Jon Brock, Executive Director

**Representing Employers**
Douglas R. Major, Ed. D., Commissioner
Gayle Harris, Commissioner

**Representing the Public**
Rev. W. B. Parker, Chairman

Brad Henry, Governor

**Representing Employees**
Rev. Mike Wester, Commissioner
Susan Stoll, Commissioner

# Oklahoma Employment and Training Issuance #21-2009

**DATE:** January 12, 2010

**FROM:** Richard Gilbertson, Director
Workforce Integrated Programs Division

**TO:** WIA Board Staff
WIA Fiscal Agents
Workforce Center Managers
Area Managers

**SUBJECT:** Oklahoma's Final On-the-Job Training Policy

**PURPOSE:** The purpose of this issuance is to disseminate guidance for On-The-Job Training (OJT) requirements under the Workforce Investment Act (WIA).

**BACKGROUND:** In Oklahoma's rapidly changing economy, new and growing companies face both uncertainties and possibilities. On-the-Job Training (OJT) provides the opportunity for employers to hire employees and provide them with the new and additional skills needed to successfully perform on the job. OJT provides Workforce Investment Act (WIA) participants the opportunity to receive training while employed, and to be paid wages comparable to other employees in similar positions. For employers, OJT agreements with Local Workforce Investment Boards (LWIBs) provide an opportunity to be reimbursed a percentage of the wages they pay to WIA OJT participants while they acquire additional job skills. OJT gives employers the opportunity to tap into a pool of workers who are good candidates for a job but need additional training to be able to perform successfully on a specific job.

OJT is a *"hire first"* program that provides job seekers with work experience and skills training needed to successfully obtain and retain employment. Under OJT, the employer is provided up to 90 percent[1] of the costs of training calculated and paid on a wage reimbursement basis. National outcome data shows that outcomes for individuals completing OJT are higher than for those using other training methods. Additionally, research on successful adult learning strategies indicates that "earn-while-you-learn" models are critical to successful training outcomes.

To encourage business involvement, OESC requested and received a waiver designed to create greater opportunity for small business owners, stimulate the economy and develop skilled workers for employers. This allows LWIBs to create new ways of engaging business through collaborative public and private partnerships that leverage resources and promote innovation and use of technology. LWIBs actively engage businesses and the economic development community to create OJT opportunities and identify needed occupational skills sets. Businesses will be capable of expanding and remaining competitive with affordable

[1] Based on business size. See "Employer Reimbursement."

OJT options uniquely designed to achieve their specific developmental goals. This waiver will make OJT a more viable option, especially for small business needs.

The WIA defines OJT at WIA §101(31). WIA allows for the provision of OJT for an unemployed individual when eligibility and other criteria are met. An OJT may take place with an employer in the public, private non-profit, or private sector. **LWIBs should concentrate on writing OJT Contracts for "Job Openings" and not demand occupations.**

The term "on-the-job training" means training provided by an employer 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;
- Provides reimbursement to the employer of up to 90 percent[2] of the wage rate of the OJT participant, for the extraordinary costs of providing the training and additional supervision related to the training; and
- Is limited in duration as appropriate to the occupation for which the OJT participant is being trained, taking into account the content of the training, the prior work experience of the participant, and the service strategy of the participant, as appropriate.

**MESSAGE:** Each LWIB must develop an OJT policy that is compliant with this OETI.

**Employer Reimbursement:** Oklahoma requested a waiver to allow a change to the maximum employer reimbursement for OJT from the current 50 percent of the wage rate. The Department of Labor (DOL) has approved our waiver request as follows based on the size of the business:

- Up to 90 percent for employers with 50 or fewer employees;
- Up to 75 percent for employers with more than 50 but fewer than 250 employees;
- For employers with more than 250 employees, the current statutory requirements will continue to apply.

This is a statewide waiver and LWIBs are not required to seek a waiver from OESC. This waiver expires on June 30, 2010.

LWIBs may choose to reimburse the employer the amounts as stated in Oklahoma's waiver – or reimburse the employer at the standard 50 percent. **LWIB policy will describe the reimbursement rates.**

**Contracting:** OESC requires a written Contract that provides a "structured" occupational training opportunity. Under this policy, structured is defined as a Contract that specifically describes the occupation, wages, training duration, and a detailed job description. The employer provides this training on-the-job in exchange for a reimbursement to compensate for the employer's extraordinary costs associated with the training and the lower productivity of the OJT participant. The extra costs are presumed and need not be documented.

An OJT Contract must be limited to the period of time required for the OJT participant to become proficient in the occupation for which the training is being provided. In determining the appropriate length of the Contract, consideration should be given to the skill requirements of the occupation, the academic and

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[2] Oklahoma requested a waiver to allow a change to the maximum employer reimbursement for On-the-Job Training (OJT) from the current 50 percent of the wage rate. The Department of Labor (DOL) has approved our waiver request as follows based on the size of the business:

- Up to 90 percent for employers with 50 or fewer employees
- Up to 75 percent for employers with more than 50 but fewer than 250 employees
- For employers with more than 250 employees, the current statutory requirements will continue to apply

occupational skill level of the participant, prior work experience, and the participant's individual employment plan. (WIA §101(31)(C).) LWIBs must develop standardized approaches to assessing the time requirements; **however, OESC has determined that no OJT Contract shall exceed 6 months.**

There are two major considerations in assessing time requirements. First is the normal training time for a given occupation. LWIBs may use such approaches as O*NET, the replacement for the DOT. O*NET provides information about thousands of job classifications and categorizes them into different zones of preparation. O*NET may be accessed at: http://www.doleta.gov/programs/onet. The second consideration is the needs of the OJT participant, which may call for a shorter training period because the OJT participant has experience or skills that limit the training time needed.

Local policies must ensure that OJT Contracts are not entered into with employers who have displayed poor patterns of retaining OJT participants in the past. When developing policies, LWIBs should consider such factors as the number of contracts written with an employer, and the elapsed time since the last contract with regard to this requirement.

LWIBs should ensure that OJT employers have not violated labor laws, discrimination laws, environmental protection laws, or health and safety laws. This may be accomplished through a written assurance from the employer incorporated into the contract. OJT employers must also ensure that workers compensation is provided to participants in the OJT activity on the same basis as the compensation is provided to other employees in similar work situations.

OJT Contracts using WIA funds may not be executed if the employer has relocated to the region from another location in the United States within 120 days AND if the relocation resulted in jobs lost by employees at the original location. OJT Contracts should not be written for jobs:

- Where an employer would typically be able to train a new employee in the first few days or weeks on the job;
- Where the principal source of income is tips, commissions or piecework; or
- That is intermittent or seasonal in nature.

OJT Contracts cannot be used to assist, promote, or deter union organization. **LWIBs should be aware that the contracts are subject to monitoring from the Federal, State, and local levels.** Local Boards may develop their own contracting formats.

**Pre-Award Review – (20 CFR 667.268) WIA funds may not be used or proposed to be used for:**

- The encouragement or inducement of a business, or part of a business, to relocate from any location in the United States, if the relocation results in any employee losing his or her job at the original location; and
- Customized training, skill training, or on-the-job training or company specific assessment of job applicants or employees of a business or a part of a business that has relocated from any location in the United States, until the company has operated at that location for 120 days, if the relocation has resulted in any employee losing his or her job at the original location.

To verify that an establishment which is new or expanding is not, in fact, relocating employment from another area, standardized pre-award review criteria must be completed and documented jointly by the LWIB with the establishment, as a prerequisite to WIA assistance. The employer wishing to implement training must be reviewed on-site prior to the execution of the first training agreement of each year.

All Board designated staff will use the Standardized Pre-Award Review form (Attachment B) to provide documentation of the new or expanding establishment. Although the Standardized Pre-Award Review form must be completed before the execution of a contract – OESC has determined that the pre-award review and the signing of the contract may occur during the same visit to the establishment. The Standardized Pre-Award Review form includes the following:

- The names under which the establishment does business, including predecessors and successors in interest;
- The name, title, and address of the company official certifying the information;
- Whether WIA assistance is sought in connection with past or impending job losses at other facilities;
- Whether WARN notices relating to the employer have been filed;
- Whether Worker's Compensation coverage is provided to employees;
- The employer has not had any wage and hour or child labor violations during the past 12 months;
- The training activity shall not impair an existing contract for services or collective bargaining agreement, and no such activity that would be inconsistent with the terms of a collective bargaining agreement shall be undertaken without the written concurrence of the labor organization and employer concerned;
- The employer has not exhibited a pattern of failing to provide WIA enrolled training participants with continued long-term employment with wages, benefits, and working conditions equal to that of regular employees doing similar work for a similar length of time; and
- The number of employees currently employed.

**On-the-Job Training (Minimum Requirements)** — Training is to be provided to a paid OJT participant while engaged in productive work in a job that:

- Provides knowledge or skills essential to the full and adequate performance of the job;
- Provides reimbursement to the employer of up to 90 percent[2] of the wage rate of the participant for the extraordinary costs of providing the training and additional supervision related to the training; and
- Determines the appropriate length of the contract, with consideration given to the skill requirements of the occupation, the academic and occupational skill level of the participant, prior work experience, and the participants IEP.

**Training is to be provided by an employer that:**

- Has not failed to meet the requirements of a previous OJT Contract. The exception to this requirement is if the employer failed to meet the requirements of a previous OJT Contract through no fault of his/her own;
- Has not reduced the workforce with the intention of filling the vacancy with the individual receiving training from the OJT Contract or displaced a currently employed worker as a result of the OJT Contract; and
- Has not violated the terms of any collective bargaining agreement.

**On-the-Job Training Contract (Minimum Requirements)** — the minimum elements required in the OJT Contract are as follows:

- Trainee name;
- Trainee wage;
- Name, address and telephone number of the employer;
- Employer identification number;
- Training job title – **if available attach a copy of the employer's job description;**
- Description of occupation involved, skill(s) and competencies to be provided and learned – **Designated staff should include the rational for those skills and competencies to be learned, i.e.**

**O*NET, Job Description, etc. This information must be entered into the participant's IEP;**

- Definition of what constitutes successful completion of training such as minimum number of hours to be completed, employer evaluation, and/or minimum mastery of skills;
- Beginning and end dates, and hours of training to be provided;
- Agreement on maximum allowable costs of training;
- The employer intends to retain the OJT participant upon satisfactory completion of training; **if the employer does not retain the OJT participant – designated staff should document the justification for not retaining;**
- Employer is to be reimbursed of up to 90 percent[2] of the wage rate (based on the OJT Waiver) of the participant for the extraordinary costs of providing the training and additional supervision; and
- Collective Bargaining Unit Concurrence.

**In addition to the training conditions listed above, OJT Contracts must contain the following three clauses.**

**1. Termination of OJT Participants**

The employer agrees that the OJT participant shall not be terminated from training without giving prior notice to the **Board's Designated Staff that signed the OJT Contract** and reasonable opportunity is given for correction or improvement of performance. The employer also agrees that it will immediately notify the Board's designated entity if the OJT participant has an attendance or disciplinary problem or has demonstrated an inability to perform in accordance with the training outline contained in the Contract. The employer understands that the termination of an OJT participant is subject to the Board's grievance procedures.

**2. Displacement of Currently Employed Workers**

The employer agrees that no currently employed worker shall be displaced by the OJT participant including a partial displacement such as a reduction in the hours, wages, or employment benefits. The employer also agrees that no OJT participant shall be placed into a position that is currently vacated by an employee who is on layoff or into a position in which the Employer has terminated the employment of an employee with the intention of filling the position with an OJT participant. The employer further agrees that this Contract does not infringe in any way upon the promotional opportunities of current employees not involved in OJT.

**3. Access to Records**

The employer agrees that at any time during normal business hours, and as often as deemed necessary, the LWIB's designated staff monitor or Board contracted entity (rather than a Board staff person), State of Oklahoma, U.S. Department of Labor, or other authorized federal agencies or their agents may inspect and monitor any records or activities pertaining to this Contract. Such inspection shall be made to determine if the employer is in compliance with the terms and provisions of this Contract and if the OJT participant is making sufficient progress.

**Recordkeeping System**

The Service Provider/Fiscal Agent responsible for payment is accountable for making sure that records are maintained properly. The LWIB/Fiscal Agent policy must be adhered to by the entity responsible for payment. The LWIB/Fiscal Agent shall establish and maintain a recordkeeping system with procedures that will provide timely and relevant information for management and planning purposes. This system will allow the LWIB to generate such information on each contract such as number of unused training hours, current funds expended to date, etc.

**On-Site Review**
The LWIB will **designate staff** to monitor each OJT Contract on-site at least once during the training period to ensure compliance with contract terms and to help solve any concerns between the Service Provider, Employer(s), and/or OJT participant.

**Designated Staff** should verify that the participant is receiving the training contracted for in the agreement, and that the participant is not required to engage in activities prohibited by WIA. **Designated Staff** must also review participant's attendance records to ensure that the participant is attending and succeeding in the training, and review employer records to assure that the participant is receiving proper wages and that the employer is withholding taxes and paying workers compensation (or equivalent insurance). Any compliance issues requiring corrective actions must comply with the local monitoring policies and procedures.

**Documentation**
The documentation listed below must be maintained in the OJT Contract file in addition to the required elements stated in this guidance:

- OJT Contract (Original);
- Standardized Pre-Award Review Form (See Attachment B);
- Any modifications to the Training Contract;
- Training Time Documentation;
- Participant Level of Completion;
- Training payment invoices;
- Monitoring reports, including problems, corrective action, and follow-up;
- Justification of OJT participant's failure to satisfactorily complete training ; and
- Proof of Workers Compensation Insurance Coverage.

**ACTION REQUIRED:** Local Workforce Investment Boards are to use this policy in developing their local OJT policies. OJT policies must be completed by January 1, 2010, subject to Board approval, **and submitted to Jackie Younge, Workforce Integrated Programs Division, OESC.**

**INQUIRIES:** Questions may be addressed to Jackie Younge at 405-557-5314, Jackie.younge@oesc.state.ok.us or Tami Decker at 405-962-7595, tdecker@oesc.state.ok.us.

**RESCISSIONS:** This policy rescinds the OJT portion of OETI #11-2003, Change 2.

**ATTACHMENTS:** To assist LWIBs with the writing of local policies, OESC's Workforce Integrated Programs Division has attached to this OETI a sample "Local Policy Template," (Attachment A), the "Standardized Pre-Award Review Form" (Attachment B) and a sample "On-The-Job Training Contract" (Attachment C). Attachment D – Training Plan/Evaluation Form is also included. Throughout the attachments, OESC used the term "service provider"; however, LWIBs should modify signature lines and policy and procedures to reflect their circumstances.

**Attachment A: Local Policy Template**
**Attachment B: Standardized Pre-Award Review Form**
**Attachment C: Sample OJT Contract**
**Attachment D: Training Plan/Evaluation Form**

The LWIB is an equal opportunity employer and provider of employment and training services.
Auxiliary aids and services are available upon request to individuals with disabilities.

**ATTACHMENT A**

## LOCAL POLICY TEMPLATE

**BACKGROUND:** The Workforce Investment Act of 1998 (WIA) defines On-The-Job Training (OJT) at WIA section 101 (31). WIA allows for the provision of OJT for an unemployed individual when eligibility and other criteria are met. An OJT may take place with an employer in the public, private non-profit, or private sector.

OJT is a viable training option for participants who prefer hands-on training experiences to a traditional classroom setting. The OJT participant is assured a job at end of training while earning an income during the training.

A written contract is required that provides a "structured" occupational training opportunity. The employer provides this OJT in exchange for a reimbursement to compensate for the employer's extraordinary costs associated with training the OJT participant and the costs associated with the lower productivity of the OJT participant. The extra costs are presumed and need not be documented. (20 CFR 663.710)

**POLICY:** OJT must be provided through a contract to provide a structured occupational training opportunity for the OJT participant to gain the knowledge and competencies necessary to be successful in the occupation in which they receive training. The employer is reimbursed up to 50% or more, depending upon state policy, of the wage rate to compensate for extraordinary costs. The contract must be completed and signed before the OJT participant starts working. [20 CFR §663.700 (a)(b)(c)]. **The BOARD'S designated staff and employer must sign an OJT Contract for each OJT participant.**

**Service providers must adhere to the following Requirements and Restrictions for OJT.**

**Duration of and Rationale for OJT Training**
The length of the training must take into consideration the skill requirements of the occupation, the academic and occupational skill level of the participant, and prior work experience. The rationale for the training duration must also take into account: a) a participant's disability including the need for accommodations; and b) the programs' available funding. (WIA sec. 101(31)(C))

The rationale for the OJT training, including duration must be entered into the participant's Individual Employment Plan.

**Employer Eligibility**
Careful consideration should be given when selecting suitable employers. General business practices in terms of working conditions (safety, health), presence of health benefits, wage structure, turnover rates, adequate staff and equipment to carry out the training, and whether the employer is in compliance with federal, state and local laws, etc. are potential indicators to research.

OJT is a "hire first" program; the OJT participant becomes an employee of the company at the start of the training program. The OJT participant may not be someone already on the employer's payroll, nor be hired prior to the effective date of the OJT Contract. Training may begin after the OJT Contract has been signed by all parties. The employer is required to certify the intention to retain the OJT participant after the subsidized training period if the OJT participant accomplished the specific occupational skills to be learned as stated in the OJT Contract.

**OJT Contract Requirements**

The OJT Contract is limited to the period of time required for the OJT participant to become proficient in the occupation for which the training is being provided. In determining the appropriate length of the contract, consideration should be given to the skill requirements of the occupation, the academic and occupational skill level of the participant, prior work experience, and the participant's individual employment plan. (WIA §101(31)(C))

In developing a standardized approach to assessing the time requirements, the designated staff will consider:

- The specific skills needed for that occupation as required by that employer for that job;
- The normal training time for that occupation as shown by O*NET. O*NET provides information about thousands of job classifications and categorizes them into different zones of preparation. O*NET may be accessed at: http://www.doleta.gov/programs/onet; and
- The specific additional skills to be learned by the OJT participant as determined by the assessment of the participant's current skills and experience in comparison to what is required for successful performance in that specific occupation.

**OJT Contracts require the following:**

- Wages paid to OJT participants must be at least the prevailing entry wage for any specific entry occupation in this community. If the employer operates under a collective bargaining agreement, the wage and benefits must be those specified in that union agreement and the job opening must be cleared with the appropriate union.
- Employers must comply with requirements of the Civil Rights Act with respect to equal opportunity in employment for the OJT position as well as comply with all federal, state, and local laws.
- OJT participants hired under this program will be subject to the same personnel policies, rules and regulations, and accorded the same benefits as the other participants of the company.
- Employers must carry Workers' Compensation insurance and make Federal and State Tax withholdings as required by law. In addition, the individual OJT participant payroll tax records and receipts for services (if applicable) must be maintained and available for review for a minimum period of three years after the end of the training period.
- Conditions of employment and training will be in full accordance with all applicable federal, state, and local laws (including but not limited to child labor, health and safety laws), and be appropriate and reasonable regard to type of work undertaken and the proficiency of the participant.
- Employer certifies that the OJT participant will not displace any regular OJT participant of the employer and certifies that no person was displaced as a result of relocation of the current business the previous 120 days of signing the OJT Referral Form.
- The OJT occupation must not involve religious or political activity.
- The OJT must be conducted at the employer's place of business or another site, and may not be subcontracted.
- No employer may hire an OJT participant if a member of the OJT participant's immediate family is engaged in an administrative capacity for that employer.
- The OJT employer must certify that neither the employing company nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or excluded from participation by any federal department or agency.
- OJT Contracts can be written with employers from the public, private non-profit, or private for- profit business sectors.
- The OJT Training Plan must be written for skills that the OJT participant does not already possess. Care must be given to check the OJT participant's work history, and to document that the new skills to be learned are different, more difficult, and/or unique to the new job, and are therefore necessary to perform the new job tasks.

- The OJT agreement will provide that the employer will maintain and make available time and attendance, payroll, and other records to support amounts invoiced and reimbursed under OJT Contracts.
- Modifications to the OJT Contract can be made as needed through mutual agreement of the employer and the BOARD.

**Documentation**
The documentation listed below must be maintained in the OJT Contract file in addition to the required elements stated in this guidance:

- OJT Contract (Original);
- Standardized Pre-Award Review Form (See Attachment B);
- Any modifications to the Training Contract;
- Training Time Documentation;
- Participant Level of Completion;
- Training payment invoices;
- Monitoring reports, including problems, corrective action, and follow-up;
- Justification of OJT participant's failure to satisfactorily complete training ; and
- Proof of Workers Compensation Insurance Coverage.

**In addition to the training conditions listed above, OJT Contracts must contain the following three clauses.**

**1. Termination of OJT Participants**
The employer agrees that the OJT participant shall not be terminated from training without giving prior notice to the **Board's Designated Staff that signed the OJT Contract** and reasonable opportunity is given for correction or improvement of performance. The employer also agrees that it will immediately notify the Board's designated entity if the OJT participant has an attendance or disciplinary problem or has demonstrated an inability to perform in accordance with the training outline contained in the Contract. The employer understands that the termination of an OJT participant is subject to the Board's grievance procedures.

**2. Displacement of Currently Employed Workers**
The employer agrees that no currently employed worker shall be displaced by the OJT participant including a partial displacement such as a reduction in the hours, wages, or employment benefits. The employer also agrees that no OJT participant shall be placed into a position that is currently vacated by an employee who is on layoff or into a position in which the Employer has terminated the employment of an employee with the intention of filling the position with an OJT participant. The employer further agrees that this Contract does not infringe in any way upon the promotional opportunities of current employees not involved in OJT.

**3. Access to Records**
The employer agrees that at any time during normal business hours, and as often as deemed necessary, the Board's designated staff monitor or Board contracted entity (rather than Board staff), State of Oklahoma, U.S. Department of Labor, or other authorized federal agencies or their agents may inspect and monitor any records or activities pertaining to this Contract. Such inspection shall be made to determine if the employer is in compliance with the terms and provisions of this Contract and if the OJT participant is making sufficient progress.

**Monitoring and Oversight (667.400 and 667.410)**

- Frequent contact with the employer and/or OJT participant is essential. **The Board's designated entity** must monitor OJT contracts monthly, at a minimum, in order to evaluate the OJT Participant's progress,

to document that the training is being provided as outlined in the contract, for compliance with provisions of the contract and to ensure that reimbursements are being made in accordance with procedures. **Participant's progress must be documented in case notes.**

- Methods of contact can include on-site visits, phone or email and in-person visits at other locations. Methods of contact must be sufficient to assure that training is being provided as specified in the OJT contract. **Contact information will be documented in case notes.**

**Occupations for Which OJT Contracts Should Not Be Written** — The following should not be considered for OJT:

- Where an employer would typically be able to train a new employee in the first few days or weeks on the job;
- Jobs where the principal source of income is tips, commissions or piecework basis;
- Jobs for commission salespersons, casino or other gambling establishment, aquarium, zoo, golf course, swimming pool, seasonal workers, or occupations requiring licensing as a prerequisite for hiring with ARRA funds;
- Jobs for commission salespersons, occupations requiring licensing as prerequisite and seasonal workers with WIA formula funds;
- Those jobs that are intermittent or seasonal in nature; and
- Jobs used to assist, promote, or deter union organization.

**Employer Orientation** — The employer must receive an orientation from the Board's designated staff to ensure the employer understands:

- The contract terms;
- The purpose of the OJT (including the training plan);
- The best method of communicating with the service provider;
- The process of preparing and submitting timesheets; and
- That the OJT participant must receive an orientation from the employer, which includes the employer's expectations, training, and evaluation methods.

**OJT Employee Orientation** — the employer will provide an orientation to the OJT employee that covers:

- The employer's rules;
- Expectations;
- Safety information; and
- Benefits.

**Procedures** — In writing your local procedures, you should describe your strategies for the following:

- Who will target employers?
- Who will promote OJT to employers?
- Who will write the contract?
- Who will develop the Training Plan?
- Who will conduct the Pre-Award Review?
- Who will provide employer orientation?
- Who will identify and connect the trainee to the OJT employer?
- Who will monitor the contract monthly?
- Who will conduct the on-site reviews?
- Who will ensure contract documentation?

**ATTACHMENT B**

**Standardized Pre-Award Review Form**

No funds provided under the Workforce Investment Act (WIA) shall be used, or proposed to be used, for the encouragement or inducement of a business, or a part of business, to relocate from any location in the United States, if the relocation results in any employee losing his or her job at the original location (20 CFR 667.268).

No funds provided under the Workforce Investment Act (WIA) shall be used, or proposed to be used, for training for a business or part of a business that has relocated from any location in the United States, until the company has operated at that location for 120 days, if the relocation has resulted in any employee losing his/her jobs at the original location. (20 CFR 667.268).

The purpose of this review is to determine whether a business establishment is new or expanding and if there is any relation to a loss of employment in another geographic area. The pre-award review is completed and documented jointly by the Local Workforce Investment Board's designee and the business establishment as a prerequisite to receiving WIA Title I assistance.

| | |
|---|---|
| List any name(s) under which this establishment does business (including predecessors and successors in interest.) | |
| | |
| | |
| The name, title, and address of the company official certifying this information is: | Name: |
| | Title: |
| | Address: |

I, the Employer, attest WIA assistance is not being sought in connection with any past or impending job losses at other facilities and I am requesting WIA assistance to be used for On-the-Job Training.

I, the Employer, attest there have not been any WARN notices filed.

I, the Employer, attest there have not been any wage and hour or child labor violations during the past 12 month period.

I, the Employer, attest that the OJT activity will not impair an existing contract for services or collective bargaining agreement, and that no such activity that would be inconsistent with the terms of a collective bargaining agreement will be undertaken without the written concurrence of the labor organization and the employer concerned.

I, the Employer, attest that there is not a failure to provide WIA enrolled training participants with continued long-term employment with wages, benefits, and working conditions equal to that of regular employees doing similar work for a similar length of time.

I, the employer, attest that as of this date we currently employ_____employees.

I, the employer, attest our Workers' Compensation Policy is current. (Upon execution of the Contract – the Board designee must obtain a copy confirming policy will be in effect during training period).

As the authorized official of _____

I certify that the WIA Standardized Pre-Award Review information set forth above is true and accurate.

As the employer and authorized official, I agree to defend, indemnify, and save the state of Oklahoma, the Local Workforce Investment Board, and the reviewing entity harmless from and against any and all liability, loss, damage, cost, and expense, including court costs and attorney fees (whether or not litigation be commenced), of whatever nature or type, including WIA disallowed costs, that the State or LWIB may suffer, incur or be required to pay, which result from _____'s

Failure to provide accurate information in response to the WIA Pre-Award Review.

_____ _____

Authorized Representative's Name Title

_____ _____

Signature: Date

This WIA pre-award review was conducted by _____, the Board's designated representative, in accordance with WIA State Policy on _____.

Neither the State of Oklahoma, any Local Workforce Investment Board, nor _____,

As the Entity conducting the review, shall be legally liable regarding the responses provided during the conduct of this review. Based upon this review, WIA Title I assistance to this establishment is: _____

Approved/Disapproved

_____ _____

Reviewer's Signature: Reviewer's Title:

_____

Date:

The LWIB is an equal opportunity employer and provider of employment and training services.
Auxiliary aids and services are available upon request to individuals with disabilities.

ATTACHMENT C

# ON-THE-JOB TRAINING CONTRACT

**Contract No:**_____ **Funding Source**_____

| **Participant Information** | **Employer Information** |
|---|---|
| Name: _____ | Company Name: _____ |
| Address: _____ | Address: _____ |
| City, State, Zip: _____ | City, State, Zip: _____ |
| Phone: _____ | Phone: _____ |
| OSL ID: _____ | FEIN or UBI: _____ |
| Training Job Title: _____ | NAICS CODE: _____ |
| O*NET Code: _____ | Email: _____ |

**A. Training Location and Supervisor**

Training Facility Location: _____

OJT Supervisor: _____

Title:_____ Phone Number: _____

**B. Alternate Supervisor**

OJT Alternate Supervisor:_____

Title:_____ Phone Number:_____

**C. Training Schedule and Cost**

| **On-Site Training** | |
|---|---|
| Number Hours per Day: | Start Date: |
| Number Hours per Week: | End Date: |
| Number of Weeks: | Total Hours of Training: |
| Total Number of Hours: | |

Starting Hourly Wage: $ Ending Hourly Wage: $ Reimbursement Rate: %

On-Site Training Cost:

| _____ | _____ | $_____ | _____ |
|---|---|---|---|
| On site hours | X Hourly Rate | X Reimbursement Rate | =Total On-Site Training Cost |

**Maximum allowable costs of Training** **$**_____

## D. Training Outline

| Estimated Hours | Specific Occupational Skills to be Learned |
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**Training will be deemed to be successfully completed when:**

## E. Job Description

## F. Concurrence of Collective Bargaining Agent

Is this On-the-Job Training occupation subject to a bargaining agreement? ☐ Yes ☐ No

Does the appropriate bargaining representative concur with this On-the-Job Training and rate of pay?

☐ Yes ☐ No

Name of Union

Phone Number

Union Representative Signature

## G. Concurrence of Apprentice Committee

Apprenticeship Representative Signature

WIA Representative Signature

## On-the-Job Training
## Terms and Conditions

### H. Standards

**Training**

1. The OJT Contract must be completed and signed before the OJT employee starts the OJT.
2. The employer shall provide the training prescribed in Attachment C and complete the evaluations and/or training progress forms that are provided by the Board. The OJT employee shall be the employer's employee, shall be on the employer's payroll, shall be entitled to the same consideration and shall be governed by the same policies as other employees. The employer shall extend to the OJT employee all of the entitled benefits offered all employees of the employer. The OJT employee must be provided with the same terms of employment, working conditions, wages and fringe benefits provided to other employees in the same or similar positions.
3. The employer must collaborate in the development of a training plan for the OJT employee that includes competencies needed to be satisfactorily skilled in the OJT position. These competencies will be listed in Attachment C. The employer will complete an evaluation to document competencies gained.
4. The employer certifies that this is not a temporary job. The OJT employee shall be continued by the employer in unsubsidized employment upon completion of the OJT period, based upon satisfactory job performance by the OJT employee.
5. The employer will provide an orientation to the OJT employee that covers the employer's rules, expectations, safety information and benefits.

**Fiscal**

1. The Board's designated entity shall reimburse the employer on a **(enter a term such as monthly or bi-monthly)** basis in an amount not to exceed the maximum training reimbursement. Reimbursable wages shall not include undocumented payments to the OJT employee. **No reimbursement shall be made** for work performed outside of the term of the Contract, or during periods of work stoppages, fringe benefits which include paid holidays, sick leave or vacation leave. Overtime hours in excess of 40 hours per week shall be reimbursed at the regular rate of pay. The employer must pay the overtime rate in excess of the regular rate in full.
2. The OJT employer agrees to maintain adequate time and attendance, payroll, and other records to support amounts reimbursed under the OJT Contract. Wages must be paid by check or direct deposit. Reimbursement time sheets must be signed, in ink, by both the employer and the OJT employee and must be submitted according to the Contract agreement. Inaccurate or incomplete timesheets or timesheets submitted more than thirty (30) days after the end of the training period may not be honored, at the sole discretion of the Board's designated staff. Copies of the timesheet(s) are to be maintained along with a copy of the OJT Contract.
3. All reimbursement requests submitted by the employer shall be supported by business receipts, time and payroll records, and other records normally kept by the employer.
4. The employer shall preserve all OJT employee payroll records, fringe benefits and personnel records for three (3) years after the end of the training period, or longer if any litigation or audit is begun or any claim is instituted which involves these records. The employer shall retain the records beyond the three (3) year period until the litigation, audit findings or claim has been resolved.
5. The employer agrees that at any time during normal business hours, and as often as deemed necessary, the Board's designated staff, State of Oklahoma, U.S. Department of Labor, or other authorized Federal agencies or their agents may inspect and monitor any records or activities pertaining to this Contract. Such inspection shall be made to determine if the employer is in compliance with the terms and provisions of this Contract and if the OJT employee is making sufficient progress.
6. Wages are monies paid by the employer to an OJT participant for work the OJT participant performs. Tips, commissions, and piece work are not considered wages and are not eligible for reimbursement.

**Employer Assurances**

1. The employer shall provide worker's compensation coverage for the OJT employee and assures that the training shall be provided in accordance with WIA Sec. 181(a)(1)(A) and 20 CFR 667.272 for wage and labor standards.
2. Employer agrees not to discriminate in their hiring or employment practices and to comply with the Civil Rights Act of 1964, as amended, the Age Discrimination Act of 1975, as amended, Section 504 of the Rehabilitation Act of 1973, as amended, and the American with Disabilities Act of 1990, as amended.
3. Employer agrees to adhere to the Local Workforce Investment Board's grievance procedures if a complaint arises in connection with the OJT employee and the training.
4. The employer agrees that the OJT employee shall not be terminated from training without giving prior notice to the Board's Designated Staff that signed the OJT Contract and reasonable opportunity is given for correction or improvement of performance. The employer also agrees that it will immediately notify the Board's designated entity if the OJT employee has an attendance or disciplinary problem or has demonstrated an inability to perform in accordance with the training outline contained in the Contract. The employer understands that the termination of an OJT participant is subject to the Board's grievance procedures.
5. Employer will comply with Federal and State laws governing the OJT Program.
6. The employer further assures that OJT funds will not be used to assist, promote or deter union organizing. 20 CFR 663.730.
7. The employer assures that the OJT employee(s) will not be employed 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. 29 CFR 37.6(F).
8. The employer assures that the OJT employee will not be required to participate in political activities.
9. No fees shall be charged to any OJT employee or employer for referral or placement services relative to this OJT Contract.
10. The employer certifies that no member of the OJT employee's immediate family is engaged in an administrative capacity for the employer, or will directly supervise the OJT employee. For the purpose of this Contract, immediate family is defined as spouse, children, parents, grandparents, grandchildren, brothers, sisters or person bearing the same relationship to the OJT employee's spouse. 20 CFR 667.200(g).
11. Employer has not exerted any undue influence or engaged in conduct which would constitute a conflict of interest or the appearance of a conflict of interest in order to be awarded the funds under this Contract.
12. The employer assures they are not involved in a strike, lockout or other unusual labor condition.
13. Employer agrees to comply with all applicable local, state and/or federal laws and ordinances. The employer assures that they have not violated any of the following within the last three years: a) antidiscrimination in its employment practices or delivery of services or other activities on the grounds of race, color, religion, national origin, age, sex, marital status, veteran status, sexual orientation, or the presence of any sensory, mental or physical disability.

**Additional Terms**

1. Either party may terminate this Contract at any time by giving ten (10) day advance written, signed notice of intent to terminate to the other party.
2. The Board's Designated Staff may terminate this Contract if:
   - The State or Federal Government terminates or reduces the funding which makes this Contract possible;
   - The employer has violated the terms and conditions of this agreement; or
   - The employer does not retain at least % of the OJT participants hired within a 12-month period.

3. This Contract may be amended by the mutual written agreement of the parties. All amendments shall be signed by both parties prior to the start date of the amendment and must be attached to the Contract.

4. Board designated staff may unilaterally amend this Contract if there are changes in Federal, State or Local Laws, rules, regulations, or policies.

5. This Contract has been and shall be construed as having been made and delivered within the State of Oklahoma and it is agreed by each party hereto that the laws of the State of Oklahoma, both as to interpretation and performance, shall govern this Contract. Any action of law, suit in equity, or judicial proceeding for the enforcement of this contract or any provision thereof shall be instituted and maintained only in any of the courts of competent jurisdiction in the State of Oklahoma.

6. The employer agrees that no currently employed worker shall be displaced by the OJT employee including a partial displacement such as a reduction in the hours, wages, or employment benefits. The employer also agrees that no OJT employee shall be placed into a position that is currently vacated by an employee who is on layoff or into a position in which the employer has terminated the employment of an employee with the intention of filling the position with an OJT employee. The employer further agrees that this Contract does not infringe in any way upon the promotional opportunities of current employees not involved in the OJT training.

7. No fees shall be charged to any OJT employee or employer for referral or placement services relative to this OJT Contract.

8. All services to be rendered or performed by the employer under this Contract shall be performed or rendered entirely at the employer's own risk. The employer expressly agrees to indemnify and hold harmless the Workforce Investment Board, its officers, agents, contractors, employees or otherwise, from any and all liability, loss or damage, including reasonable cost of defense that they may suffer as the result of claims, demands, actions, or damages to any and all persons or property, costs or judgments against the Workforce Investment Board which result from, arise out of, or are in any way connected with the services to be performed by the employer under this Contract.

## I. Employer Certification

I certify to the best of my knowledge that this information is true and correct and that I intend to **pay** **%** of the participant's wages during training and retain the participant at the end of the subsidized training period if satisfactory performance is maintained. I am also aware of my responsibilities as stated in this Individual On-the-Job Training Contract.

_____ _____

**Authorized Employer Representative Signature** **Date**

_____ _____

**Title** **Phone Number**

## J. Agency Certification

A legitimate need for training and reasonable expectation of continued employment for the participant indicated on this Individual OJT Contract has been established by the _____. Therefore, this OJT Contract is approved.

_____ _____

**Board's Designated Staff's Signature** **Date**

The LWIB is an equal opportunity employer and provider of employment and training services.
Auxiliary aids and services are available upon request to individuals with disabilities.

**ATTACHMENT D**

**OJT Contract No: _____**

## TRAINING PLAN/EVALUATION FORM

OJT Employee Name: _____

Occupational Training: _____

| Training Plan/Skills Required | Satisfactorily Skilled? Yes or No | Comments | Evaluation Date |
|---|---|---|---|
| | | | |

I understand and agree to the above listed training plan.

OJT Employee Signature: _____ Date: _____

**CERTIFICATION OF COMPETENCIES**

The signatures below certify that the OJT Employee is satisfactorily skilled in the required functions of the position, as indicated in the evaluation above and will continue employment as follows:

Job Title: _____ Hours per week: _____ Wage per Hour: _____

Supervisor Signature: _____ Date: _____

OJT Employee Signature: Date:

| Comments: |
|---|
| |
| |

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