

Area 11: Local Policy

Work Experience for Youth

Purpose:

This communication provides guidance on paid and unpaid work experience for the youth program under Title I of the Workforce Innovation and Opportunity Act (WIOA). WIOA administrative entities should convey this guidance to subrecipients and other entities that provide WIOA youth activities and services.

Background:

Under the Workforce Innovation and Opportunity Act, paid and unpaid work experience is an allowable activity and one of the fourteen (14) youth program elements. The goal of Work Experience is to provide youth with an opportunity to explore careers and develop skills. All work experiences should expose youth to realistic working conditions and tasks in in-demand occupations as much as possible.

Policy:

Work Experience is one of the fourteen (14) required program elements that must be made available to all enrolled youth and should be offered throughout the program year. It is a planned, structured learning activity that takes place in a workplace setting for a limited period of time and has an academic and occupational education component. Work experience may be paid or unpaid.

The primary intent of work experience is to help the youth understand proper workplace behavior and what is necessary in order to attain and retain employment. Work experiences should help youth acquire the personal attributes, knowledge, and skills needed to obtain a job and advance in employment. Work experience can serve as a steppingstone to unsubsidized employment and is an important step in the process of developing a career pathway for youth. All work experiences should expose youth to realistic working conditions and task as much as possible.

Work experience must be based on the identified needs of the individual youth. Use of work experience situations must be based on an objective assessment of the youth's abilities and interests and identified on the youth's individual opportunity plan (IOP).

Paid and unpaid work experience must include academic and occupational education. The types of work experiences include the following categories:

- Internship and job shadowing;
- Summer employment opportunities;
- On-The-Job training; and

- Pre-apprenticeship programs.

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

Per section 129 (c)(4) of the WIOA, not less than 20% of the youth program funds shall be used to provide youth participants with paid and unpaid work experiences.

A. Appropriate Employers

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

Attention must be given to ensure that work experience arrangements do not unfavorably impact current employees and do not impair existing contracts for services or collective bargaining agreements. Work experience, including internships, in the private for-profit sector must be structured so as not to be subsidizing operations of the business or organization. The work of the participant should not materially impact the profit margin of a private-for-profit company.

The WDB and contracted subrecipients may encounter employers reluctant to assume responsibility for youth as employees. If an employer/employee relationship does exist, the youth provider may deem it advisable to be the employer of record and refer youth participants to host sites so they may receive experience. This may be done only with prior approval of WDBCO.

B. Determining "Trainee" versus "Employee"

Work experience may be paid or unpaid. It is expected that work experience will be paid in most cases and the Federal Fair Labor Standards Act (FLSA) will apply in any situation where an employer/employee relationship exists. WIOA participants are subject to the requirements of the FLSA to the extent that the activities performed in the work experience constitute employment.

WDBCO shall ensure that the youth provider has correctly identified whether the work experience is a "training" situation or an "employment" situation through the worksite agreement approval process

Trainee

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

employment settings, as opposed to skills particular to one work experience provider's operations, the more likely the participant is a trainee.

According to the Wage and Hour Division of the U.S. Department of Labor, Employment Standards Administration, if all of the following six (6) items exist, the work experience can be considered a "training" situation and an employment relationship does not exist under the FLSA:

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

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

Employee

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

If the worksite uses the youth participants as substitutes for regular full time or part time employees, it is more likely that the participants are employees as opposed to trainees. Also, if the work experience provider would have needed to hire additional employees or require overtime had the participants not performed the work, then the participants are likely employees. As stated previously, work experience, including internships, in the private for-profit sector must be structured so as not to be subsidizing operations of the business or organization. The work of the participant should not materially impact the profit margin of a private-for-profit company. Situations where a youth participant is substituting for regular full time or part time employees may not be approved.

Employer of Record

1. Employer - If the work experience provider is relying on the participant to perform real work, i.e., to be productive, then the situation should be recognized as an employer-employee relationship. In this situation, the site employer is the employer of record. Participants must receive no less than the applicable state or federal minimum wages, related benefits are required, and payroll taxes should be deducted. The employer of record will be responsible for paying all taxes and providing similar benefits as are available to other employees.
2. Youth Provider - The youth provider has the option of being the employer of record, with prior approval of WDBCO, for the youth participant. The employer of record is responsible for paying the participant and negotiating with the host site the activities that will be performed by the participant. The work experience may occur at the youth service provider location or the participant may be referred to a host site to receive the work experience. The host site is the location where work experience tasks will occur.

"Trainee" versus "Employee" when Job Shadowing

If the employer is providing job shadowing opportunities whereby the participant learns certain functions under the close and constant supervision of regular employees, but performs no or minimal work, this type of activity is more likely to be a bona fide training program. However, if the participant receives the same level of supervision as employees, this would suggest an employment, rather than training, relationship.

C. Child Labor Laws

WDBCO will ensure compliance with child labor laws. The employer must comply with all applicable federal laws and with state child labor laws if the participant is less than 18 years of age. The Fair Labor Standards Act (FLSA); Ohio Revised Code (O.R.C.) Chapter 4109 Employment of Minors, and Chapter 3331 Age and Schooling Certificates; and Ohio Administrative Code (O.A.C.) Chapter 4101:9-2 Employment of Minors in Occupations Hazardous or Detrimental to Health and Well-Being, are primary legislation which governs the employment of minors at the federal and state levels.

Proof of age and parental consent must be given for both paid and unpaid work experience. Minors participating in a work experience while school is in session also require a work permit. Minors who are under 16 also must have an Age and Schooling Certificate (work permit).

D. Health and Safety Standards

WDBCO will apply the same health and safety standards otherwise applicable to working conditions of employees to working conditions of participants in programs and activities under Title I of the WIOA.

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

E. Unpaid Work Experience

Unpaid work experience is an activity exposing participants to the working environment, and an individual does not expect payment for tasks performed. An employer and employee relationship must not exist, which means that all six conditions listed in Section B. of this policy letter must be met. The use of unpaid work experience should be limited.

For unpaid work experience, WIOA funds may be used for incentives and/or a stipend for youth. Incentives and stipends encouraging successful completion are beneficial to youth.

Unpaid work experience will be no less than 5 hours but cannot exceed 160 hours per participant program year and may be provided a stipend of \$10/hr.

Incentives

Incentives should be reasonable and allocable and issued through a uniform payment system. Such incentives are not considered income for WIOA eligibility purposes, are not required to meet minimum wage requirements, are not to be dispersed as payroll, and income tax is not to be withheld.

Unpaid work experience participants may receive remuneration in cash or non-cash incentives. The incentive should equate to an achievement, and should be tied to training and education, a work readiness skill attainment and/or an occupation skill attainment goal identified in the IOP.

Incentives for youth may include plaques, certificates, gift certificates, recognition ceremonies for participants, caps and gowns, class pictures, class rings, school supplies and/or calculators, or a check.

If the AMP program incorporates incentives, the WDBCO Youth Committee will approve procedures that must include;

- Ties to the successful completion of the participant's IOP goals;
- Written requirements for participants before the commencement of incentive payments;
- And be in accordance with the requirements contained in 2 CFR 200.

It is recommended that the youth program provider consult with other public assistance case managers where applicable to ensure that the receipt of incentives do not negatively impact the youth participant's receipt of public assistance.

F. Paid Work Experience

Paid work experience will be limited to a minimum of 5 hours and may not exceed 160 hours per participant program year. This limit can be adjusted for a participant that is enrolled into a registered, pre-apprenticeship program to align with the hands-on, paid-work component of the pre-apprenticeship with approval by WDBCO.

G. Worksite/Job Site/Host Site Agreement

WDBCO will ensure that the youth provider has a written agreement to ensure compliance with the WIOA and applicable regulations. Agreements must be approved by WDBCO prior to the start of the work experience. The agreement is a written document that details terms and conditions of paid and unpaid work experience and the expectations of the parties to the agreement. The written agreement is between the participant, the site employer or host site, and the youth provider. This agreement must be in place and signed by all parties prior to youth's participation in work experience.

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

H. Documentation to be Maintained

Documentation of the work experience must be maintained in the participant's file. WDBCO requires that the following documentation will be kept in the participant's file, which should include, at a minimum, the following items:

- An objective assessment and IOP indicating a need for work experience;
- Pre-approved justification for incentive and description of type of payment method and amount, if applicable;
- A copy of the agreement between the participant, the worksite or host site and the local workforce investment board, including any attachments to the agreement, such as a training plan;
- Time sheets, attendance sheets and performance records, as appropriate; and
- Documentation of receipt of incentives and supportive services received by the participant.

I. Tracking Youth Work Experience

The WIOA request that not less than 20% of funds allocated to the local area be used to provide in-school and out-of-school with paid and unpaid work experiences. In order to ensure that this requirement is met, local areas should track program funds spent on paid and unpaid work experiences and report such expenditures as part of the local WIOA youth financial reporting. Program expenditures on the work experience program element include wages as well as staffing costs for the development and management of work experiences. Local area administrative costs are not subject to the 20% minimum work experience expenditure requirement.

J. Monitoring

Program Operators are required to maintain and report accurate program in OWCMS and financial information in CFIS. Pursuant to rule 5101:9-30-04 of the Ohio Administrative Code, information regarding WIOA participants and their activities and performance must be entered into Ohio Workforce Case Management System (OWCMS) accurately and within 30 days. OWCMS may be used to assist in the determination of eligibility. However, OWCMS cannot be used as verification of youth eligibility. WIOAPL No. 15-07, Source Documentation for WIOA Eligibility, lists the type of acceptable documentation to verify eligibility for programs.

WDBCO will conduct oversight of the implementation of the WIOA youth programs to ensure that participants enrolled in the programs are eligible and that eligibility has been properly documented. Program Operators are required to make available to the board and/or contracted monitors all relevant participant files, documents and paperwork. Program files will be monitored yearly unless it is determined by the board there is a need for more frequent monitoring.

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Definitions:

Alternative secondary school services: Services provided to youth who have struggled in traditional secondary education to help them re-engage and persist in education to complete a high school diploma or recognized equivalent, including basic education skills training, individualized academic instruction, and English as a Second Language training.

Attending school: An individual who is enrolled in and/or attending secondary or postsecondary school, including alternative secondary school services.

Basic skills deficient: A youth who has English reading, writing, or computing skills at or below the eighth grade level, based on a generally accepted standardized test, or who is unable to compute or solve problems, or read, write, or speak English, at a level necessary to function on the job, in the individual's family, or in society.

Charter school: Public, nonprofit, nonsectarian, tuition-free schools operating independently of a school district, but under contract with a Sponsor that has been approved by the Ohio Department of Education (ODE).

Comprehensive Case Management and Employment Program (CCMEP): An integrated intervention program that combines Temporary Assistance for Needy Families (TANF) and the WIOA youth program to provide employment and training services to individuals ages 14 through 24 years.

Covered individual: An eligible WIOA youth who is:

1. An in-school youth, or
2. An out-of-school youth who is low income and meets one of the following criteria:
 - a. Has a secondary school diploma or its recognized equivalent and is basic skills deficient or an English language learner; or
 - b. Requires additional assistance to enter or complete an educational program or to secure or hold employment.

English language learner: An individual who has limited ability in reading, writing, speaking, or comprehending the English language, and whose native language is a language other than English or who lives in a family or community environment where a language other than English is the dominant language.

Family: Per 20 C.F.R. 675.300, two or more persons related by blood, marriage, or decree of court, who are living in a single residence and are included in one or more of the following categories:

1. A married couple and dependent children;
2. A parent or guardian and dependent children; or
3. A married couple.

Homeless child or youth (as defined in 42 U.S.C. 11434a(2)): An individual who lacks a fixed, regular, and adequate nighttime residence and includes the following:

1. Children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; or are abandoned in hospitals;
2. Children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
3. Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
4. Migratory children (as such term is defined in 20 U.S.C. 6399) who qualify as homeless for the purposes of this part because the children are living in one of the previously mentioned circumstances.

Homeless individual (as defined in section 41403(6) of the Violence Against Women Act of 1994 (34 U.S.C. 12473(6)): An individual who lacks a fixed, regular, and adequate nighttime residence and includes:

1. An individual who:
 - a. Is sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason;
 - b. Is living in a motel, hotel, trailer park, or campground due to the lack of alternative adequate accommodations;
 - c. Is living in an emergency or transitional shelter;
 - d. Is abandoned in a hospital; or
 - e. Is awaiting foster care placement.
2. An individual who has a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings; or
3. Migratory children who qualify as homeless because the children are living in circumstances listed above.

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

Individual with a disability: An individual who:

1. Has a physical or mental impairment that substantially limits one or more major life activities of such individual;
2. Has a record of such an impairment; or
3. Is regarded as having such an impairment.

Low income individual (as defined in 29 U.S.C. 3102(36)(A)): An individual who:

1. Receives, or in the past six months has received, or is a member of a family that is receiving or in the past six months has received, assistance through the supplemental nutrition assistance program (SNAP), temporary assistance for needy families (TANF), or supplemental security income (SSI), or State or local income-based public assistance;
2. Is in a family with total family income that does not exceed the higher of –
 - a. The poverty line; or
 - b. 70 percent of the lower living standard income level.
3. Is a homeless individual or homeless child or youth;
4. Receives or is eligible to receive a free or reduced price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.), (does not include students in school districts participating in the Community Eligibility Provision (CEP) Healthy, Hunger-Free Kids Act of 2010);
5. Is a foster child on behalf of whom the State or local government payments are made; or
6. Is an individual with a disability whose own income meets the eligibility income requirement of clause (2) but who is a member of a family whose income does not meet this requirement.

Offender: An adult or juvenile who:

1. Is or has been subject to any stage of the criminal justice process and for whom services under WIOA may be beneficial; or
2. Requires assistance in overcoming artificial barriers to employment resulting from a record of arrest or conviction.

Participation: The point at which the individual has been determined eligible for youth program services, has received an assessment, and has received or is receiving at least one program element and the point at which the individual is to be included in calculations for performance measures.

Postsecondary school: Any schooling that follows graduation from high school or completion of high school equivalency, including community colleges, four-year colleges and universities, and technical and trade schools.

School dropout: As defined in section 3(54) of WIOA, an individual who is no longer attending any school and has not received a secondary school diploma or its recognized equivalent.

School year calendar quarter: The timeframe identified as an academic quarter by the local school district or charter school that a youth last attended, or the calendar quarter if not defined by the district or school.

Secondary School: A school operated by a board of education, a community school established under Chapter 3314 of the Revised Code, or a nonpublic school for which the state board of education prescribes minimum standards under section 3301.07 of the Revised Code that provides secondary education as determined under State law, except that the term does not include any education beyond grade 12.

Stipend: A predetermined amount of money that's paid to trainees, interns and students to help offset expenses. Stipends are often provided to those who are ineligible to receive a regular salary in exchange for the duties they perform.

References:

Workforce Innovation and Opportunity Act, §129, Pub. L. 113-128.

20 C.F.R. §§ 681.200 – 681.410.

29 U.S.C. § 3101, et seq.

O.R.C. § 3321.01, et seq.

O.A.C. rules 5101:9-30-04, 5101:10-3-01, and 5101:14-1-01 - 5101:14-1-07.

USDOL, Training and Employment Guidance Letter WIOA No. 21-16, Third Workforce Innovation and Opportunity Act (WIOA) Title I Youth Formula Program Guidance, (March 2, 2017).

USDOL, Training and Employment Guidance Letter WIOA No. 08-15, Second Title I WIOA Youth Program Transition Guidance, (November 17, 2015).

USDOL, Training and Employment Guidance Letter WIOA No. 23-14, Workforce Innovation and Opportunity Act (WIOA) Youth Program Transition, (March 26, 2015).

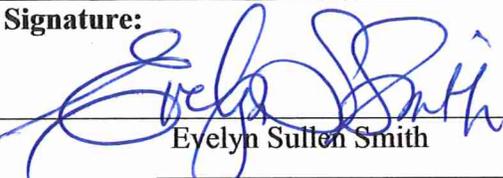
ODJFS, Workforce Innovation and Opportunity Act Policy Letter No. 15-04, Selective Service Registration, (July 15, 2015).

ODJFS, Workforce Innovation and Opportunity Act Policy Letter No. 15-07.1, Source Documentation for WIOA Title I Program Eligibility, (June 25, 2018).

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