

TITLE 11 LABOR AND WORKERS' COMPENSATION
CHAPTER 2 JOB TRAINING
PART 19 WORKFORCE INVESTMENT ACT (WIA) ON-THE-JOB TRAINING

11.2.19.1 ISSUING AGENCY: The New Mexico Office of Workforce Training and Development (OWTD).
[11.2.19.1 NMAC - N, 12/31/2005]

11.2.19.2 SCOPE: The Workforce Investment Act (WIA) state administrative entity (SAE), state workforce development board (SWDB), local workforce development boards (LWDBs) and all SAE WIA subrecipients.
[11.2.19.2 NMAC - N, 12/31/2005]

11.2.19.3 STATUTORY AUTHORITY: Workforce Development Act, Chapter 50, Article 14, NMSA 1978.
[11.2.19.3 NMAC - N, 12/31/2005]

11.2.19.4 DURATION: Permanent.
[11.2.19.4 NMAC - N, 12/31/2005]

11.2.19.5 EFFECTIVE DATE: December 31, 2005, unless a later date is cited at the end of the section.
[11.2.19.5 NMAC - N, 12/31/2005]

11.2.19.6 OBJECTIVE: The objective of this rule is to establish requirements for local workforce development boards (LWDBs) in the delivery of on-the-job training services under the Workforce Investment Act (WIA).
[11.2.19.6 NMAC - N, 12/31/2005]

11.2.19.7 DEFINITIONS: [RESERVED]

11.2.19.8 BACKGROUND: On-the-job-training (OJT) provides WIA participants the opportunity to receive training while employed and to be paid wages and benefits (i.e., holiday and sick leave) comparable to other employees in similar positions. OJT also provides employers the opportunity to be reimbursed a percentage of the wages paid to WIA participants who are engaged in productive work.
[11.2.19.8 NMAC - N, 12/31/2005]

11.2.19.9 ACTION: References include the following: Public Law 105-220, Section 101 (31)(A)(B)(C) and Section 122 (h)(1), 20 CFR Part 652, *et al.*, Section 663.430 (a)(1) (permissible training activity), Section 663.595 (performance criteria), Section 663.700 (requirements), Section 663.705 (a)(b)(c) (employed worker), Section 663.710 (a)(b)(c) (OJT payments), Section 663.730 (union organizing), Section 664.460 (d) (older youth), Section 665.200 (b)(2) (eligible provider information), Section 667.268 (a)(2) (business relocation), Section 667.270 (displacement), Section 667.272 (wage and labor standards), Section 667.274 (health & safety), Section 667.275 (nondiscrimination, equal opportunity and nonsectarian activities), and Section 667.640 (b)(iii) (denial of training provider).

A. OJT services shall be provided by an employer in the public, private non-profit or private for-profit sector with payment for WIA participant(s) engaged in productive work that: (a) provides knowledge or skills essential to full and adequate performance of the job; (b) provides reimbursement to the employer of up to 50% of the participant's wage rate (excluding benefits) for the extraordinary costs of providing training; (c) is limited in duration as appropriate to the occupation and considering the individual's prior work experience and employability development plan; and (d) prepares the participant for long-term, unsubsidized employment.

B. WIA mandates that training services for OJT and customized training be provided through the use of a contract.

(1) Each OJT contract shall be designed for a particular participant and employer. Procurement of OJT contracts is conducted through non-competitive negotiations. Documentation detailing how the price was derived must be developed and maintained.

(2) Contracts shall not be written for seasonal, intermittent or other types of temporary employment and must not involve payment in the form of a commission, tip, or similar kinds of payments. Generally, contracts should be written for full-time employment; the standard for what constitutes "full-time" employment may vary depending on the occupation, industry or needs of the participant.

(3) OJT contracts must be geared to occupations in demand in the local area or area where the participant is willing to relocate. An "occupation in demand" will be defined by the LWDB and the method for identifying those occupations shall be documented. No documentation is required if the occupation is listed as an "in demand" occupation by the economic research and analysis bureau of the New Mexico department of labor, or its successor agency.

(4) The local workforce development board shall make efforts to assure that the occupations and positions are those which afford adults and dislocated workers the opportunity to become self-sufficient as defined in the local five-year plan.

(5) The employment of an OJT participant with the participant's previous employer in the same or similar job is prohibited.

(6) Compensation shall not be made for no more than the total number of work hours worked for any given month. In establishing the rate of reimbursement to employers, reimbursement may be authorized for wages paid for benefits (i.e., holidays and sick leave) provided to Title I participants.

(7) OJT contracts may, per local board policy, be developed with employer leasing agencies that provide regular, permanent employment (i.e.: not probationary, temporary or intermittent employment) in a demand occupation and, place employees at worksites with other employers. WIA funds may not be used for payment or reimbursement of any fees charged by an employer leasing agency.

C. The LWDB shall ensure that OJT contracts are not written with employers who have had two or more previous OJT or customized training contracts and exhibited a pattern of failing to provide participants with continued, long-term (9 months or longer) employment as regular employees with wages and working conditions the same as similarity situated employees. The LWDB shall determine what constitutes a pattern of failure and shall develop a written policy on employer sanctions to include time limits and appeal procedures. In determining sanctions, the LWDB shall consider whether the OJT participant quit voluntarily, was fired for cause or if business conditions changed the employment opportunities with the employer.

D. OJT contracts may also be written for eligible *employed workers*. An eligible *employed worker* is an individual who is job attached but in need of skills upgrade and not earning a self-sufficient wage as determined by the LWDB. Contracts must relate to the introduction of new technologies, introduction to new production or service procedure, upgrading to new jobs that require additional skills, workplace literacy, or other purposes as identified by the LWDB.

E. The LWDB shall ensure that both types of OJT contracts include, at a minimum, the following contract elements:

(1) job description (use O Net [<http://online.onetcenter.org>]) training outline or curriculum, including provision for any required classroom/adult basic education/or vocational training as established by the needs assessment;

(2) participant hourly wage rate and allowable training hours (work zones as noted on O Net);

(3) provision for wage increases based upon successful achievement of training goals as provided to other similar employees, if applicable;

(4) provision for assurances not to reduce wage rates after completion of training contract;

(5) agreement on the maximum amount of reimbursement and/or allowable costs of training;

(6) provisions for participant time off, if necessary; to attend WIA sponsored meetings, workshops, classes or other events;

(7) duration of contract;

(8) a provision for recoupment of overpayments;

(9) a provision for termination due to lack of funds or lack of participant attendance or unsatisfactory progress;

(10) a provision for termination due to failure of the employer to comply with initial or upgraded employment requirement (OJT for *employed workers only*);

(11) a provision for allowing for LWDBs or their designee, state and federal staff monitoring and review of training records;

(12) a provision for meeting record retention requirements;

(13) identification and reporting of new employees versus employed workers (OJT for *employed workers only*);

- (14) employer requirement to maintain attendance and payroll records to support requests for reimbursement;
- (15) provision for the submittal of participant reimbursement/progress evaluations on a timely basis;
- (16) state taxpayer identification numbers for payment of state gross receipts tax and unemployment compensation tax;
- (17) worker's compensation coverage, if applicable;
- (18) a provision for equal employment opportunity;
- (19) a provision for drug-free workplace;
- (20) a provision for debarment and suspension, where applicable;
- (21) a requirement that the providers report program outcomes;
- (22) a requirement for job retention beyond the training period; and
- (23) other provisions as required by local policies and procedures.

F. In determining an employer's viability for an OJT contract, the LWDB shall consider the employer's past history with OJT and customized training contracts. LWDBs shall ensure compliance with 20 CFR at Sections: 663.730, 663.270, 667.268, 667.272, 667.274 and 667.275. The LWDB may also consider the employer's finances, lay-offs, relocation, labor disputes, as well as the occupational and industry outlook.

G. OJT for youth is to provide older youth with opportunities for career exploration and skill development. It should enable a youth to acquire the personal attributes, knowledge and skills needed to obtain a job and advance in employment.

(1) Generally, OJT is not considered an appropriate activity for youth under 18 years of age. The objective assessment and individual service strategy must support OJT for youth.

(2) Where OJT contracts must be developed for youth, contracts must include child labor law compliance.

(3) OJT for youth may include one or more of the following:

- (a) instruction in employability skills or generic workplace skills such as those identified by the secretary's commission on achieving necessary skills (SCANS);
- (b) internships and job shadowing;
- (c) progressively more complex tasks; and
- (d) other elements as identified by the LWDB in the local five-year plan.

(4) Like adult OJT contracts, the LWDB shall not contract with an employer who has previously exhibited a pattern of failing to provide OJT participants with continued, long-term (6 or more months) employment with wages, benefits and working conditions equal to those of regular employees doing the same work and who have worked a similar length of time.

H. LWDBs shall make provisions for the maintenance and retention of all on-the-job training records, including systems of issuance, funding obligations/expenditures, oversight and completion in accordance with WIA record retention requirements. Such records shall be retained for a period of three (3) program years from the date the individual participant exits unless an unresolved audit is pending. In that case, records must be retained until final resolution of the audit.

I. LWDBs shall establish and collect relevant performance criteria/program outcomes for each of their contract providers.

J. LWDBs shall ensure that, at a minimum, one core and one intensive service are provided to each WIA participant prior to their participation in any training activity and is documented in the participant folder.

K. LWDBs or their designee shall ensure that selected training providers are afforded appropriate training and technical assistance necessary to deliver the required WIA services.

L. LWDBs or their designee shall review each OJT contract on-site to determine that payroll and time and attendance records substantiate amounts claimed for reimbursement and that training, wages, hours, benefits and working conditions are provided in accordance with the contract.

[11.2.19.9 NMAC - N, 12/31/2005]

11.2.19.10 CONTACT AGENCY: Inquiries regarding this rule should be directed to the state administrative entity (SAE) in Santa Fe at (505) 827-6827.

[11.2.19.10 NMAC - N, 12/31/2005]

11.2.19.11 DISTRIBUTION: SWDB and LWDB chairpersons, LWDB administrative entities, all SAE WIA subrecipients, SAE legal counsel, SAE EEO officer, USDOL federal representative, and New Mexico commission of public records.

[11.2.19.11 NMAC - N, 12/31/2005]

HISTORY OF 11.2.19 NMAC: [RESERVED]