



Local Workforce Innovation And Opportunity Act (WIOA) Policy No. 2017-PL-09

To: Delegate Agencies, American Job Centers and Sector Centers

From:


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Subject: WORK EXPERIENCE

Date: September 7, 2017

Purpose:

The purpose of this letter is to establish The Chicago Cook Workforce Partnership's (The Partnership) policy for the use of work experience, internships and supported work for youth; adults, and dislocated workers under Title I of the Workforce Innovation Opportunity Act.

References:

WIOA Section 129 - Use of funds for youth workforce investment activities

WIOA Final Rules, Part 680, Subpart B – Training services

WIOA Final Rules, Part 680, Subpart F – Work-based training

WIOA Section 134 - Adult and Dislocated Worker Employment and Training Activities, Use of funds

WIOA Final Rules, Part 681, Subpart D – One-stop services to youth

Issuances Affected

Rescissions: None

Subject Index

WIOA Work Experience

Background:

Customers can utilize a variety of program tools to successfully complete training. Work experience is one of these. Not all educational experiences available to WIOA participants are classified as Training Services or occur under conditions similar to those outlined in the Training section of the Illinois ePolicy manual which can be found at the following link; <https://apps.il-work-net.com/WIOAPolicy/Policy/Home>.

Work Experience and Supported Work Policies

Work experience is a planned, structured learning experience that occurs in a workplace for a limited period and may be paid or unpaid. Work experience differs from On the Job Training and Incumbent Worker Training in that no hiring occurs either prior to or after the learning experience.

Work experience may be combined with classroom instruction relating to a particular position, occupation, industry or basic skills and abilities necessary to successfully compete in the local labor market.

A. Elements of Work Experience Programs:

- 1) Instruction in employability skills or generic workplace skills;
- 2) Exposure to various aspects of an industry;
- 3) Progressively more complex task;
- 4) Internships and job shadowing;
- 5) The integration of basic academic skills into work activities;
- 6) Supported work, work adjustment, and other transition activities;
- 7) Entrepreneurship;
- 8) Service Learning
- 9) Paid and unpaid community services; and
- 10) Other elements designed to achieve the goals of work experiences.

B. Requirements for Work Experience: All The Partnership WIOA service providers and American Job Centers that wish to provide a work experience must meet each of the following requirements:

- 1) **Objective Assessment:** Only registrants determined to be in need of work experience through objective assessment and as documented in the customer individual service strategy (ISS) or individual employment plan (IEP), may participate in a work experience activity. When determining individual needs, the objective assessment must consider the individuals' prior education, work history, and barriers to employment. A candidate for work experience is a registrant 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.
- 2) **Duration:** The duration of the work experience must be limited to the number of hours appropriate for career exploration of the target occupation and/or the time needed to develop good work habits and accomplish the goals established in the IEP or ISS. Duration may vary depending on the complexity of job tasks and the individual needs of the registrant.
- 3) **Documentation:** Work Experience documentation must be maintained in the registrants file and made available upon request. At a minimum, the file must include the following:
 - a. An objective assessment, individual employability plan or an individual service strategy indicating a need for work experience;

- b. Justification for payment of stipends, allowances, and/or incentives, and description of payment method and amount, if applicable;
 - c. A copy of the agreement between the registrant, worksite/job site/ host site and the delegate agency, including any attachments to the agreement, such as a training plan;
 - d. Time sheets, attendance sheets and performance records, as appropriate.
 - e. Worksite agreement;
 - f. Registrant and employer questionnaire providing formal feedback at completion of work experience;
 - g. When placing minor youth, a sex offender search must be run on the worksite supervisor at <https://www.nsopw.gov>. If the employer has a background check on file for the worksite supervisor, a sex offender search does not need to be complete. Evidence must be included in the participant's case file; and
 - h. Evidence of formal worksite visits.
- 4) Worksite/Job site/ Host site Agreements: All work experience sites must have a worksite agreement. Each worksite agreement must be signed by the grantee and contractor and maintained by the delegate agency. Each agreement must contain, at a minimum, the following items for each worksite included in the agreement:
- a. Worksite contact and mailing information;
 - b. Detailed information on the worksite such as location, days and hours of operation, activities, job titles and number of positions available per site;
 - c. Worksite supervisor information;
 - d. A detailed set of mutual terms, conditions, promises, and payments that the grantee and contractor have agreed upon. (See Attachment A for agreement template)
- 5) Monitoring: Delegate agencies are required to perform periodic monitoring of worksites to ensure compliance with project goals and adherence to WIOA law, policies and procedures.
- 6) Employment Relationship: If the worksite/job site/ host site is relying on the registrant to perform substantive work, i.e., to be productive, then the situation should be recognized as an employer-employee relationship

The requirements of the Fair Labor Standards Act (FLSA) apply whenever an employer/employee relationship exists. WIOA registrants are subject to the requirements of the FLSA to the extent that the activities performed during the work experience constitute employment.

According to the Wage and Hour Division of the U.S. Department of Labor, Employment Standards Administration, if all of the following six elements exist, the work experience can be considered a training situation. The WIOA registrant is **not** an employee of the employer site if:

- a. The training, even though it includes actual operation of the facilities of the employer, is essentially a training experience similar to a vocational school;
- b. The registrant is primarily the beneficiary of the experience;
- c. Regular employees are not displaced and the experience is closely supervised/observed;
- d. The “employer” that hosts the experience derives no immediate or significant advantage (and may experience an actual downside);
- e. The registrant is not necessarily entitled to a job at the conclusion of the experience; and,
- f. There is a mutual understanding between the registrant and the host agency that the registrant is not entitled to wages for this time because the activity is essentially a training experience.

If any of the above six (6) conditions are not met, the WIOA registrant **must** be considered an employee. Only if the registrant can be considered a trainee and not an employee, may the work experience be unpaid. For more information about the FLSA see www.opm.gov/flsa

- 7) **Employer of Record**: If the worksite is relying on the registrant to perform substantive work, i.e., to be productive, then the situation should be recognized as an employer-employee relationship. In this situation, the business, not the agency, is the “employer of record”. Registrants must receive no less than the applicable state or federal minimum wage (see section 11 Compensation for further guidance on local minimum wage ordinances). The employer of record is responsible for paying all taxes and providing similar benefits as are available to other employees. For information about federal and Illinois minimum wages law see. www.dol.gov/dol/topic/wages/minimumwage.htm and, www.state.il.us/agency/idol/faq/gamwot.htm

In other circumstances (i.e., if the worksite/job site/ host site does not rely on the registrant to perform substantive work, but all six conditions are not met) the WIOA delegate agency has the option of being the employer of record for the WIOA registrant. The delegate agency as employer of record is responsible for paying the registrant and negotiating with the worksite/job site/ host site regarding the activities that will be performed by the registrant. The work experience may occur at the service provider or employer location or the registrant may be referred to a worksite/job site/ host site to receive the work experience. The worksite/job site/ host site is the location where work experience task will occur.

- 8) **Payments and Tax Treatments**: All paid work experience is subject to state and federal tax withholdings. Employers must identify the taxes applicable to each type of payment, and must also determine the necessity and/or arrangements for withholding and payment of income, employment, FICA, Medicare, and Unemployment Insurance taxes applicable to the type(s) of payments to be made to registrants (i.e., wages, stipends, allowances, needs-related payments, or incentives). Employers are responsible for providing a

rationale for the tax treatment of payments when requested. Consult **Guidance on Tax Treatment of Work Experience** (Attachment B).

- 9) Child Labor Laws: If the project proposes to serve youth, the design must include assurances of compliance with applicable State and Federal Child Labor laws and a discussion of any specific provisions of those laws directly bearing on the project (e.g., hours of work or hazardous occupations). These laws include the Fair Labor Standards Act (FLSA), and 820 ILCS 205/, Illinois' Child Labor Las (also see the related State implementing regulations at 56 ILL. Adm. Code 250). The FLSA and the Illinois Labor Law (and Rule) may be accessed at:

FLSA: www.opm.gov/flsa

820 ILCS 205/: www.sate.il.us/agency/idol/laws/Law205.htm

For information and resources on safety and child labor laws, consult

<http://www.state.il.us/Agency/IDOL/Facts/MW.HTM>

<http://www.state.il.us/agency/idol/forms/pdfs/FLSCLLO3.pdf> and

<http://www.osha.gov/teens>

- 10) Worksite/Job site/ Host site Prohibitions: The employment of participants in work experience programs must not occur at worksite/job site/ host site where:
- A participant's employment would unfavorably impact current employees (a participant would displace all or a portion of a current employee's hours including overtime, wages, employment benefits, or promotional opportunities);
 - A participant's employment would impair existing contracts for services or collective bargaining agreements;
 - A participant's employment would replace the work of discharged employees who were subject to layoff;
 - An employer has terminated a regular employee or otherwise reduced its workforce with the intention of replacing them with participants subsidized with these funds; or.
- 11) Compensation: Participants in a paid work experience must be provided a reasonable wage or stipend (whichever applies) consistent with that paid for similar work according to 2 CFR 200.430(b) in the Uniform Guidance.

Cook County and the City of Chicago both have exceptions to their respective minimum wage ordinances for temporary subsidized youth employment programs. These exceptions allow providers to pay less than the established minimum wage. (See Attachments C and D for the full ordinances).

- 12) Health and Safety Standards: Health and safety standards otherwise applicable to working conditions of employees are equally applicable to working conditions of registrants in programs and activities under Title I WIOA. The Illinois 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 worker's compensation law does not apply to a participant in work experience, insurance coverage

must be secured for injuries suffered by registrants participating in work experience. The work experience must provide for compliance with health and safety standards established under Federal and state law.

Action Required:

This information should be disseminated to all service provider staff responsible for agreements such as job developers, placement staff and career coaches; and to staff responsible for budgeting, vouchering and accounting.

Inquiries:

Delegate agencies should contact their assigned Regional Manager with questions regarding any aspect of this policy letter.

Effective Date:

Immediately upon approval of the Chicago Cook Workforce Innovation Board.

Attachments:

- A—Worksite Agreement Template
- B—Guidance on Tax Treatment of Work Experience
- C—Cook County Minimum Wage Ordinance
- D—City of Chicago Minimum Wage Ordinance