, work adjustment, and other transition activities;
- Entrepreneurship;
- Service learning;
- Paid and unpaid community service; and
- Other elements designed to achieve the goals of work experiences.

Work experience may be combined with classroom instruction relating to the work experience position, occupation, industry or basic skills and abilities to successfully compete in the local labor market. Work experience is an intermediate employment step toward the long-term goal of moving along a career path and may be conducted in the private for-profit, private non-profit and public sectors.

A likely candidate for work experience is a participant who is appropriate for long term employment in a particular industry or occupation, but does not have all of the skills or the experience to qualify for entry-level employment in the field.

You are encouraged to develop on-the-job training and customized training contracts as a service strategy for dislocated worker participants assigned to the private for-profit sector.

- **Employer and Employee Relationship**

Work experience may be paid or unpaid. It is expected that work experience will be paid in most cases and the federal Fair Labor Standards Act (FLSA) will apply in any situation where an employer/employee relationship exists. You may use the following Web site for information on FLSA:

[www.opm.gov/flsa](http://www.opm.gov/flsa).

WIA participants are subject to the requirements of the FLSA to the extent that the activities performed in the work experience constitute employment. A local grant recipient should ensure that an administrative entity makes determination regarding whether work experience is a training situation or an employment situation. The administrative entity should establish a process for making determination.

According to the Wage and Hour Division of the U.S. Department of Labor, Employment Standards Administration, if all of the following six (6) items exist, the work experience can be considered a training situation. The WIA participant is not an employee of the employer site if:

1. the training, even though it includes actual operation of the facilities of the employer, is essentially a training experience similar to a vocational school;
2. the participant is primarily the beneficiary of the experience;
3. regular employees are not displaced and the experience is closely supervised/observed;
4. the "employer" that hosts the experience derives no immediate or significant advantage (and may experience an actual downside);
5. the participant is not necessarily entitled to a job at the conclusion of the experience; and,
6. there is a mutual understanding between the participant and the host agency that the participant is not entitled to wages for this time because the activity is essentially a training experience.

If any of the above 6 conditions are **not** met, then the WIA participant must be considered an employee. If the worksite is relying on the participant to perform real work, i.e., to be productive, then the situation should be recognized as an employer-employee relationship. In this situation, the site employer is the employer of record. Participants must receive no less than the applicable state or federal minimum wages, related benefits are required and payroll taxes should be deducted. The employer of record will be responsible for paying all taxes and providing similar benefits as are available to other employees.

The WIA administrative entity has the option of being the employer of record for the WIA participant. The administrative entity as employer of record is responsible for paying the participant and negotiating with the host site the activities that will be performed by the participant. The work experience may occur at the administrative entity, service provider or employer location or the participant may be referred to a host site to receive the work experience. The host site is the location where work experience tasks will occur.

Needs-related payments are prohibited for WIA adult and dislocated worker participants who are in school and required to complete an internship that is an employment situation, if wages are being paid for the internship activity.

- **Unpaid Work Experience**

Unpaid work experience is an activity exposing participants to the working environment, and an individual does not expect payment for tasks performed. The use of unpaid work experience should be limited.

Unpaid work experience may include job shadowing. Job shadowing is a short-term activity which introduces a participant to the workplace and provides exposure to occupational areas of interest. A participant experiences the work environment to increase career awareness, observe models of behavior on the job through examples, and receives help in making career decisions. Job shadowing can reinforce the link between classroom learning and work requirements. Job shadowing is limited and allows participants to observe only.

WIA adult and dislocated worker participants who are in school and required to complete an unpaid internship as part of a training program may receive needs-related payments in accordance with WIA requirements governing needs-related payments or receive incentives or a stipend as appropriate.

Unpaid work experience participants may receive remuneration in cash or non-cash incentive. An incentive is remuneration to participants for successful participation and achievement of expected outcomes as defined in the individual employment plan (IEP). The incentive should equate to an achievement, and should be tied to training and education, a work readiness skill and/or an occupation skill attainment goal identified in IEP.

WIA, title I is silent on using the term “stipend.” A stipend is a fixed and regular small payment such as an allowance. Reasonable stipends are allowable expenditures for unpaid work experience when the provision of stipend is included in the participant’s IEP. An adult or dislocated worker may receive a stipend for an entire day if at least 51% of the individual’s time is

spent in unpaid work experience. For example, if an individual spends five hours per day in unpaid work experience and three hours in classroom training, the participant may receive a stipend for eight hours.

The incentives or stipend are determined by the Local Workforce Investment Board (WIB) and funded by the WIA administrative entity. Stipends should be issued through a uniform payment system. Such incentives or stipend are not considered income for WIA eligibility purposes, not required to meet minimum wage requirements, are not to be dispersed as payroll, and income tax is not to be withheld.

### **C. Stand-alone Activities vs. Combination of Services**

Unpaid work experiences must be offered in combination with other services. The services that will be provided in combination with unpaid work experience need to be identified in the local policy.

Paid work experience may be a stand-alone activity, or it may be combined with other services. The local policy needs to indicate whether paid work experience will be offered as a stand-alone activity or in combination with other services. If offered in combination with other services, identify the types of services that will be combined with paid work experience in the local policy. Work experience may be combined with community service programs.

### **A. Local Workforce Investment Board Policy**

The WIB is responsible for directing policy and a service delivery strategy to the administrative entity for administering both paid and unpaid work experience. We recommend that work experience be paid. Local policy should ensure that paid work experience does not result in the loss of public assistance benefits. In developing local policy, the needs, circumstances and characteristics of the adult and dislocated worker population should be taken into consideration. At a minimum, the WIB's policy should cover the following:

- **The goal of the work experience** - Work experience designed to aid participants in learning good work habits should be assigned more hours than work experience which is designed for career exploration.
- **Duration of work experience** - The duration of paid and unpaid work experience should be stated in the policy. A minimum and a maximum limitation may be set on the number of hours assigned for any single work experience. When assigning hours consider the needs of the participant and the job duties to be performed.
- **Past work experience** - More hours are justified for a participant who has not worked before or who has a poor work history, and fewer

- hours should be assigned to participants who possess good work histories.
- **Participant barriers** - Participants with multiple barriers may benefit from more hours and those with fewer barriers may require fewer hours.
- **The complexity of the job tasks** - Jobs with tasks of higher complexity will need more hours assigned, and jobs of lesser complexity require fewer hours.

The WIB must ensure that the administrative entity has a written agreement to ensure compliance with WIA and applicable regulations. The agreement is a written document that details terms and conditions of paid and unpaid work experience and the expectations of the parties to the agreement. The written agreement is between the participant, the site employer or host site, and the administrative entity.

The agreement which may be called a worksite agreement, job site agreement, or host site agreement should include at a minimum: the duration, remuneration, tasks, duties, supervision, health and safety standards and other conditions of work experience such as consequences of not adhering to the agreement and termination clause. The worksite or host site entity, the participant and the administrative entity should have a copy of the agreement. The agreement must be available for audit and monitoring purposes.

#### **A. Health and Safety Standards**

The local policy should include an assurance that the health and safety standards established under Federal and state law will be followed.

Health and safety standards otherwise applicable to working conditions of employees are equally applicable to working conditions of participants in programs and activities under Title I of WIA.

The State worker's compensation law may or may not apply to a participant in work experience depending on the work experience arrangements and employer's benefits. If the State worker's compensation law does not apply to a participant in work experience, the administrative entity must secure insurance coverage for injuries suffered by the participant in work experience.

#### **F. Documentation to be Maintained**

Documentation of work experience activities must be maintained in the WIA participant's file. Local policy and procedures should specify what

documentation will be kept on file, which should include, at a minimum, the following items:

- an objective assessment and Individual Employment Plan (IEP) indicating a need for work experience;
- justification for incentive and description of type of payment method and amount, if applicable;
- an analysis of how the cost and duration of the work experience were determined;
- a copy of the agreement between the participant, the worksite or host site and the local workforce investment board, including any attachments to the agreement, such as a training plan; and
- time sheets, attendance sheets and performance records, as appropriate.

To ensure effective and efficient record keeping practices, local procedures should specify where certain documents should be placed in the file.

### **G. Appropriate Employers**

You should use employers that are committed to helping participants receive the experience and training that is required for employment beyond the work experience period. Use employers that are willing to work closely with program staff. Employers should be flexible in working with participants who have issues that may be barriers to employment.

Attention must be given to ensure that work experience arrangements do not unfavorably impact current employees and do not impair existing contracts for services or collective bargaining agreements.

Work experience, including an internship, in the private for-profit sector must be structured so as not to appear to be subsidizing private for-profit operations. The work of the participant should not materially impact the profit margin of a private-for profit company.

A selection criteria can be established to ensure that one employer is not favored at the expense of another employer. Although not required, the selection criteria could include using a request for proposal or a modified bid process which would also make the community at large aware of opportunities.

### **H. Sharing Career Opportunities and Training Information (SCOTI)**

Work experience job positions are not to be entered into SCOTI Labor Exchange matching system as a job order. Work experience job positions

cannot be included in the match pool because job seekers are not to be referred to these job positions. Work experience is not counted as placements for purposes of Wagner-Peyser. Keep in mind the employer offers a meaningful position for a participant to gain work experience.

### **I. Monitoring**

The WIB is responsible for ensuring oversight of the program. The administrative entity should periodically monitor the participant and the worksite or a host site to ensure goals are being met and adherence to this guidance and WIA law and regulations.

### **V. Technical Assistance**

For additional information, you may send your questions or request to the Bureau of Workforce Services, { [HYPERLINK "mailto:wiaqna@odjfs.state.oh.us"](mailto:wiaqna@odjfs.state.oh.us) } .

### **VI. Reference**

Workforce Investment Act of 1998, Public Law 105.220, Subtitle B, Section 134,  
WIA Final Rules, 20 CFR Part 652 Sections 661.305, 663.200, 667.270 and 667.274