

**NORTEC  
WIOA POLICY STATEMENT  
ON-THE-JOB TRAINING**

*Effective Date: August 25, 2016*

**PURPOSE**

To provide guidelines to the Service Providers (NoRTEC subcontractors) to be used in the provision of On-the-Job Training (OJT), pursuant to the requirements of the Workforce Innovation and Opportunity Act (WIOA), Department of Labor Regulations (DOL), State Directives, and NoRTEC policy.

The purpose of the OJT is to provide eligible participants with structured occupational skills training on an actual job worksite, to expose them to the same employment conditions as any other member of the employer's workforce, and to offer them continued, unsubsidized employment opportunities or other allowable positive outcomes, upon completion of their training.

The following provides information on the minimum requirements/elements for OJT. Service Providers may include additional elements in their OJT contracts and procedures, so long as they are in conformance with this policy, the WIOA, DOL Regulations, and State Directives.

**GENERAL INFORMATION**

- A. "On-the-Job Training" (OJT) means training by an employer that is provided to a paid participant while engaged in productive work in a job that: (*WIOA, Section 101(44)*)
  1. Provides knowledge or skills essential to the full and adequate performance of the job;
  2. Is made available through a program that provides reimbursement to the employer of up to 50 percent of the wage rate of the participant for the extraordinary costs of providing the training and additional supervision related to the training; and
  3. 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 appropriate.
- B. OJT may be provided by an employer in the public, private non-profit, or private sector.
- C. OJT payments to employers are deemed to be compensation for the extraordinary costs associated with training participants and the costs associated with the lower productivity of the participants. *Employers are not required to document such extraordinary costs.*
- D. An OJT contract 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. 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 participants' Individual Employment Plan (IEP) or Individual Service Strategy (ISS). This shall be documented in the participant file via the assessment process and subsequent IEP/ISS development and included in the case notes.

- E. Reimbursement rates to employers under an OJT contract may be up to 50% of the wages for the contract period. Service Providers may also negotiate reimbursement rates of less than the allowed maximums.<sup>1</sup>
- F. There are also instances when the reimbursement percentage may be more than 50%. See Attachment A for details.

### **PARTICIPANT/TRAINEE ELIGIBILITY**

To be eligible for OJT services, the trainee must:

#### **A. Unemployed Workers**

1. Be enrolled in the WIOA program; and
2. Have participated in assessment activities; and
3. Have a completed an Individual Service Strategy (youth) or Individual Employment Plan (adults and dislocated workers); and
4. Have been referred to and hired by an employer, but need specific skills in order to become proficient on the job.

#### **B. Employed Workers**

1. Conditions 1-4 under item A above must be met; and
2. An employee is not earning a self-sufficient wage (determined by NoRTEC policy) or an employee will earn wages comparable to or higher than wages from the previous employer; and
3. The OJT relates to the introduction of new technologies, introduction to new production or service procedures, upgrading to new jobs that require additional skills, workplace literacy, or other appropriate purpose identified by NoRTEC.

### **CONTRACT ELEMENTS**

NoRTEC requires a written, signed agreement between a Service Provider representative and an authorized employer representative prior to the start of work.

At a minimum, an OJT contract between the Service Provider and an employer must comply with the requirements of Sections 194(1) and (4) and 101(44) of the WIOA and include:

1. The occupation(s) for which training is to be provided.
2. The duration of the training.
3. The wage rate to be paid to the trainee/participant.
4. The rate of reimbursement.<sup>2</sup>

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<sup>1</sup> For example, an OJT may be written for a 25% reimbursement and/or part of the wage reimbursement may be withheld until the participant has been retained for a specified period of time beyond the end of the training period.

<sup>2</sup> The reimbursement must be based on hours actually worked by the trainee/participant, and does not include reimbursement for holidays, sick-time, vacation time, or other non-training hours.

5. The maximum amount of the reimbursement.
6. A training outline that reflects the work skills required for the position.<sup>3</sup>
7. An outline of any other separate classroom training that may be provided by the employer.
8. The employer's agreement to maintain and make available time and attendance, payroll, and other records to support amounts claimed by the employer for reimbursement under the OJT contract<sup>4</sup>.
9. A written assurance by the employer that said employer complies with the following wage and labor standards:
  - a. Participants/trainees shall be compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience and skills. Such rates must be in accordance with applicable law, but may not be less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the applicable State or local minimum wage law.
  - b. Participants/trainees shall be provided benefits and working conditions at the same level and to the same extent as other trainees or employees working a similar length of time and doing the same type of work.
10. A written assurance by the employer that said employer complies with the following health and safety standards:
  - a. 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/trainees engaged in the OJT.
  - b. Workers' compensation insurance must be provided to participants/trainees engaged in the OJT on the same basis as the compensation is provided to other individuals in the State in similar employment.
11. A written assurance by the employer that said employer is in compliance 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.
12. A written assurance that the employer is not experiencing abnormal labor conditions such as strikes, lockouts, or layoffs and the OJT participant/trainee will not dislocate or

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<sup>3</sup> The delivery of the training specified in this outline shall be accompanied by a training plan that outlines the specific skills to be learned during the training period. These skills will be reviewed during on-site monitoring visits by Service Provider staff and will include a review of the trainee's progress against these skills. This shall be documented in the participant file.

<sup>4</sup> Documentation must also be collected by the Service Provider showing pay stubs or other employment records verifying the participant actually received the rate of pay outlined in the contract for each reimbursement made to the employer.

affect employment or promotional opportunities for employer's current or laid-off employees.

13. The employer or immediate supervisor is not providing OJT training to a member of his/her immediate family (defined as: wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, grandparent or grandchild).

## **MONITORING**

NoRTEC Service Providers shall monitor each OJT contract at the worksite at least once each calendar month during the OJT period.<sup>5</sup> All monitoring results must be documented and retained by the Service Provider.

NoRTEC will monitor Service Providers for compliance with this OJT policy as part of the regularly scheduled program and fiscal monitoring, as appropriate.

## **PROHIBITIONS**

- A. OJT contracts shall not be entered into with employers who have received payments under previous contracts and have exhibited a pattern of failing to provide OJT participants with continued long-term employment as regular employees with wages and employment benefits (including health benefits) and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work.<sup>6</sup>
- B. OJT contracts shall not be entered into with employers of a business or part of a business that has relocated from any location in the United States, until such company has operated at the new location for 120 days, if the relocation resulted in any employee losing her/his job at the original location.
- C. No funds provided to employers for OJT may be used to employ the participant/trainee in a position involving political activities.

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<sup>5</sup> Contracts that begin after the 15<sup>th</sup> of a given month are exempt from a Service Provider monitoring visit for that month. Contracts that end prior to the 16<sup>th</sup> day of a given month are exempt from a Service Provider monitoring visit for that month. Any contract, however, whose duration is less than 32 calendar days must be monitored at least once during the time period of the contract.

<sup>6</sup> The determination of whether an employer has “previously exhibited a pattern of failing to provide OJT participants with continued long-term employment as regular employees with wages and employment benefits (including health benefits) and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work,” will be determined by the Service Provider that writes the OJT contract with the employer. Service Provider staff may use NoRTEC’s “[OJT Employer Form](#)” or develop their own method of documentation.

If an employer has never been party to an OJT contract with a Service Provider, the entity will be considered a “new employer” and no additional research is required. An employer will also be considered a “new employer” if there have been no OJT contracts written between the Service Provider and the employer in the four quarters subsequent to the exit quarter of a previous OJT participant/trainee.

- D. No funds provided to employers for OJT may be used to directly or indirectly assist, promote or deter union organizing.<sup>7</sup>
- E. No funds provided to employers for OJT may 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).
- F. OJTs are limited to a maximum of 1,040 hours. If a Service Provider wishes to write an OJT for more than 1,040 hours, prior written authorization must be obtained from NoRTEC.
- G. In most cases, OJT is not considered to an appropriate training activity for individuals under the age of 18. If a Service Provider wishes to utilize this vehicle on behalf of a participant under the age of 18, prior written authorization must be obtained from NoRTEC.

### **POLICY EXCEPTIONS**

Service Providers (NoRTEC Subcontractors) may make exceptions to this policy only with prior written authorization from the NoRTEC Administrative Entity.

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<sup>7</sup> Per an e-mail, sent on July 13, 2016, from Rolando Cordova (Policy Unit at EDD), union initiation fees and dues are “meant to pay for the operational costs of the local union representing the member. This means that things such as bills, salaries, organization costs, etc., are all paid by the dues and fees the local union collects...such a fee would be used to assist union organizing.” Based upon this guidance from the State, NoRTEC and its service providers may not pay union initiation fees or dues on behalf of a participant.

## ATTACHMENT A

### **REIMBURSEMENT RATES FOR EMPLOYERS ABOVE 50%**

Section 134(c)(H) of WIOA and Section 680.730 of the regulations allow NoRTEC to raise the OJT training reimbursement rate to a maximum of 75%, provided the following factors are taken into account:

1. The characteristics of the participants taking into consideration whether they are “individuals with barriers to employment,” as defined in WIOA Section 3(24);
2. The size of the employer, with an emphasis on small businesses;<sup>8</sup>
3. The quality of the employer-provided training and advancement opportunities (i.e., the occupation is an in-demand occupation that will lead to an industry-recognized credential; and
4. Relation of the training to the competitiveness of the participant (i.e., the skills and abilities the participant possesses prior to the beginning of the training).

Employer size alone may not be the only factor in determining reimbursement rates above 50%, and the Service Provider must clearly document the factors used when deciding to increase the reimbursement levels above 50%. This may be documented in the case notes, via a NoRTEC approved “form,” and/or in the Individual Employment Plan (Adults/Dislocated Workers) or the Individual Service Strategy (Youth).

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<sup>8</sup> Maximum rates for employer size are: (1) Up to 75% for employers with 50 or fewer employees; (2) Up to 60% for employers with 51-250 employees; and (3) Up to 50% for employers with more than 250 employees.