

**A RESOLUTION OF NEW YORK CITY WORKFORCE INVESTMENT BOARD
WORKFORCE POLICY COMMITTEE AUTHORIZING A LOCAL POLICY FOR THE
NEW YORK CITY DEPARTMENT OF SMALL BUSINESS SERVICES WORKFORCE
INVESTMENT ACT (WIA) & NATIONAL EMERGENCY GRANT (NEG) ON-THE-
JOB TRAINING (OJT) PROGRAMS**

WHEREAS, OJT is a workforce training strategy favored by the U.S. Department of Labor, whereby OJT participants can increase their job skill level, while earning a regular paycheck; and

WHEREAS, the WIB determines that OJT programs can bridge the gap between unemployment and long-term employment by facilitating improvement of an OJT participant's skill level in addition to promoting the upskilling of employed workers; and

WHEREAS, the WIB determines that OJT programs should match participant training needs with the business development needs of the hiring employer(s); and

WHEREAS, the term "on-the-job training" means training by an employer that is provided to an OJT participant while engaged in productive work that:

- a. provides knowledge or skills essential to the full and adequate performance of the job;
- b. provides reimbursement to the employer of the participant's wage rate for the extraordinary costs of providing the training and additional supervision related to the training; and
- c. is limited in duration as appropriate to the occupation for which the 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 appropriate¹; and

WHEREAS, the term "participant" means an individual who has been determined to be eligible to participate in and who is receiving services under an OJT program as called for under WIA, including WIA Section 173; and

WHEREAS, it is necessary for the WIB to establish procedures to address increased opportunities for OJT program development.

NOW, THEREFORE, BE IT RESOLVED by the Workforce Policy Committee that the attached "Exhibit A", dated August 19, 2010, is adopted effective immediately.

¹ WIA Section 101(31)

EXHIBIT A
MATERIAL TERMS OF THE NYC WIB ON-THE-JOB TRAINING POLICY

OJT REQUIREMENTS

1. OJT contracts with employers may be written when:
 - a. The employee is not earning a self-sufficient wage as determined by the WIB.¹
 - b. The OJT relates to the introduction of new technologies, introduction to new production or services procedures, upgrading to new jobs that require additional skills, workplace literacy, or other appropriate purposes identified by the WIB.²
 - c. The Department of Small Business Services deems the contract to be an appropriate response to participant training and employer business development needs.

2. OJT contracts shall not be made with employers who have previously exhibited a pattern of failing to provide OJT participants with continued long-term employment 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,³ or with employers who have not expressed a good faith intent to do the same where no prior history can be referenced.

3. OJT contracts must be limited to the period of time required for a participant to become proficient in the occupation for which the training is being provided or to a period of time determined by the U.S. Department of Labor. In determining the appropriate length of a contract, consideration should be given to the skill requirements of the occupation, the academic and occupational skill level of the participant, prior work experience, or the participant's individual employment plan.⁴

ASSURANCES

1. As a condition of an OJT contract, a participating employer must assure that OJT will be provided in accordance with WIA 181(a)(1)(A) and 667.272 for wage and labor standards. Worker protection requirements are set forth in WIA Sections 181(a) (1) (A) and (B), (b) (2), (3), (4) and (5) and 188. Participating employers must agree to cooperate with monitoring efforts as required by WIA legislation and adhere to all other applicable local, state and federal rules, regulations and administrative guidance.

2. OJT employers must:
 - a. Employ an OJT participant in:
 - i. an industry, sector or subsector occupation with positive projected growth, as defined by the WIB or NYC Business Solutions, or deemed a strategic industry as defined by the WIB, or

¹ Final Rules 663.705

² Final Rules 663.705

³ Federal Register, Friday, August 11, 2000, Part II, Department of Labor, Employment and Training Administration, 20 CFR Part 652 et al., Workforce Investment Act; Final Rules 663.700(b)

⁴ 663.700(c); WIA Section 173(c)(2)(C)

- ii. a business that can demonstrate projected growth as a result of OJT-training;
- b. Provide a training outline;
- c. Meet requirements necessary to contract with the New York City Department of Small Business Services which may be in addition to WIA requirements.

MONITORING

1. The employer is required to keep sign-in sheets for each instance of training. These records should be retained for three years after the end of the program year in which costs were charged. The records may be requested for audit purposes.
2. The employer shall represent and warrant that all training records are accurate. Any falsified or inaccurate information is grounds for denial of payment or contract termination.
3. In addition, the employer must promptly notify the New York City Department of Small Business Services of any change in any participant's employment or terms of employment, including, without limitation, termination or withdrawal from employment.

REIMBURSEMENT

1. Reimbursement will generally be offered up to 50 percent for the extraordinary costs of providing training and additional supervision related to the training, as provided under WIA Section 101(31)(B). Under certain extraordinary circumstances, OJT reimbursements may exceed 50 percent based on a variety of factors, including, but not limited to business size or an OJT participant's skills gap.⁵

⁵ See, e.g., TEN 38-09 and TEGl 04-10; WIA Section 173