

To: Indiana's Workforce System

From: Indiana Department of Workforce Development (DWD)

Date: August 15, 2022

Subject: DWD Policy 2022-04
Workforce Innovation and Opportunity Act (WIOA) Title I Adult and Dislocated
Worker Transitional Jobs

Purpose

To establish state policy regarding the use of local formula funds for Transitional Jobs for WIOA Title I Adult and Dislocated Worker Programs and to provide guidance for the development of local policies if Transitional Jobs will be offered in the local area.

References

- WIOA Sections 3(24), 134(d)(5), and 188
- 20 CFR § 680.190 and 195
- 20 CFR § 683.255 through 280
- TEGL 19-16 *Guidance on Services provided through the Adult and Dislocated Worker Programs under the Workforce Innovation and Opportunity Act (WIOA) and the Wagner-Peyser Act Employment Service (ES), as amended by title III of WIOA, and for Implementation of the WIOA Final Rules*
- DWD Policy 2022-02 *Workforce Innovation and Opportunity Act (WIOA) Title I Adult and Dislocated Worker On-the-Job Training (OJT)*
- DWD Policy 2019-04, Change 1 *Workforce Innovation and Opportunity Act (WIOA) Title I Adult Priority of Service*
- United States Department of Labor Employment and Training Administration (USDOL/ETA) *WIOA Desk Reference: Transitional Jobs* (January 2016)¹

Content

Transitional jobs (TJ) provide a time-limited work experience that is wage-paid and subsidized. TJ may be in the public, private, or non-profit sectors for those individuals with barriers to employment who are chronically unemployed or have inconsistent work history, as determined by the Local Workforce Development Board (WDB). These jobs are designed to enable an individual to establish a work history, demonstrate work success in an employee-employer relationship, and develop the skills that lead to unsubsidized employment.

¹ https://ion.workforcegaps.org/resources/2017/03/19/19/26/Transitional_Jobs_-_WIOA_Desk_Reference.

Funding²

The local area may use up to 10% of their combined total of Adult and Dislocated Worker allocations for transitional jobs.

Participant Eligibility³

TJ are only available for individuals:

- That received an assessment and were determined eligible and receiving services through the Adult or Dislocated Worker Program services;
- Have barriers to employment; and
- Who are chronically unemployed or have an inconsistent work history, as determined by the local WDB.

TJ Requirements⁴

TJ must:

- Be combined with comprehensive career and supportive services; and
- Be designed to establish a work history for the individual, demonstrate success in the workplace, and develop the skills that lead to entry and retention in unsubsidized employment.

Unlike on-the-job training (OJT), there is no requirement that the employer retain the individual upon completion; however, job retention is an ideal outcome.

NOTE: Participant program eligibility and required service provision documentation must be documented and maintained in DWD's case management system.

Employer Requirements and Restrictions

TJ must be provided in accordance with WIOA Section 181, which requires fair and equitable wages, benefits, and working conditions. Section 181 and the Fair Labor Standards Act prohibit TJ activities from displacing current employees or creating a layoff, filling openings that resulted from a labor dispute, or infringing on the promotional opportunities of current employees.

The employer of record is most typically the WDB or WIOA service provider. However, the participating employer may also be the employer of record. If an entity other than the WDB serves as the employer of record, that entity may be entitled for reimbursement up to 100% of wages. If the WDB serves as the employer of record, the participant's wages will be paid at 100%.

The employer of record must provide workers' compensation insurance to participants on the same basis as the compensation provided to other individuals in the state in similar employment. The worksite employer must adhere to labor laws and health and safety requirements.

² 20 CFR § 680.195.

³ 20 CFR § 680.190.

⁴ USDOLETA WIOA: Transitional Jobs Desk Reference.

The employer must comply with federal and state laws including those laws pertaining to nondiscrimination based on race, color, sex, religions, national origin, age, disability, sexual orientation, and marital status.

A TJ agreement may not be written with an employer or worksite that has previously demonstrated a “pattern of failure” as defined by the local board. Such failure may include failing to provide participants with wages, benefits, and working conditions that are equal to those provided to regular employees who have worked a similar length of time and are doing the same type of work.

Funds provided to employers for TJ must **not** be used to directly or indirectly assist, promote, or deter union organizing.

TJ funding may not be used in the employment or training of participants/trainees involved in the construction, operation, or maintenance of that part of a facility which is used for religious instruction or worship (sectarian activities).⁵

The TJ must not impair existing contracts for services or collective bargaining agreements.

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.

WIOA funds may **not** be used to provide TJ if the business has relocated from any location in the United States and the relocation resulted in any employee losing his or her job at the original location.⁶ This prohibition is no longer applicable after the company has operated at the new location for 120 days. To verify that an establishment (which is new or expanding) is not, in fact, relocating employment from another area:

- A standardized pre-award review must be completed and documented jointly by the WDB and the TJ employer as a prerequisite to WIOA assistance.
 - The review must include:⁷
 - 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 WIOA assistance is sought in connection with past or impending job losses at other facilities;
 - A review of whether WARN notices relating to the employer have been filed; and
 - A search of the Indiana Secretary of State’s Business Search⁸ to determine whether the business is properly registered without any irregularities in their registration.
 - The review may include consultations with labor organizations and others in the affected region or local area(s).

⁵ WIOA section 188(a)(3).

⁶ 20 CFR § 683.260.

⁷ See DWD TA *Example OJT Program Templates* for a sample training pre-award review template.

⁸ <https://bsd.sos.in.gov/publicbusinesssearch>.

TJ Contracts

The TJ contract outlines the respective required duties of a TJ employer, the participant, and the local area as they relate to the provision of a TJ.

All TJ contracts must include:

- The following assurance language:
 - *“The equal opportunity and nondiscrimination assurances at 29 CFR Part 38.25 apply to this contract/agreement.”*
- The signatures of the employer, the participant, and the local area representative.

Please see Attachment A, *Recommended TJ Contract (Worksite Agreement) Provisions*, for additional guidance.

Priority of Service⁹

Section 134(c)(3)(E) of WIOA establishes a priority requirement with respect to funds allocated to a local area for individualized employment and training activities funded by the WIOA Title I Adult Program. Additionally, veterans and eligible spouses continue to receive priority of service for all DOL-funded job training programs. Veterans must meet each program’s eligibility criteria to receive services under the respective employment and training program.

Local WDB TJ Policy Requirements

Local WDBs which plan to offer TJ as part of their service strategy must develop policies and procedures for TJ implementation.

Minimum policy requirements are as follows:

- Percentage amount of reimbursement (up to 100%);
- Minimum beginning hourly wage;¹⁰
- TJ maximum duration, not to exceed 26 weeks;
- TJ maximum hours worked per week, not to exceed 40 hours per week;¹¹
- The supportive services are to be offered as part of the TJ;
- Define:
 - Chronically unemployed or
 - Inconsistent work history; and
- Pre-award review process and documentation, as applicable.

⁹ See WIOA Title I Adult Priority of Service and Priority of Service for Veterans and Eligible Spouses in Indiana DWD's Integrated WorkOne Offices policies for Priority of Service Requirements policy for additional guidance. Policies are located at <https://www.in.gov/dwd/compliance-policy/policy/active/>.

¹⁰ At a minimum, wages should be the higher of the federal, state, or local minimum wage.

¹¹ Ideally, TJ recipients should work close to a full-time schedule, but no overtime is permitted.

Action

Regions must develop local policies and procedures for the provision of TJ that are aligned with this policy if they will be offered in the local area. Contents of this guidance are subject to routine DWD monitoring.

Attachments

Attachment A - Recommended TJ Contract Provisions

Effective Date

Immediately.

Ending Date

Upon rescission.

Additional Information

Questions regarding the content of this publication should be directed to DWD Policy: policy@dwd.in.gov.

Attachment A

Recommended TJ Contract Provisions

NOTE: The below items are not an all-inclusive list but serve as an initial guideline. Furthermore, these points are not intended to replace or supersede mandates and guidelines in federal and state laws and regulations regarding procurement and contracting.

At a minimum, the following provisions are recommended to be included in local JT contracts:

- Identification of the parties involved in the contract;
- The beginning and ending dates of the contract;
- Percentage amount of reimbursement (up to 100%);
- The total reimbursement for the entire TJ program;
- The wage rate for the WIOA participant;
- Assurances of safe working conditions;
- Assurances from employer of compliance with all federal, state, and local regulations, including WIOA;
- Assurances from the employer that include specific references to fair labor standards, benefits, nondiscrimination, non-sectarianism, lobbying restrictions, and political activity restrictions;
- Audit rights and access to records for the local WDB and DWD;
- Record retention requirements;
- Default clauses for non-performance;
- Termination for convenience clause;
- Modification methodology;
- Payment and delivery terms; and
- A requirement that the employer must maintain time and attendance records and must produce these records to the WDB and DWD upon request.