

WORKFORCE DEVELOPMENT BOARD  
Workforce Innovation and Opportunity Act Area 8  
Workforce Innovation and Opportunity Act Policy Letter

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| <b>Policy number</b>         | 220   |
| <b>Subject</b>               | Work Experience for Adults and Dislocated Workers<br><a href="#">WIOAPL 15-12</a> |
| <b>This policy obsoletes</b> | Work Experience- Guidance -no date  |
| <b>May apply for waiver</b>  | NA  |
| <b>Board approved</b>        | 5/17/18   |
| <b>Effective date</b>        | 5/1/18  |
| <b>Revisions approved</b>    |   |

**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 Innovation and Opportunity Act (WIOA).

**II. Effective Date.**

May 1, 2018

**III. Background.**

Under the Workforce Innovation and Opportunity Act, work experience is a career service that is provided in order for an individual to obtain or retain employment and is linked to a potential career choice.

**IV. Definitions.**

Internship: a system of gaining on-the-job experience by placement in a work environment for a period of time with the goal to build technical and job awareness skills. Internships may be paid or unpaid.

Job shadowing: a short-term unpaid activity which introduces a participant to the workplace and provides exposure to occupational areas of interest to increase career awareness. Job shadowing is limited and allows youth to observe only.

Public service employment: work normally provided by governments, and includes, but is not limited to work in fields of: human betterment and community improvement, child care, health

care, education, crime prevention, public transportation, streets and parks, solid waste removal, housing and neighborhood improvement, rural development, etc.

Work experience: a planned, structured learning activity that takes place in a workplace setting for a limited period of time.

Incentive/Stipend: remuneration to participants for successful participation and achievement of expected outcomes as defined in the individual service strategy (ISS).

On-the-job training (OJT): training by an employer that is provided to a paid participant while engaged in productive work in a job that:

- Provides knowledge or skills essential to the full and adequate performance of the job;
- Is made available through a program that provides reimbursement to the employer of a percentage of the wage rate of the participant; and
- Is limited in duration as appropriate to the occupation for which the participant is being trained, taking into account the content of the training, prior work experience of the participant, and the service strategy for the participant. (See Area 8 Policy 190 On-the-Job Training)

Pre-apprenticeship programs: programs or set of strategies designed to prepare individuals to enter and succeed in Registered Apprenticeship programs and have a documented partnership with at least one, if not more, Registered Apprenticeship programs.

## **V. Requirements.**

Work experience is a planned, structured learning activity that takes place in a workplace setting for a limited period of time **not to exceed 520 hours**. The eligible participant is in need of this service to obtain unsubsidized employment leading to self-sufficiency. Work experience is paid or unpaid and may include but is not limited to internship and job shadowing etc.....

Work experience functions as a workplace-values activity for acquiring of behavioral competencies and specific occupation or job skills. The primary intent of work experience is to provide participants with opportunities for career exploration and skill development to gain work readiness skills in preparation for employment. Work experiences should enable adults and dislocated workers to gain exposure to the working world and its requirements. It is a strategy for participants who have little or no work experience in situations where an employer can offer a meaningful experience.

Work experience must be based on identified needs of the adult and dislocated worker. Use of work experience situation must be based on an assessment and identified on the participant's individual employment plan (IEP). 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.

Work experience may be conducted in the private-for profit, private non-profit and public sectors. It must be clearly distinguishable from public service employment. Public service employment is a prohibited activity under the WIOA. Although a business, public agency or non-profit (hereafter collectively referred to as " work experience provider") may also receive some benefit from work experience in the form of work being done or recruiting a potential new employee, the primary goal of work experience is to benefit the participant.

Work experience may be combined with classroom instruction relating to a particular 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.

**Area 8 Workforce Development Board** requires the following of its providers:

- **Paid or unpaid** Work experience designed to aid participants in a structured environment, learning good work habits with the focus on career exploration; if Paid the employer may provide the compensation, or be paid by the provider (see section C).
- **The Worksite Agreement**, must include at a minimum: the duration of the experience, remuneration, tasks, duties, supervision, health and safety standards and other conditions of work experience such as consequences of not adhering to the agreement and a termination clause. The worksite or host site entity, the participant and the provider of career services should all be given a copy of the agreement. The agreement must be available for audit and monitoring purposes.
- The provider of career services is required to have a written "worksite agreement" 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 provider of career services.
- **Monitoring** - The OMJ staff must monitoring said sight upon initiation and at 30% intervals of the total duration, and as requested by the client or the employer. The OMJ staff will use a form or checklist for evaluation.

**A. Paid Work Experience.**

Providers may provide paid work experience programming for Adult and/or Dislocated Workers. Work Experience Programming may be provided to eligible adult and dislocated workers. For all paid work experience, wages will be at least the state minimum wage rate, with operators having the discretion to pay more based on the occupation. Work experience is **not to exceed** 520 hours, not to exceed the sum of \$2500.00 per participant.

**B. 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. An employer and employee relationship must not exist, which means that all

six conditions listed in Section V.C. of this policy letter must be met. The use of unpaid work experience should be limited.

Unpaid work experience may include job shadowing. 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.

WIOA 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 the WIOA requirements governing needs-related payment (refer to WIOAPL No. 15-14, Needs-Related Payments (NRP) - WIOA Adult and Dislocated Worker Formula Funds).

### **C. Determining "Trainee" versus "Employee"**

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. WIOA participants are subject to the requirements of the FLSA to the extent that the activities performed in the work experience constitute employment.

A local area shall ensure that staff providing career services make a determination regarding whether work experience is a "training" situation or an "employment" situation. The local WDB should establish a process for making these determinations.

#### **Trainee**

Because the FLSA's definition of "employee" is broad, the excluded category of "trainee" is necessarily quite narrow. In general, the more a training program is centered around a classroom or academy as opposed to the work experience provider's actual operations, the more likely the activity is training. The more the training is providing the participants with skills that can be used in multiple employment settings, as opposed to skills particular to one work experience provider's operations, the more likely the participant is a trainee.

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 and an employment relationship does not exist under FLSA:

1. The training, even though it includes actual operation of the facilities of the work experience provider 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 work experience provider that hosts the experience derives no immediate or significant advantage (and may even be adversely impacted);
5. The participant is not guaranteed a job at the conclusion of the experience; and,
6. There is 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.

As the participant is a "trainee" and an employment relationship does not exist under the FLSA, the FLSA's minimum wage and overtime provisions do not apply to the participant.

### **Employee**

If the adult or dislocated worker participants are engaged in the primary operations of the work experience provider and are performing productive work (for example, filing, performing other clerical work, or assisting customers), then receiving some benefits in the form of a new skill or improved work habits is unlikely to make the participant a trainee, given the benefits received by the work experience provider.

If the worksite uses the adult or dislocated worker participants as substitutes for regular full time or part time employees, it is more likely that the participants are employees as opposed to trainees. Also, if the work experience provider would have needed to hire additional employees or require overtime had the participants not performed the work, then the participants are likely employees.

### **Employer of Record**

1. Employer - If the work experience provider 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. (See Area 8 Policy 190 On-the-Job Training)

2.Provider of Career Services- The OhioMeansJobs center operator or the contracted provider of career services, whichever situation applies, has the option of being the employer of record for the adult or dislocated worker participant. The employer of record is responsible for paying the participant, workers compensation, taxes or a stipend and negotiating with the host site the activities that will be performed by the participant. The work experience may occur at the provider of career services, 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.

#### **D. Work Experience Provider Agreement.**

Prior to the commencement of any paid/unpaid Work Experience, there must be a written Work Experience Provider Agreement entered into that details terms and conditions of paid and unpaid work experience and the expectations of the parties to the agreement. The written agreement must be between the participant, the work experience provider, and the Adult and Dislocated Worker provider.

The written agreement, must 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 a termination clause. The work experience provider, the participant, and the youth provider should all be given a copy of the agreement. The agreement must be available for audit and monitoring purposes.

#### **VI. Documentation to be Maintained.**

Documentation of the work experience must be maintained in the participant's file. All of the following documentation will be kept in the participant's file:

- An objective assessment and Individual Employment Plan indicating a need for work experience.
- Justification for incentive/stipend, and description of type of payment method and amount, if applicable.
- A copy of the agreement between the participant, the work experience provider, and the Adult and Dislocated Worker provider, including any attachments to the agreement, such as a training plan.
- Time sheets, attendance sheets and performance records, as appropriate.

-AND-

- Documentation of receipt of incentives, stipends and supportive services received by the participant.

#### **A. Appropriate Employers**

- The WDB should seek employers that are committed to helping participants receive the experience and training that is required for employment beyond the work experience period. Employers should be willing to work closely with program staff and be flexible in working with participants who have 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 internships, 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.

#### **B. Health and Safety Standards**

- The local areas must apply the same health and safety standards otherwise applicable to working conditions of employees to working conditions of participants in programs and activities under Title I of the WIOA.
- The state workers' 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 workers' 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.

### **VII. Monitoring.**

The WDB is responsible for ensuring oversight of the program. The local area OMJ staff must periodically monitor the participant and the worksite or a host site to ensure that goals are being met and adherence to this guidance and WIOA law and regulations.

Through the state's monitoring system, program monitors will review the local area's use of work experience in the WIOA adult and dislocated worker programs, including a participant file review, during the annual onsite monitoring review for compliance with federal and state laws and regulations. Any issues will be handled through the state's monitoring resolution process.

### **VIII. Technical Assistance**

For additional information, you may send your questions to the Office of Workforce Development: [OWDPOLICY@jfs.ohio.gov](mailto:OWDPOLICY@jfs.ohio.gov).

For additional information, you may send your questions to ODJFS, Office of Workforce Development: [WIAQNA@JFS.OHIO.GOV](mailto:WIAQNA@JFS.OHIO.GOV).

**IX. References.**

- Workforce Innovation and Opportunity Act, Pub. L. 113-128.
- 20 CFR Parts 603 et al.
- 29 U.S.C. 3101 et seq
- Fair Labor Standards Act of 1938, 52 Stat. 1060, 29 U.S.C. 201 et seq.
- USDOL, Training and Employment Guidance Letter No. 12-09, Joint Guidance for States Seeking to Implement Subsidized Work-Based Training Programs for Unemployed Workers, (January 29, 2012).
- USDOL, U.S. Secretary’s Commission on Achieving Necessary Skills, A SCANS Report for America 2000, (June 1991).
- I.R.S. Revenue Ruling 75-246, 1975-1 C.B. 24, Scenarios distinguish between amounts paid in connection with training—excludable under general welfare exception—and amounts paid in connection with services.
- O.A.C. § 4101:9-2 (2004).
- O.R.C. § 3331 (2002).
- O.R.C. § 4109
- WIOAPL No. 14-XX, Needs-Related Payments (NRP) – WIOA Adult and Dislocated Worker Formula Funds.

**Area 8 WDB Approval**

Date:   5/17/2018  

Motion made by:  Rob Radway 

Motion seconded by:  Michelle Steinke 

Vote  4  aye  0  nay  0  abstain  X  motion carries    motion rejected