



**BUFFALO AND ERIE COUNTY
WORKFORCE INVESTMENT BOARD, INC.**

LOCAL POLICY BULLETIN
BECWIB BULLETIN # 3-20 DATE: 1/28/2020

TO: Lavon Stephens, Administrative Director, WDC, Inc.
FROM: Geoffrey M. Szymanski, Executive Director, WIB, Inc.
SUBJECT: **PAID WORK EXPERIENCE FOR WIOA ELIGIBLE ADULTS AND DISLOCATED WORKERS ENROLLED IN TRAINING - REVISED**
REFERENCES: Title 1 of the Workforce Innovation and Opportunity Act, Sections 3(7), and 134 (c)(2)(A)(xii)(VII); and its Regulations at 20 CFR Subpart A, Sections 680.150, 680.180, 680.190, and 680.195; TEGL No. 19-16 (March 1, 2017); 29 CFR 95.53 and Super-Circular 2 CFR 200.333.

EFFECTIVE DATE: MARCH 1, 2020

Effective March 1, 2020, and in accordance with the Workforce Innovation and Opportunity Act (WIOA), our Local Workforce Development Area (LWDA) revises its policy concerning paid work experience for WIOA eligible Adults and Dislocated Workers enrolled in Training.

Local Policy Bulletin #3-20 revises and replaces Local Policy Bulletin #6-19 dated January 14, 2019.

POLICY STATEMENT

The Workforce Innovation and Opportunity Act (WIOA) offers internships and work experiences as an available individualized career service for Adults and Dislocated Workers. This local policy bulletin authorizes paid work experience for WIOA eligible Adults and Dislocated Workers enrolled in training provided through Individual Training Accounts (ITAs).

This policy is based on funding availability and must be implemented in conjunction with BECWIB's ITA, Priority of Service, and Supportive Services Policies. **Only Transitional Jobs, a type of work experience for Adults and Dislocated Workers, may use WIOA funds to subsidize wages.**

Please share this information with appropriate staff.

GS:FN/bhs

c: Terry Chatfield, Demone Smith, Denise Raymond, Lavon Stephens, Mary Zerpa and WIB staff.

**PAID WORK EXPERIENCE
FOR
WIOA ELIGIBLE ADULTS AND DISLOCATED WORKERS**

BACKGROUND

Work experience is a career pathway activity that connects theoretical classroom learning to real world application. It provides a planned and structured learning experience that contributes to the achievement of the participant’s employment goals through a measurable training component.

WIOA Regulations [20 CFR 680.180] define work experience as “a planned, structured learning experience that takes place in a workplace for a limited period of time”. Work experience may be paid or unpaid, as appropriate. WIOA does not distinguish between “work experience” and “internships.” The definition of both is the same. WIOA also provides a separate category for Transitional Jobs. Transitional Jobs are a type of work experience offered to Adults and Dislocated workers. Transitional jobs are subject to specific structural and funding restrictions [20 CFR 680.190 and 680.195].

All categories of work experience may be in the private for profit sector, the nonprofit sector, or the public sector. Labor standards apply in any work experience where an employee/employer relationship, as defined by the Fair Labor Standards Act, exists. Only Transitional Jobs, a type of work experience for Adults and Dislocated Workers, may use WIOA funds to subsidize wages.

TRANSITIONAL JOBS

Transitional jobs are a separate category of work experience. Transitional 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.

Transitional jobs, which are wage paid and subsidized by WIOA, are specifically reserved for those Adults and Dislocated Workers most in need of intervention. As such, Transitional Jobs are subject to the following requirements:

Eligibility: Transitional jobs may be provided to Adults and Dislocated Workers who are chronically unemployed or have an inconsistent work history.

For an Adult or Dislocated Worker to be “chronically unemployed” or “have an inconsistent work history”, they must fall into one of the following subcategories:

Chronically Unemployed

- a. Unemployed for six (6) of the past (24) months, or
- b. Fifteen (15) of the last 60 months.

Inconsistent Work History

- a. In the same occupation or industry for 39 or fewer months during the past five (5) years;
or
- b. With three (3) or more different employers during the past five (5) years; or

- c. With a staffing agency as a temporary employee for at least three (3) months during the past two (2) years; or
- d. With a staffing agency as a temporary employee for at least 15 months during the past (5) years; or
- e. Has been employed for fewer than 60 months during their lifetime.

Mandatory Services: Participant placed in Transitional Jobs must receive the appropriate Comprehensive Career Services provided in 20 CFR §680.150 and the appropriate Supportive Services under our local policy bulletin.

Funding Cap: the total amount of funds available for Transitional Jobs in any program year is subject to a 10% cap of the total WIOA allocation provided to our local workforce development area for adult and dislocated workers under all funding sources. WIOA funds for the wage subsidy of a Transitional Job is capped at \$8,000 per participant, and may only be exceeded at the discretion and prior written approved by the LWDB Executive Director, as noted in the “*Duration*” section below.

PAID WORK EXPERIENCE REQUIRMENTS

All paid work experience must be part of an ITA tied to the participant’s occupational skills training curriculum. It must be related to a Career Pathway in a Demand Occupation, and help the participant gain the competencies and experience necessary to meet local employer demands.

Our local definition of [Career Pathway](#), adapted from the elements of Section 3(7) of WIOA is as follows:

A Career Pathway is an agreed upon model highlighting an occupational track or path that typically includes increasing skills and responsibilities within an occupational line or an occupational cluster of similar jobs. This model is shared and recognized among employers and employees, education and training providers, and the public workforce system as the common information to align education and work in similar sectors.

The six key elements of a Career Pathways initiative are noted in the Career Pathways toolkit from the US Department of Labor, and utilized by BECWIB in its Career Pathways and Sector Partnership development.

(See: https://www.doleta.gov/usworkforce/pdf/career_pathways_toolkit.pdf; and <https://workforcebuffalo.org/business-services/workforce/career-pathways>)

Adults or DWs who are enrolled in ITAs funded through WIOA or other funding sources are eligible for paid work experience. However, WIOA funds may only be used to subsidize wages for eligible participants placed in Transitional Jobs.

Development and Authorization

Paid work experience will be developed by the ITA’s Eligible Training Provider and BECWIB’s fiscal agent, the WDC, or its designee. The WDC’s Administrative Director must provide written authorization for the paid work experience prior to its commencement.

Duration:

A paid work experience is provided in the workplace for a limited period of time. The length of a paid work experience will be determined by the participant's ITA training curriculum, the work and supervision offered by the worksite employer, and funding available. The number of weeks in a paid work experience will be no less than 4 weeks and no more than 10 weeks. A written modification of this requirement maybe authorized prior to the start of training and at the sole discretion of BECWIB's Executive Director on a case by case basis. An instance where an exception may be allowed is where the ITA training requires an extended work experience as part of the written Career Pathway curriculum.

Funding

All funding for Transitional Jobs are subject to funds allocated and received by BECWIB pursuant to its grant(s) and dedicated funding sources under WIOA.

Compensation

Participants enrolled in paid work experience will be compensated at a rate comparable to similarly situated entry level employees of the worksite organization; provided however, compensation to participants for purposes of paid work experience will be not less than the NYS minimum wage rate currently in effect, nor greater than \$2.00/hour above that minimum wage rate.

Documentation of the worksite organization's rate of pay to entry level employee similarly situation must be obtained by staff and kept in the Participant's file. An example of such documentation may be a letter from the worksite organization's Human Resources Department indicating that rate of pay.

Participants shall be paid only for the hours worked during the paid work experience as documented on the participant's paid work experience time sheet. Participants are not authorized to work overtime.

Participants will not be paid for:

- Sick leave
- Vacation breaks
- Lunch breaks, or
- Holidays recognized as "paid holidays"

EMPLOYER OF RECORD

If BECWIB deems it appropriate, a staffing organization procured in accordance with BECWIB's Procurement Policy may be the employer of record for paid work experiences. In that event, the staffing organization shall enter into a duly executed contract with BECWIB, the WDC and the organization hosting the paid work experience (the "worksite organization").

The employer of record, which may be the WDC, the procured staffing agency, or the worksite organization, will be responsible for paying all state and federal withholding taxes, and providing the benefits that are available to other similarly staffed employees.

The employer of record must utilize the trainee's weekly time sheets, signed by the both trainee and the trainee's supervisor at the worksite organization, attesting to the accuracy of time record. This record must be utilized as the source document entry by which payroll is generated. If an agency other than the WDC is the employer of record, the method of payment will be in the form of reimbursement. The employer of record must submit to the WDC the dually endorsed time record (by the trainee and the trainee's supervisor) as well as the employer of record's payroll register confirming payment was made to the trainee, prior to receiving reimbursement for the trainee's paid work experience.

PARTICIPANT ELIGIBILITY

Participants who meet WIOA eligibility requirements as an Adult or Dislocated Worker (DW) are eligible for paid work experience; provided, however, that the paid work experience is a component of the participant's ITA training curriculum and such funding is available.

In addition, the participant must have received an assessment resulting in the development of an Individual Employment Plan that documents the participant's need for and benefit from occupational skills training.

ELIGIBILITY OF A WORK-SITE ORGANIZATION

The worksite organization must designate an appropriate manager or supervisor to provide supervision and feedback to the participant at regular intervals during the course of the program.

Health and safety standards otherwise applicable to working conditions of the worksite organization are equally applicable to working conditions of trainees in programs and activities under Title I of WIOA. This includes, where applicable, workers' compensation insurance.

Although the work experience is intended to provide employers with a pool of technically trained employees from which to fill future positions and reduce recruitment costs, the worksite organization is under no obligation to offer regular employment to the participant subsequent to the conclusion of the work experience.

Worksite organizations participating in the paid work experience must:

- Be located in New York State and hold valid business/occupational licenses
- Be registered with the Internal Revenue Service (IRS), have an account with the New York State Department of Labor, and carry Worker's Compensation Insurance, as appropriate (20 CFR 683.280);
- Be licensed to operate in New York State as verified by the New York State Department of State, Division of Corporations, and have an active business that has operated at its current location for at least 120 days;

- Provide its Federal Employer Identification Number (FEIN) to the WDC and the Employer of Record;
- Have safe and healthy working conditions with no previously reported health and safety violations that have been reported but not corrected;
- Not terminate the employment of any of their current employees or otherwise reduce its workforce either fully or partially (such as reduction in hours or benefits) with the intention of filling the vacancy with a work experience participant or as the result of having a paid work experience participant (20 CFR 683.270);
- Not infringe the promotional opportunities of their current employees due to the engagement of a participant in paid work experience;
- Not illegally discriminate in training or hiring practices because of race, color, sex, sexual orientation, national origin, religion, physical or mental disability, political beliefs or affiliations, or age (WIOA Sec 188(a)(2));
- Not allow the participant to be involved in the construction, operation or maintenance of any part of any facility that is used or to be used for religious instruction or as a place for religious worship (20 CFR 188(a)(3)); and
- Have sufficient quantity of meaning work experience for the participant and able to provide the appropriate staff supervision and mentoring.

WORK EXPERIENCE AGREEMENT

The work experience will be guided by an agreement between BECWIB, the WDC, the worksite organization, and the employer of record. The agreement will specify the relationship and responsibilities of the parties, include a Participant Letter of Assignment articulating the participant's work experience, and include standard BECWIB contractual terms, as well as other provisions required by federal or state policies, regulations or laws. The agreement must be signed by all parties prior to the start of the paid work experience.

Any modifications to the agreement must be in writing and signed by all parties prior to the effective date of the modification. Verbal modifications are not valid.

The loss or disruption of funding will be cause for termination of the agreement.

MONITORING

The worksite organization must agree to regular and on-going monitoring and oversight of the paid work experience. Monitoring by the WDC may include on-site visits and phone/email communication with the worksite and participant to review the participant's progress in meeting training plan objectives. Any deviation from the paid work experience agreement should be dealt with promptly.

RECORD RETENTION

The WDC's oversight of the participant's training and payroll records may be reviewed by Federal, State and local fiscal and program monitors. These entities will have the right to access, examine and inspect any site where any phase of the paid work experience program is being conducted. As a result, the Employer of Record will be required to maintain its WIOA work experience records and accounts in such a way as to facilitate such audit. Records must be maintained for a three (3) year Record Retention Period. The Record Retention Period begins on the date that final expenditure reports are submitted by NYSDOL to USDOL. Should any audit or litigation issues arise, the records must be retained for the full three (3) year Record Retention Period or until all issues are resolved, whichever is longer [29 CFR 95.53 and Super-Circular 2 CFR 200.333].