



# **Sullivan County Workforce Development**

## **ON-THE-JOB TRAINING (OJT) POLICIES AND PROCEDURES**

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**I. PURPOSE OF THE ON-THE-JOB (OJT) TRAINING PROGRAM**

The basic purpose of an OJT is to allow an employer to hire a WIOA eligible participant who would not otherwise qualify for the job and to teach the skills needed to perform at the entry level for the position. The activity is based upon a contractual exchange between the employer and Sullivan County Center for Workforce Development (CWD). The OJT program provides the employer with a partial wage reimbursement for an agreed-upon training time period in exchange for the provision of training by the employer and an expectation that the individual will be retained upon successful completion of the training.

The participant is an employee of the company that has agreed to provide the training - this is not a subsidized employment program. The OJT training payments to employers are deemed to be compensation to the employer for the extraordinary costs associated with training participants and the costs associated with the lower productivity of the participants during the training period. Employers may be reimbursed up to 50 percent of the wage rate of an OJT participant during the pre-established training period, and the training duration is limited to not less than four (4) weeks and not more than twenty-six (26) weeks.

Because all new employees undergo some form of training, it is essential to differentiate the initial "training and orientation" routinely provided by the employer to qualified new hires from the additional training that is to be provided for the OJT participant. The employer will be compensated only for training which is in addition to what is normally provided to a qualified new employee.

During the course of the OJT, the participant must be treated as a regular employee and should receive wages and benefits at the same level as similarly employed workers. As reimbursements are intended to compensate the employer for the decreased productivity, jobs that pay by commission or piecework are generally considered inappropriate. Additionally, seasonal and temporary jobs are not eligible because the desired outcome is long-term retention into full time employment at the completion of training.

The assessment process is used to substantiate that each participant has a need for the training that is to be provided and has the capability to benefit from this training. The decision to assign a participant to an OJT should be based on consideration of the participant's employability skills, skill deficiencies, and interests. As with consideration of any participant for a training service, he or she should generally possess at least the threshold level of basic and work readiness skill proficiency to ensure the possibility of success.

Expenditures for training activities are to be confined to situations where there is a documented need for training - mere subsidies for an employer or financial incentives to hire are to be avoided. Thus, the selection of participants for an OJT should be carefully governed by a well thought out process. The skills already possessed by the participant must be considered along with the skills required to do the job.

**II. QUALIFYING THE EMPLOYER - THE INITIAL DISCUSSION**

The contracting process begins with a systematic exchange of information between the prospective employer and CWD. The Workforce staff must make an on-site visit to the interested employer to:

- Explain the program;
- Learn about the business;
- Identify and describe the job to be filled;
- Provide the potential employer with an Employer Orientation Fact Sheet
- Observe the work setting and environment;

- Ensure that the health, safety, and working conditions are reasonably safe and sanitary; and if it appears as if the business is a viable OJT employer, provide them with a Sample OJT Contract for them to review the provisions.

### **III. EMPLOYER ELIGIBILITY FOR ON-THE-JOB TRAINING PROGRAMS**

Employers selected as OJT contractors must meet the following program guidelines:

- Contracts can be written with employers from the public, private non-profit or private for-profit business sectors as long as the training employer complies with all applicable health and safety policies and standards required by Federal and State law.
- The employer must complete the Pre-Award Review Business Application form and the Responsibility Questionnaire to provide information for the Workforce staff to evaluate suitability and eligibility. If a business has submitted a Responsibility Questionnaire within the last 12 calendar months, all that is needed is a Responsibility Questionnaire Attestation Form which basically states that the information presented in the original form remains true, accurate and complete.
- The Workforce staff must confirm that the applicant business is a responsible training provider for an OJT candidate by checking:
  - *Responses to Responsibility Questionnaire* -A "yes" answer to one of the questions on the Responsibility Questionnaire (RQ) does not automatically mean that the business is ineligible to receive funding. NYSDOL has moved the responsibility of reviewing the RQ to the local area for the purpose of the OJT due diligence. This responsibility includes determining what is considered a satisfactory explanation in the Sullivan County area. If a business answers yes to a question, as long as the business has provided an explanation that is reviewed and found to be satisfactory, the OJT contract can proceed.
  - *Registration with the New York Department of State's Division of Corporations.* This search can be conducted at: [http://www.dos.state.ny.us/corps/bus\\_entity\\_search.html](http://www.dos.state.ny.us/corps/bus_entity_search.html)
  - *Federal OSHA Records.* Search only New York State. These records are found on-line at: [http://www.osha.gov/pls/i\\_mis/establishment.html](http://www.osha.gov/pls/i_mis/establishment.html)
  - *New York State Department of Labor (NYSDOL) Records.* Requests for evaluation of this information should be made to [OJTDueDiligence@labor.ny.gov](mailto:OJTDueDiligence@labor.ny.gov) using the OJT Due Diligence Request Form The subject line should read "Local Area OJT Due Diligence Request - [Business Name]." The Hudson Valley Regional Business Services Representative should be listed in the cc line of the requesting email. Upon receipt of the request, NYSDOL will respond with a confirmation email.

This request should be made as early in the process as possible in order to allow for a timely response. NYSDOL expects to provide a response to due diligence requests via email within three business days from the time confirmation of receipt is provided.

Due to the confidential nature of the information in question, NYSDOL will not provide any specifics for the categories of information. Instead, it will provide a response of "Found to be Responsible," "Issues Pending," or "Not Found to be Responsible" via email for each entity. The records to be checked will include:

- Unemployment Insurance records
- WARN notices
- Open investigations with NYSDOL's public Works, Labor Standards and/or

Safety and Health Divisions

- Workers' Compensation Insurance and Disability Insurance coverages

This review provides a snapshot of the business at the point in time the review takes place. For this reason, the review is considered valid for a three (3) month period beginning on the date the review is completed. After this three (3) month period, the organization must undergo a new due diligence review if it wishes to enter into a new contract.

In addition, an on-site review must be conducted with the business. This review will allow staff to see where the OJT participant will be working, meet the participant's supervisor, and gain a better understanding of the employer's facility and operations. The purpose of the site visit is to determine whether the employer will afford a viable on-the-job training opportunity.

- An OJT cannot be used to hire an immediate relative of the employer, and no member of the OJT participant's immediate family can directly supervise the OJT participant, nor can the participant supervise an immediate family member. For the purpose of this contract, immediate family is defined as spouse, children, parents, grandparents, grandchildren, brothers, sisters or persons bearing the same relationship to the OJT participant's spouse.
- An OJT contract may not be entered into with an employer who has received payments under previous WIOA contracts if the employer has exhibited a pattern of failing to provide OJT participants with continued long-term employment at the same level as regular employees.
- The employer agrees to adhere to the Local Workforce Development Board's (WDB) grievance process if a complaint arises in connection with the OJT participant and the training.
- The employer must not be involved in a current labor dispute and must not have a history of frequent layoffs.
- An OJT may not be used for training participants in sectarian activities or be used to carry out the construction, operation or maintenance of any part of a facility that is used or to be used for sectarian instruction or as a place for religious worship.
- The employer may not utilize an OJT contract to replace a worker who is currently on layoff, displace currently employed workers, reduce the hours of those employed below their normal schedule, or to infringe in any way upon the promotional opportunities of current employees not involved in the OJT.
- OJT contractors may not include employers who have relocated, either in whole or in part, if such relocation resulted in the loss of employment for any employee of the company at the original location.
  - An establishment has relocated if any of its operations have moved from facilities located in one labor market area within the United States and its territories to a new or expanding facility in another labor market. As a rule, this restriction extends for a period equal to 120 days following the commencement or the expansion of the relocating company.
  - Whenever there is an inquiry from a new employer that has relocated from another labor market area regarding the development of an OJT contract, the Workforce staff will review the Pre-Award Review form included with these policies.

The purpose of this review is to ascertain whether the relocating employer has caused a loss of employment at its original location. The WIOA regulations require that a period of 120 days elapse before an OJT contract can be written. If the relocation has not caused unemployment, it is permitted to develop a contract.

- As a rule, employers having four or more employees may not have more than 25% of its workforce in an OJT program within a program year (July 1- June 30). Employers with less than four employees may have no more than one OJT contract within a program year. (Waivers to this policy may be extended by the Workforce Development Board where economic development circumstances such as major plant expansions or start-ups exist.)
- OJT contracts will be permitted with an employer where current and/or past Workforce Development Board members are employed, or otherwise have a financial or personal interest. The Workforce Development Board Executive Director shall be informed about the type and number of these contracts.
- The employer must pay participants the same rates as employees who are similarly situated in similar positions, and who have similar training experiences and skills. Participants must also receive the same working conditions and benefits as those in similar employment. The anticipated reimbursement of wages must not be used to provide higher wages to participants than employees in similar positions not covered by the OJT contract.
- Funds provided to the employer to reimburse the costs associated with an OJT contract may not be used to assist, promote or deter union organizing.
- The training activity will not impair an existing contract for services or collective bargaining agreement, and/or no activity which would be inconsistent with the terms of a collective bargaining agreement shall be undertaken without the written concurrence of the labor organization and the employer.
- The Sullivan County Workforce Development Board, the New York State Department of Labor, or the U.S. Department of Labor may inspect and monitor any records or activities pertaining to the OJT contract at any time during normal business hours, and as often as deemed necessary. Such inspection shall be made to determine whether the employer is following the terms and provisions of the OJT contract and the OJT participant is making sufficient progress.

#### **IV. OCCUPATIONAL QUALIFICATIONS**

In general, all occupations that require a period of significant training and instruction to acquire specific skills and knowledge are eligible for the OJT program. The following guidelines will determine occupations that are eligible for OJT.

1. The occupation must be one in which there is anticipated demand. An OJT that occurs in small businesses where the OJT training covers a relatively broad range of functions that draw from several occupations are generally considered as a unique occupation for labor market demand purposes. With these unique occupations, the fact that an opening exists for the occupation at the business presupposes the existence of a demand for the occupation.
2. The position must not be intermittent, seasonal, or temporary. Temporary employment is defined as employment with a pre-determined end-date.
3. The position must not involve compensation in the form of commission as the source of payment to the OJT participant.
4. The position must not include political or religious activity.
5. The employer's intention in hiring the participant is for the newly hired employee to remain

- employed with the business upon completion of the OJT.
6. Adequate Disability, Workers' Compensation and Liability insurance coverage must be in effect.

### ***PART-TIME ON-THE-JOB (OJT) CONTRACT GUIDELINES***

Following is information regarding the implementation of a part-time OJT contract:

1. Eligible participant criteria:
  - Must be going from long-term unemployment to part-time employment; or
  - Going from one part-time job to another part-time job which pays at least \$.50 per hour more than the previous position; or
  - Due to significant barriers, a part-time position is the most appropriate placement for the participant.
  - Must be at least 18 years of age, U.S. citizen or legal resident eligible to work in the U.S.
  - The participant must be willing to complete all paperwork, participate in a basic skills review, and provide any required supporting documentation, e.g., driver's license, social security card, prior earnings history, etc. This all must be completed prior to date of hire.
  - An individual who is credentialed (degree/license) in a demand occupation will not be eligible.
2. Employer criteria:
  - Must be a Sullivan County employer - any exception must have the approval of the Workforce Development Board.
  - Employer must meet with Workforce staff to provide information necessary for the contract implementation.
  - Employer must provide evidence of Disability, Workers Compensation, and Liability Insurance.
  - Participant paperwork and qualification approval must be completed prior to date of hire.
  - Positions which require a license are not eligible.
  - **A part-time OJT must pay at least NYS minimum wage plus \$1.00 per hour, consist of a minimum of 20 hours per week, and training may be from four weeks to twenty-six weeks (depending upon the skills and abilities of the individual.)**
  - **Reimbursement will be 50% of gross wages paid during the training period outlined in the contract, and is based on a base wage, not including shift differentials, commissions, incentives, etc.**
  - **Upon successful completion of training the employer must provide a minimum of \$1.00 per hour increase.**
  - Employers should submit timesheets and vouchers on a monthly basis. All paperwork must be submitted within 60 days after the contract ends or the employer may forfeit reimbursement.
  - OJT contracts must be signed by the Owner/CEO or designated Principle of the business.

## **FULL-TIME ON-THE-JOB (OJT) CONTRACT GUIDELINES**

Following is information regarding the implementation of a full-time OJT contract:

1. Eligible participant criteria:
  - Must be at least 18 years of age, U.S. citizen or legal resident eligible to work in the U.S.
  - The participant must be willing to complete all paperwork, take a basic skills test, and provide any required supporting documentation, e.g. driver's license, social security card, prior earnings history, etc. This all must be completed prior to date of hire.
  - An individual who is credentialed (degree/license) in a demand occupation will not be eligible.
  
2. Employer Criteria:
  - Must be a Sullivan County employer - any exception must have the approval of the Workforce Development Board
  - The employer must meet with Workforce staff to provide information necessary for the contract implementation.
  - Employer must provide evidence of Disability, Workers Compensation, and Liability Insurance.
  - Positions which lead to a license are not eligible.
  - Participant paperwork and qualification approval must be completed prior to date of hire.
  - **The OJT must pay at least NYS minimum wage plus \$1.00 per hour.**
  - **Upon successful completion of the training the employer must provide a minimum of \$1.00 per hour increase.**
  - **Reimbursement will be 50% of gross wages paid during the training period outlined in the contract, and is based on a base wage, not including shift differentials, commissions, incentives, etc.**
  - Full-time OJT's must be for a minimum of 30 hours a week.
  - Business should submit timesheets and vouchers on a monthly basis. All paperwork must be submitted within 60 days after the contract ends or the employer may forfeit reimbursement.
  
3. Reimbursement Rate up to 75% for OJT contracts when considering certain factors:
  - The participant is an "individual with barriers to employment: as defined in WIOA section 3(24).
  - The business is a small business. This is defined by New York State as having 100 employees or less; and
  - The quality of the employer-provided training and the advancement opportunities.

*Approval for a 75% reimbursement must be given in writing by the Executive Director to the Workforce Development Board and the Director of the Center for Workforce Development.*

- V. OJT contracts must be signed by the Owner/CEO or designated Principle of the business.

### VI. **PARTICIPANT ELIGIBILITY**

The participant must meet the current eligibility criteria as defined by the WIOA under the Adult,

Dislocated Worker or Youth programs. The participant must receive an Individual Employment Plan (IEP), which documents that an OJT is an appropriate activity. The participant should possess the ability and aptitude to learn the skills offered by the training program.

*Participant Recruitment and Assessment:*

Workforce staff will evaluate the client's appropriateness and job readiness for the OJT program. A participant is considered to be OJT-ready if he or she:

- a. Has identified an occupational area for which immediate employment is a realistic goal;
- b. Has the interest and aptitude necessary to begin an OJT position in a specific occupation.
- c. Has resolved or has plans to resolve such employment barriers as transportation, day care, housing, health, or other barriers that can prevent successful OJT participation;
- d. Has a positive attitude toward working;
- e. Does not lack the basic skills needed to perform on the job. Such basic skills can include math, reading, understanding the English language and others that are necessary to begin OJT training;
- f. Does not have significant prior experience and/or education in the occupational area for which OJT is being considered, and lacks the specific occupational skills required for employment.

A participant who possesses knowledge or skills essential to the full and adequate performance of the specific occupation for which the OJT is proposed may not be placed into an OJT in that occupation. While compliance with this principle is inherent in the concept of OJT, in reality many jobs are unique and do not present an exact match of the skills required for jobs with other employers, even where the job title is identical. Thus, even where a participant has some relevant experience or training, the need for OJT may still be substantiated through the assessment process. In addition, a lack of contemporary application of skills or a change in technology may necessitate additional training.

It is the responsibility of the Workforce staff to ensure that an appropriate and complete Individual Employment Plan (IEP) is prepared for every participant considered for the OJT program. All of the elements listed above should be contained on the IEP and relevant aspects documented in the One Stop Operating System (OSOS).

The IEP not only assists in documenting activity, but also provides the participant with an understanding of the WIOA training activities that he or she will progress through in order to eliminate barriers to long-term employment.

OJT contracts may be written for eligible *employed* workers when:

- The employee is not earning a self-sufficient wage as determined by Local Workforce Development Board (LWDB) policy; and
- The OJT contract relates to the introduction of new technologies, introduction to new production or service procedures, upgrading to new jobs that require additional skills, workplace literacy, or other appropriate purposes identified by the LWIB.

**VI. OJT Job Development**

- a. The Workforce staff determines that an OJT position is an appropriate course of action for the participant (and this determination is documented in the IEP). Candidates may also be identified through system employer relationships, from the

pool of applicants who have registered in OSOS, those who have applied for WIOA services and have not yet been enrolled, or among participants who are receiving services beyond self-service informational.

Employer referrals are also permitted. An employer may sometimes refer an applicant for a vacant position in order to determine whether the applicant is eligible for WIOA and appropriate for training through an OJT training plan. Workforce staff should assess the circumstances to determine whether an OJT is appropriate in the same way they would assess an individual participant.

- b. The appropriateness of referrals to OJT positions must be substantiated by an assessment of the participant's needs, interests, education, and previous work history. In instances where the participant possesses previous work experience in the same or substantially similar job, the Workforce staff will take such information into consideration when reviewing the training outline prepared in conjunction with the employer, and in determining an appropriate length of training time.
- c. The OJT contract will also take into consideration the education and previous training of the participant in evaluating the training design.
- d. An OJT contract will not be allowed for participants who were previously employed by the prospective employer in the same or similar job.
- e. An OJT contract will not be allowed in situations where an individual has been hired by the employer prior to the execution of the contract.

## **VII. DETERMINING TRAINING LENGTH**

The allowable length of On-the-Job Training for an employer is based upon several guiding principles, including the following:

1. An OJT contract is provided in order to enable a participant to become skilled and knowledgeable while on-the-job and competitive with co-workers. It is not intended to necessarily last until the participant is 100 percent productive or proficient in the occupation;
2. The OJT outline provided by the employer is one of the determinants for training length. The Workforce staff may assist the employer in his or her development of the training outline.
3. The OJT contract is primarily participant-focused, therefore the participant's Individual Employment Plan (IEP) should document the OJT as the preferred program activity for the participant and should contain a description of the skills, knowledge, education and work experience already possessed by the participant. The training outline should be developed in consideration of these factors.
4. To determine the length of training:
  - a. The Workforce staff completes the identifying information by recording the name of the participant, the employer and the job title for the occupation in which employment and training is to be offered.

- b. The Workforce staff determines the O\*NET Job tile and code for the occupation.
  - c. The Workforce staff determines the Specific Vocational Preparation (SVP) level associated with the O\*NET Code.
  - d. The Workforce staff will then evaluate the participant's previous work experience, education, and training background to reduce the unadjusted training hours.
  - e. In instances where the participant has a disability that requires training time in excess of that required of an individual without such a disability, the Workforce staff may determine that additional hours are justified and will contribute to the success of the OJT program.
5. Under no circumstances shall the amount of the OJT reimbursement exceed six (6) months of total training hours (not including unavoidable and/or authorized absences including holidays, vacations, illness, temporary plant shutdowns) including any additional time spent in related classroom training during which wages are paid to the participant by the employer, and maximum reimbursement is not to exceed \$8,000. (Approved by WDB 2/2020.)
  6. Wages over 40 hours per week will not be reimbursed.

**VIII. TRAINING OUTLINE**

1. The Workforce staff will work with the employer to shape the training outline to the needs of the participant. In this regard, the training outline will consider the relevant skills, knowledge, experience, and education of the participant as documented on the IEP.
2. The training outline must clearly state the specific units of knowledge and skills which will be required during the training period, and identify the approximate number of hours of training time to be devoted to each.

**IX. OJT CONTRACT**

The OJT contract is an agreement between Sullivan County Workforce Development and the employer in which the employer agrees to abide by the Federal, State and local rules governing OJT's for all positions that have been approved.

1. The OJT contract must be executed no later than the day of or prior to the participant commencing employment.
2. All OJT contracts must be reviewed and approved by the Workforce Director or WDB Executive Director prior to the participant commencing employment.
3. Two original copies are to be signed by both the employer and the Workforce Director or WDB Executive Director.

**X. OJT CONTRACT DISTRIBUTION**

Once the OJT contract has been executed, it is to be distributed as follows:

- a. One original executed contract to the employer
- b. One original executed contract to the County Audit Department
- c. Two copies of the executed contract to the CWD (Fiscal and Participant file)
- d.

**XI. OJT CONTRACT VOUCHERS, PAYMENTS & W-9**

1. Employers will be provided vouchers and timesheets to submit for the participant's wage reimbursement. The employer may submit vouchers on a monthly or bi-monthly schedule, or may wait until contract completion to submit vouchers for payment.
2. Final claims for re-imbusement must be received within 60 days of the end of the contract.

**The maximum allowable cost for an OJT contract is \$8,000 per participant.**

3. A W-9 Form must be completed by the employer and provided to the program's accounting staff to facilitate payment.

**XII. MONITORING**

1. Each OJT contract must receive an on-site monitoring visit at least once during the training period. Observation of the workstation and interviews with both the participant and the supervisor should be used to determine whether benefits and working conditions remain unchanged, whether the participant is being paid on time at the proper rate, and if the training plan is being followed and on-track for completion.
2. Any deviations from the Agreement should be dealt with promptly, either with an appropriate corrective action plan or by suspension or termination of the Agreement if serious violations have occurred.
3. All visits to the employer should be documented in the employer file. The entry should identify when the visit was made, what was observed, who was interviewed, a synopsis of the content of the conversation, and any items of concern that need to be addressed. Use OJT Monitoring Report Form.
4. Participant's progress should be noted in the comments section of OSOS.

**XIII. CONTRACT MODIFICATIONS**

From time to time, OJT contracts may require changes for which a formal modification is necessary. This section explains when such modifications are required, circumstances under which modifications may not be made, and the format and instructions utilized to prepare and execute these changes.

1. Types of Modifications
  - a. Adding or Deleting OJT Contract Slots
  - b. Extending the End Date of the Contract
  - c. Deobligations
2. Changes in signatories
3. Unallowable Modifications
  - a. Modifications to change the scope of work under the OJT contract are not allowed.
  - b. Any changes in the contract, following the completion of the total training hours detailed in the Contract.

- c. To change the level of reimbursement to the employer. Additionally, the reimbursement schedule will not be changed as a result of increased hours during the workweek. The employer will continue to be reimbursed based on the original starting wage and for the original number of hours per week that the participant was expected to work.

3. Format and Instructions

The format included in this section will be utilized to modify existing OJT contracts. The following instructions are in reference to Contract Modifications.

- a. Identify the type of modification.
- b. Identify the effective date of the modification. Under no circumstances will this date be later than the end date of the original contract or subsequent modifications.
- c. Describe the general intent of the modification.
- d. Check the appropriate modification action.
- e. In some cases, it may be more practical to re-write the entire contract rather than change individual pages.
- f. For modifications that deobligate the balance of the contract, attach a second page explaining the reason(s) for the deobligation.
- g. All pertinent pages that change as a result of this modification are to be included.
- h. Obtain the necessary signatures from the Workforce Director or WDB Executive Director and the employer.