
Policy Number: WIOA I-B – 3.8 Updated

Effective Date: August 27, 2018

Work Experience

PURPOSE:

The purpose of this policy is to describe and to detail the regulations concerning work experiences for adults and youth, including internships and transitional jobs for adults and various types of work experiences for youth, in accordance with the rules and regulations of Workforce Innovation and Opportunity Act of 2014 (WIOA), the WIOA Final Rule, Training and Employment Guidance Letters (TEGLs) published by the Employment and Training Administration of the U.S. Department of Labor (ETA), and policies of the Arkansas Workforce Development Board (AWDB).

REFERENCE:

WIOA §§129(c)(2)(C), 129(c)(4), 134, 181(d), & 188(a)(3)

20 CFR 680, 681, & 683

Comments in WIOA Final Rule concerning §§ 680.140, 680.180, 680.190, 680.195, & 680.320

TEGL 19-16

29 CFR part 2, subpart D

Fair Labor Standards Act

ADWS Policy No. WIOA I-B – 1.2 (Definitions)

ADWS Policy No. WIOA I-B – 3.3 (Occupational Skills Training)

ADWS Policy No. WIOA Title I-B –3.4 (On-the-Job Training)

ADWS Certification of Local Workforce Development Boards

POLICY:

Work experiences (including internships) that are linked to careers are individualized career services that are required to be available for adults and dislocated workers if these services are determined to be appropriate in order for individuals to obtain or retain employment [*WIOA § 134(c)(2)(A)(xii)(VII)*; *20 CFR 680.150(b)*]. Although the Workforce Innovation and Opportunities Act (WIOA) lists transitional jobs with training activities in WIOA § 134(c)(3)(D)(viii), transitional jobs are also individualized career services because the activity is a type of work experience [*20 CFR 680.180*; *20 CFR 680.190*; *Comments in WIOA Final Rule concerning §680.140*]. Paid and unpaid work experience, including internships, is one of the 14 required program elements for youth [*WIOA § 129(c)(2)(C)*; *20 CFR 681.460(3)*]. At least 20% of the funds allocated to a local area for youth must be spent for work experience [*WIOA § 129(c)(4)*; *20 CFR 681.590*]. Some work experience activities for adults and youth have particular required components.

Each local area must have a Work Experience Policy that outlines specific details and allowances for the area. Each policy must address the length of time for each work experience, the rate of pay, and the allowance of raises during work.

Work Experience for Adults and Dislocated Workers

Work experiences, including internships and transitional jobs, are planned, structured learning experiences that take place in workplaces for limited periods of time. Internships and other work experiences may be paid or unpaid, as appropriate and consistent with other laws, such as the Fair Labor Standards Act [20 CFR 680.180; TEGL 19-16].

Transitional jobs are a type of work experience LWDBs may provide under WIOA. A transitional job is a time-limited, subsidized, wage-paid work experience for an individual who has barriers to employment and who is either chronically unemployed or has inconsistent work history, as defined by the LWDB. Wages may be subsidized up to 100%. Transitional jobs are designed to enable an individual to establish a work history, demonstrate work success in an employee-employer relationship (although the program provider may act as the employer [Comments in WIOA Final Rule concerning §680.190]), and develop the skills that lead to unsubsidized employment. Transitional jobs are available only to individuals with barriers to employment who are chronically unemployed or have an inconsistent work history, as determined by the LWDB [WIOA § 134(d)(5); 20 CFR 680.190; TEGL 19-16].

Unlike on-the-job training (OJT), there is no requirement that the employer retain the individual upon completion of the transitional job. Where appropriate, however, retention is preferred for the benefit of the worker and employer [TEGL 19-16].

Transitional jobs must be combined with comprehensive career services and supportive services [WIOA § 134(d)(5); 20 CFR 680.195]. Comprehensive career services may include both basic and individualized career services and are based on the needs of the participant. Local areas determine which career and supportive services are appropriate for each individual [Comments in WIOA Final Rule concerning §680.195]. The local area may use no more than 10% of their combined total of Adult and Dislocated Worker allocations for transitional jobs [WIOA § 134(d)(5); 20 CFR 680.195; TEGL 19-16]. Comprehensive career and supportive services need not be included in determining the 10% cap [Comments in WIOA Final Rule concerning §680.195].

If the LWDB uses transitional jobs as part of its service delivery strategy, it must adopt policies and identify appropriate employers (public, private, or nonprofit). These policies must include plans on the amount of reimbursements for the jobs (up to 100% of the wage), what supportive services must be included, and the limits on the duration of the transitional job. They must also develop policies for defining and identifying individuals who are “chronically unemployed” or “have an inconsistent work history.” The Department of Labor (the Department) encourages targeting individuals who are long-term unemployed, ex-offenders, and individuals who are currently receiving or have exhausted TANF benefits when developing these policies. The Department also encourages using job readiness training in combination with transitional jobs if determined appropriate by the LWDB [TEGL 19-16].

Unlike transitional jobs, internships and other types of work experience for adults and dislocated workers do not require other particular career or supportive services. In addition, there is no cap on the percent of adult and dislocated funds that may be spent for other work experiences, including internships [Comments in WIOA Final Rule concerning §680.180].

Work Experience for Youth

Paid and unpaid work experience is one of the 14 program elements that must be available for youth [20 CFR 681.460(a)]. As with adults, a work experience for youth is a planned structured learning experience that takes place in a workplace for a limited period of time [20 CFR 681.600(a)]. Work experience for youth may be in the form of summer employment, employment during the school year, a pre-apprenticeship program, an internship, job shadowing, or on-the-job training. As with adults, work experience for youth may be paid or unpaid, as appropriate and consistent with other laws, such as the Fair Labor Standards Act. Work experiences provide youth participants with opportunities for career exploration and skill development [WIOA § 129(c)(2)(C); 20 CFR 681.460(3); 20 CFR 681.600-630].

Each Youth work experience must include an academic and occupational education component. The academic and occupational component refers to contextual learning that accompanies a work experience. The component includes the information necessary to understand and work in specific industries and/or occupations. The educational component may occur concurrently or sequentially with the work experience. Academic and occupational education may occur inside or outside the work site. The education component may include workforce preparation activities, basic academic skills, and/or hands-on occupational skills training connected to a specific occupation, occupational cluster, or career pathway. The occupational component may include information concerning occupations and/or career paths related to the work experience. The educational and occupational component is more than general education, except as the education is related to the occupation, and current duties of the work experience. Local areas have the flexibility to decide the appropriate type of academic and occupational education related to a specific work experience and the provider of the educational component for the work experience. The academic and occupational component must be recorded in the participant files [20 CFR 681.600; TEGL 21-16].

The pre-apprenticeship program is a work experience designed to prepare a youth to enter a registered apprenticeship program. The experience includes five major components [20 CFR 681.480; TEGL 21-19]:

- Training and curriculum that aligns with the skill needs of employers in the economy of the State or region
- Access to educational and career counseling and other supportive services, directly or indirectly
- Hands-on, meaningful career options that are connected to education and training activities, such as exploring career options, and understanding how the skills acquired through coursework can be applied toward a future career
- Opportunities to attain at least one industry-recognized credential
- A partnership with one or more registered apprenticeship programs that assists in placing individuals who complete the pre-apprenticeship program in a registered apprenticeship program

Job shadowing is a work experience option that is designed to increase career awareness, help model youth behavior through examples, and reinforce in the youth the link between academic classroom learning and occupational work requirements. Job shadowing work experience is a temporary, unpaid exposure to the workplace in an occupational area of interest to the participant. The experience may last from a few hours to a few weeks. The youth learns about a job by walking through the work day as a shadow to a competent worker. Youth witness firsthand the work environment, employability and occupational skills in practice, the value of professional training, and potential career options [TEGL 21-16].

Although on-the-job training is defined as work experience for youth and as training for adults, the guidelines and policies for Youth OJT follow those for OJTs for adults and dislocated workers. See ADWS Policy No. WIOA Title I-B –3.4 (*On-the-Job Training*) for more information concerning this category of work experience for youth.

Not less than 20% of the youth funds allocated to a local area (minus area administrative costs) must be spent to provide ISY and OSY with paid and unpaid work experiences. Local youth programs must track program funds spent on paid and unpaid work experiences, including wages and staff costs for the development and management of work expenses, and report such expenditures as part of the local youth financial reporting. The percentage of funds spent on work experience is calculated as the total amount spent on ISY and OSY work experience divided by the total allocated youth funds (minus administrative costs) [WIOA § 129(c)(4); 20 CFR 681.590].

The following expenditures may be counted toward the 20% work experience requirement [TEGL 21-16]:

- Wages/stipends paid for participation in a work experience (including employment costs such as FICA match and workers' compensation insurance)
- Staff time working to identify and develop a work experience opportunity, including staff time spent working with employers to identify and develop the work experience
- Staff time working with employers to ensure a successful work experience, including staff time spent managing the work experience
- Staff time spent evaluating the work experience
- Participant work experience orientation sessions
- Employer work experience orientation sessions
- Classroom training or the required academic education component directly related to the work experience
- Incentive payments directly tied to the completion of work experience
- Employability skills/job readiness training to prepare youth for a work experience.

Leveraged resources cannot be used to fulfill any part of the 20% minimum. Supportive services are a separate program element and cannot be counted toward the work experience expenditure requirement, even if supportive services assist the youth in participating in the work experience [TEGL 21-19]

General Requirements for Adults, Dislocated Workers, and Youth

Work experiences of all types may be arranged within the private for-profit sector, the non-profit sector, or the public sector. Labor standards apply in any work experience setting where an employee/employer relationship, as defined by the Fair Labor Standards Act, exists [20 CFR 680.180; 20 CFR 681.600].

Providers of internships, paid or unpaid work experience, or transitional jobs are not subject to the requirements applicable to entities listed on the eligible training provider list, and they are not included on the state list of eligible training providers and programs. If the State, however, decides to impose performance regulations, local areas must collect required performance data and identify providers that

meet required performance levels [20 CFR 680.530]. There is no prohibition on the combination of ITAs with any type of work experience, with the exception of ISY. In-school youth may not use youth program-funded ITA, but ISY between the ages of 18 and 21 may co-enroll in the Adult program and may receive training services through an ITA funded by the Adult program, if the youth's individual needs, knowledge, skills, and interests align with the Adult program [Comments in Final Rule concerning §680.320; TEGL 21-19]. See ADWS Policy No. WIOA I-B – 3.3 (*Occupational Skills Training*) for information concerning ITAs.

No funds may be provided to employers for work-based training and other work experiences to be used directly or indirectly to assist, promote, or deter union organizing [20 CFR 680.830]. No funds may be provided to employers for work-based training and other work experiences to be used directly or indirectly to aid in the filling of a job opening which is vacant because the former employee is on strike, the former employee is being locked out in the course of a labor dispute, or the job is vacant because of an issue in a labor dispute involving a work stoppage [20 CFR 680.840; 20 CFR 681.600].

WIOA funds may not 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. No individual may be placed in work experience in any 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's losing his or her job at the original location. To verify that a business that is new or expanding and is not relocating, in fact, relocating employment from another area, a standardized Arkansas pre-award review criteria must be completed and documented jointly by the local area and the business (FORM WIOA I-B – 4.1 *Standardized Pre-Award Review Criteria*) [WIOA § 181(d); 20 CFR 683.260].

A participant in any workforce training activity must not displace any currently employed employee (as of the date of the participation). This includes a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits. The workforce training activity must not impair existing contracts for services or collective bargaining agreements unless the appropriate labor organization and the employer provide written concurrence before the activity begins. The participant may not replace an unsubsidized employee who was laid off from the same or any substantially equivalent job or who was terminated with the intention of hiring the participant. The participant may not be placed in a promotional line that infringes in any way on the promotional opportunities of currently employed workers as of the date of the participation [20 CFR 683.270]

No individual may be placed in a WIOA employment activity if a member of that person's immediate family is directly supervised by or directly supervises that individual [20 CFR 683.200(g)]. The Arkansas State definition of "immediate family" is (1) a spouse and (2) any other person residing in the same household as the participant, who is a dependent of the participant or of whom the participant is a dependent. Dependent means any person, whether or not related by blood or marriage, which receives from the participant, or provides to the participant, more than one-half of his/her financial support [ADWS *Certification of Local Workforce Development Boards*]. (This definition is slightly different from the definition of "family" used for eligibility purposes.)

No funds may be used to pay a participant to construct, operate, or maintain any part of a facility used for sectarian instruction or as a place for religious worship, with the exception of maintenance of facilities that are not primarily used for sectarian instruction or worship and are operated by organizations providing services to WIOA participants [WIOA § 188(a)(3); 20 CFR 683.255(a)]. Special rules concerning training administered by religious organizations can be found in 29 CFR part 2, subpart D

(Equal Treatment in Department of Labor Programs for Religious Organizations, Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries) [20 CFR 683.255(b); 20 CFR 683.285(b)].

Health and safety standards established under Federal and State law otherwise applicable to working conditions of employees are equally applicable to working conditions of participants. To the extent that a State workers' compensation law applies, workers' compensation must be provided to participants on the same basis as the compensation is provided to other individuals in the State in similar employment. If a State workers' compensation law does not apply to a participant in work experience, insurance coverage must be secured for injuries suffered by the participant in the course of such work experience [20 CFR 683.280].