



IMPERIAL COUNTY WORKFORCE DEVELOPMENT BOARD

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| POLICY | ORIGINAL DATE | LAST REVISION |
|--|-----------------------|--------------------|
| ICWDB Incumbent Worker Training Policy | FISCAL YEAR 2019-2020 | September 28, 2022 |

POLICY OVERVIEW:

The purpose of this policy is to provide guidance and criteria to be used by the Imperial County Workforce Development Board (ICWDB), Imperial County Workforce and Economic Development Office (ICWED), America's Job Center of California (AJCC) staff, and Workforce Innovation and Opportunity Act (WIOA) funded service providers in the administration of Incumbent Worker Training (IWT) for current Workforce Innovation Opportunity Act (WIOA) eligible adult and dislocated workers residing in Imperial County.

REFERENCES:

- Workforce Innovation and Opportunity Act (WIOA) (Public Law) Sections, 122(h)(i), 134(d)(4), 134(G)(ii), 134(c)(3)(H), and 194(4)
- Title 20 Code of Federal Regulations (CFR) Sections 680.780 – 680.820
- Training and Employment Guidance Letter (TEGL) 10-16, Change 1, Subject: Performance Accountability Guidance for Workforce Innovation and Opportunity Act (WIOA) Title I, Title II, Title III and Title IV Core Programs (August 23, 2017)
- 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 Services (ES) as amended by title III of WIOA, and for Implementation of the WIOA Final Rules (March 1, 2017)
- California Unemployment Insurance Code (CUIC) Section 14000-14530
- Workforce Services Directive WSD18-10 (PDF), WIOA Training Expenditure Requirement, (January 31, 2019)
- WSD18-03 (PDF), Subject: Pathway to Services, Referral, and Enrollment (August 29, 2018)
- WSD17-08 (PDF), Subject: Procurement of Equipment and Related Services (March 14, 2018)
- WSD16-18 (PDF), Subject: Selective Service Registration (April 10, 2017)
- WSD16-16 (PDF), Subject: Allowable Costs and Prior Written Approval (February 21, 2017)
- WSD16-15 (PDF), Subject: Dislocated Worker Additional Assistance Projects (December 28, 2016)
- WSD16-13 (PDF), Subject: Monthly and Quarterly Financial Reporting Requirements (November 28, 2016)
- WSD16-04 (PDF), Subject: Rapid Response and Layoff Aversion Activities (July 22, 2016)
- WSD15-23 (PDF), Subject: Transfer of Funds – WIOA Adult/Dislocated Worker Programs (March 29, 2016)
- Workforce Services Information Notice WSIN12-31 (PDF), Subject: Assisting Employers in the New CalJOBS (February 15, 2013)
- WSD 19-01 Incumbent Worker Training

BACKGROUND:

Under WIOA, Incumbent Worker Training (IWT) provides both workers and employers with the

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opportunity to build and maintain a quality workforce, and increase both participants' and employers' competitiveness. IWT is a type of work-based training and upskilling designed to ensure California workers can acquire and develop the skills necessary to avert layoff or increase the skill levels of employees so they can be promoted within the company and create backfill opportunities for employers.

DEFINITIONS:

For the purpose of this policy, the following definitions apply:

Business and Employer – A private sector, local government, for profit or not-for profit place of business. Business and Employer are used interchangeably in this directive.

California Employer Account Number – An eight-digit payroll tax number issued to a registered employer by the Employment Development Department, also known as the Employer Payroll Tax Account Number, State Employer Identification Number, or state ID.

Eligible Employer – For an employer to be eligible for IWT services, the Local Board must consider the following:

- Whether the employer can provide a valid California Employer Account Number.
- The characteristics of the individuals in the program (see the IWT definition below).
- The relationship of the training to the competitiveness of an individual and the employer.
- Other factors the Local Board determines appropriate, such as the number of employees trained, wages and benefits including post training increases, and the existence of other training opportunities provided by the employer.

Employer Share – Employers are required to pay for a significant cost of the training for those individuals in IWT. The minimum amount of employer share in IWT depends on the size of the employer.

Follow-up – Shall be performed six months after reported completion of IWT to determine outcomes (retained employment, advancement, and increased wages).

Incumbent Worker – To qualify as an Incumbent Worker, the employee must meet the following:

- Be a current employee of an eligible employer and have an established employment history with the employer for six months or more. An individual is not held to the six month employment requirement if the IWT is being provided to a cohort of employees. In this instance, not every employee must meet the employment history requirement as long as a majority of the employees being trained do meet the requirement.
- Meet the Fair Labor Standards Act requirements for an employer-employee relationship.
- Meet the WIOA Selective Service requirements.

IWT Allowable Costs – The Local Boards' share of the cost of training (teacher, books, materials) for the delivery of IWT. This amount excludes the cost of individual wages paid by the employer while the employee is attending/participating in the training.

Qualified Trainer – Qualified training can be provided in-house, by a training agency, or by a third party. Training providers should be California-based, unless the training is so unique that a training provider cannot be found in California. The choice and method of training are determined by the employer.

Training Method – The following are types of training methods allowable for IWT:

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- Classroom training is instruction in a classroom setting that is provided to a group of trainees and conducted by a qualified instructor.
- Laboratory training is hands-on instruction or skill acquisition under the constant and direct guidance of a qualified trainer. Laboratory training may require the use of specialized equipment or facilities. Laboratory training may be conducted in a simulated work setting, or at a productive work setting, also known as Productive Laboratory.
- Computer-based training is delivered through a computer program at a pace set by the trainee. There is no requirement for delivery by a live trainer and training does not have to be interactive.
- Video Conference training is live, interactive instruction provided by a trainer through a video communications session.
- E-Learning instruction is delivered through a web-based system, conducted in a virtual environment utilizing a web meeting/webinar.

POLICY:

IWT is a business services designed to develop a highly skilled workforce which will result in increased business financial viability, stability, competitiveness, and productivity. To avert risk of closing and mass layoffs, IWT may be developed with a business or a business association to maintain their competitive status, incorporate new technology, or prevent downsizing.

Worker participating in IWT will benefit by enhancing existing skill, learning new skills and earning employer or industry recognized credentials, in addition to retaining employment, maintaining their careers, and/or increasing their earning potential. IWT will also allow the opportunity for backfilling vacated positions resulting from the promotion of newly trained workers.

The following characteristics define IWT:

- Designed to meet the special requirements of an employer (including a group of employers) to retain a skilled workforce, avert the need to lay-off employees by assisting the workers in obtaining the skills necessary to retain employment, and/or provide training that will result in progression on a career pathway and income mobility.
- Conducted with a commitment by the employer to retain employees, avert the layoff(s) of the incumbent worker(s) trained for a period of six months following completion of the training, or promote incumbent workers to higher paying positions.
- Increases the competitiveness of the employer or employee.
- Gives employees the opportunity to progress on their career pathway by providing opportunities to obtain certificates or credentials based on the employers need.

Types of IWT:

IWT is restricted to skill attainment activities. The training should benefit workers by making them more qualified in their line of business and/or by providing them with skills for new products or processes. It is desired that the training results in credentials or industry recognizable skills that promote the worker's career and increases the overall employability.

Allowable types of training for incumbent workers:

1. Skills upgrading and retraining: Short-term training that enhances occupation- specific skills or basic skills that lead to a credential/certificate.
2. Customized training: Customized training is conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of training. *(See ICWDB Customized Training Policy for more information.)*

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3. Occupational skill training (individual training accounts): Training that leads to an industry recognized credential or a certificate. (See *ICWDB Individual Training Accounts Policy for more information.*)

Employer Eligibility for IWT

ICWDB will determine an employer's eligibility for participating in IWT in order to evaluate whether training would increase the competitiveness of the employees and/or employers. Employers must show a commitment to retain or avert the layoffs of the incumbent worker(s) trained. Eligibility for participation in IWT is based on the following factors:

- The characteristics of the individuals in the program (e.g. individuals with barriers to employment).
- The relationship of the training to the competitiveness of the individual and employer.
- ICWDB shall consider other appropriate factors, which may include, but are not limited to, the following:
 - The number of employees participating in the training.
 - The employees' advancement opportunities, along with wages and benefits (both pre- and post-training earnings).
 - The existence of other training and advancement opportunities provided by the employer.
 - Credentials and skills gained as a result of the training.
 - Layoffs averted as a result of the training.
 - Utilization as part of a larger sector and/or career pathway strategy.
 - Employer size.

IWT contracts shall not be made with employers who have previously exhibited a pattern of failing to provide IWT participants with continued long-term employment wages, benefits and working conditions that are equal to those provided to regular employees who have working a similar length of time and are doing the same type of work.

A business will **not** qualify for IWT if they participated in any past or current violations of local, state or federal law; unfair labor practices; and/or other unallowable conditions identified during the course of conducting the initial employer assessments and reviewing contract requirements, assurances, and certifications with the local WDB director or staff. Businesses that fail to meet any of the following qualifying criteria are **not** eligible to receive funds for incumbent worker training:

1. Businesses must not be presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from participation in transactions by USDOL or the state of California. Below are two websites that may be helpful in checking tax, environmental compliance, and debarment status.
 - a. Federal Department Site: <http://www.sam.gov>
 - b. California Department of Tax and Fee Administration www.cdtfa.ca.gov
2. Businesses must not have any outstanding tax liability for over six months to the state of California. Local providers will require the businesses to disclose any known outstanding tax liabilities with other states prior to entering into contract. The local provider may consider existing out-of-state violations when determining eligibility to receive training funds. The local provider must document any resolution of outstanding tax liability, which may include letters from the business or from the State from which the tax liability occurred.
3. Businesses must ensure that they do not have more than one unfair labor practice contempt of court finding, and that they are not identified as such on the most recent list established by the Secretary of State.

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4. California businesses must have all of the approvals, licenses, or other qualifications needed to conduct business in the state and all must be current. Should this status change during the course of the local training program activities and the business be disqualified from conducting business in California, all training under the training program must cease.
5. Businesses that have employees in a lay-off status should not be considered for IWT unless the training would avert additional layoffs.
6. Businesses that have relocated to California and have laid-off workers at their former location in the United States may not be considered for this program until they have been in operation at the new location for 120 days.
7. Businesses must not have any outstanding civil, criminal or administrative fines or penalties owed to or pending in the state of California.

Employer Requirements

With assistance from Imperial County Workforce and Economic Development, the participating employer(s) must guarantee that:

- All participants shall be provided benefits and working conditions at the same level and to the same extent as other employees working at a similar length of time and doing the same type of work.
- The training being provided is in accordance with federal, state and local laws.
- The employer agrees to all performance and reporting requirements outlined in this policy.
- The employer commits to retain the trained employees following the completion of the training.
- The employers provides all wage and retention information of the participants.

Employee Eligibility

To qualify as an Incumbent Worker (IW), the employee must:

- Be employed.
- At least 18 years of age.
- A citizen of the United State or a non-citizen who's status permits employment in the United States.
- Be a current employee by an eligible business and have an established employment history with the employer for six months or more.
 - An employee is not held to the six-month employment requirement if the IWT is being provided to a cohort of employees. In this instance, not every employee must meet the employment history requirement as long as the majority of them meet it.
- Meet the Fair Labor Standards Act requirements for an employer-employee relationship.

An eligible individual participating in IWT is not required to meet the eligibility requirements for the Adult or Dislocated Worker program, unless they are also co-enrolled as a participant in the WIOA Adult or Dislocated Worker program and will receive WIOA funded services in addition to the IWT.

Per WIOA regulations (20 CFR 683.200(g)), "no individual may be placed in an employment activity if a member of that person's immediate family is directly supervised by or directly supervises that individual." For the purpose of this policy, the term "immediate family" includes a spouse, child, son-in-law, daughter in-law, parent, mother-in-law, father-in-law, sibling, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, and grandchild.

Worker Displacement Prohibition

WIOA prohibits the layoff of employees in order to replace them with WIOA participants and is against using WIOA participants to replace employees who have been terminated, with the intent of so

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replacing them. WIOA further prohibits infringement on the promotional opportunities of currently employed workers.

Funding

IWT is part of a comprehensive business engagement strategy designed to meet the special requirements of an employer (including a group of employers) to upskill current employees. To implement this strategy, ICWDB shall use up to 20 percent of their WIOA Adult and Dislocated Worker formula allocations for IWT activities. This 20 percent can only be used for programmatic activities, and cannot be used for administrative functions.

Generally, IWT should be provided to private sector employers, but there may be instances where non-profit and local government entities may receive IWT funds. For example, IWT funds may be used in the health care industry where nursing upskilling opportunities are available in a hospital operated by a non-profit organization.

Under WIOA, layoff aversion is now a required Rapid Response activity (Title 20 CFR Section 682.330). ICWDB shall leverage Rapid Response funds by including IWT as part of a robust layoff aversion strategy for the Imperial County. ICWDB has the flexibility to determine which strategies and activities are applicable in a given situation, based upon the specific needs, policies, and procedures within the state and local area.

The WIOA defines IWT as a business service, therefore, the delivery of IWT does not require the use of an Individual Training Account or that the training program be listed on the Eligible Training Provider List.

Tracking IWT Expenditures

The EDD Workforce Services Branch's Financial Management Unit (FMU) is tasked with keeping track of IWT expenditures to ensure the 20 percent allowance for IWT has not been exceeded. FMU has updated the expenditure reports the sub-recipients use to include a line item for IWT. Each quarter, FMU compiles a report for the ICWDB that details where they stand in regards to these expenditure levels.

Note – IWT expenditures can be counted toward the training expenditure requirement and the employer contributions for IWT can be counted as leveraged dollars.

Allowable and Unallowable Costs

Allowable costs are only those directly related to training and may include:

1. Salaries for instructors
2. Development of curriculum, textbooks, manuals, training software material and other non-consumables
3. Costs of off-site training facilities
4. Other necessary costs directly related to training

Unallowable costs include but are not limited to:

1. Foreign travel
2. Purchase of lease of capital equipment
3. Incentivizing a business or a part of a business to relocate from another location in the United States
4. Payment of a worker's training wages
5. Reimbursement of training costs that are also being reimbursed by another State or Federal training program.

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Employer Cost Sharing Requirements

Employers are required to pay for a portion of the training for those individuals in IWT. This can be done through cash payments and fairly evaluated in-kind contributions. Example of in-kind contributions could include but are not limited to:

1. Wages paid to trainees during the training period.
2. Equipment purchases to be used during the training program.
3. Manuals and text books.
4. Curriculum development.
5. Facility usage
6. Travel and lodging costs

ICWDB shall consider the number of employees participating in the training, the wage and benefit levels of the employees (at the beginning and anticipated upon completion of the training), the relationship of the training to the competitiveness of the employer and employees, and the availability of other employer-provided training and advancement opportunities. The minimum amount of employer share in IWT depends on the size of the employer and are as follows:

- At least 10 percent of the cost for employers with 50 or fewer employees.
- At least 25 percent of the cost for employers with 51 to 100 employees.
- At least 50 percent of the cost for employers with more than 100 employees.

Application Procedures

ICWDB only accepts IWT applications from organizations who are conducting business in Imperial County. ICWDB will conduct an evaluation of each employer in order to determine if they meet the IWT requirements. The following documents need to be submitted in order to be considered for IWT:

1. A completed and signed Incumbent Worker Training application (only applications will be considered).
2. Letter of Justification
3. Current Business License
4. Complete W9 Form
5. California Employer ID
6. W/C and Liability Insurance
7. Copy of Industry Recognized Credential/Certificate earned by employees
8. Itemized Invoice with all expenses paid by Employer for Training
9. Training Curriculum
10. Multiple Business Collaborative Form (if applicable)
11. Any other necessary documentation

Completed Applications will be reviewed within the 30 days of the received documents. Once an employer has been approved, the following must be submitted:

1. A Incumbent Worker Training Contract.
2. A Incumbent Worker Training Agreement.
3. A Finalized Budget.
4. An Itemized Training Costs per participant.
5. A reimbursement Invoice Form at the completion of the training.
6. A monitoring report (when requested) and at the conclusion of a training.

Appeal Process

If an application is denied, the business will be notified in writing along with the reason(s) for denial and will be provided information with the appeal process. An appeal request must be submitted in writing to

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the ICWDB within 30 days of issuance of the denial. The appeal must include: a) name of the business(s) (b) business point of contact d) point of contact phone and email e) a statement of the desire to appeal f) reasons for the appeal, including documentation supporting the grounds for the appeal g) signature of the appropriate contact person. All appeals must be submitted to the following:

Imperial County Workforce and Economic Development Office
2799 S. 4th Street
El Centro, CA, 92243

Staff will then set up an informal meeting with the business as an attempt to identify a simple solution to resolve the dispute. A final decision will be made within 30 days following the meeting. The business will be notified of the final decision in writing.

Documentation

Documentation for each IWT initiative shall be retained by the AJCC, Business Services and the employer, to ensure all training is completed and certificates of completion are obtained for each trainee within thirty (30) days of completion. Follow-up will be performed and documented six months after the reported completion of the training in order to determine outcomes (retained employment, advancements, and increased wages). This documentation will be subject to monitoring.

IWT Performance and Reporting Requirements

Since eligibility for IWT is determined at the employer level (not the individual level), the Department of Labor (DOL) does not consider individuals in IWT to be a participant in the Adult and/or Dislocated Worker program. Individuals who only receive IWT are not included in the WIOA Adult or Dislocated Worker program performance calculations. However, the DOL requires Local Boards and the State to report certain participant and performance data on all individuals participating in IWT. The required information for these individuals is limited to demographic information, and information necessary to calculate employment in the 2nd and 4th quarters after exit, median earnings in the 2nd quarter after exit, measurable skill gains, and credential attainment. For the purpose of calculating these metrics for IWT-only individuals, the exit date is the last date of training, as indicated in the training contract.

To reduce the reporting burden on employers and the Local Boards, the DOL *encourages* the collection of Social Security Numbers (SSNs) as part of the training contract with the employer. For all individuals where a SSN is collected, the EDD will conduct a base wage match to obtain their employment and earnings. For those individuals that have a pseudo SSN, it is the AJCC staffs' responsibility to provide supplemental data and to capture and enter credential information into CalJOBS for each IWT individual participant.

Note – If the individual in IWT becomes a participant in the Adult or Dislocated Worker program at any point, they are included in performance calculations for the core program that provides additional services.

CalJOBS

The AJCC and Business Services staff must ensure that the employer participating in IWT is registered as a preferred employer (recruiting employer) in CalJOBS, and the CalJOBS Activity Code E68 – IWT is added to the employer's account.

All recipients of IWT must be reported to DOL, regardless of whether they become a participant in one of the other WIOA programs. Individuals who participate in IWT must be registered in CalJOBS and do the following:

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- Title I – Workforce Development application with an Incumbent Worker eligibility date entered. The application and eligibility requirements for the IWT eligibility is truncated and requires minimal information.
- On the Eligibility Summary tab of the Title I application:
 - Set “Incumbent Worker Eligibility” to yes.
 - Add the appropriate IWT grant code, then select [Finish] to save the application.
- CalJOBS Activity Code 308 – IWT should be added to the application and associated to the appropriate funding stream for the duration of the IWT. If utilizing WIOA formula funds, staff must associate grant code 2284 – Incumbent Worker Training Formula to the 308 – IWT activity code.

MONITORING:

ICWED is responsible for ensuring oversight of the WIOA funded programs. Monitoring shall take place by means of on-site visits to AJCC’s, contracted Service Providers and Employers. Site visits shall be performed at a minimum of once a year per each approved training and training site. An annual monitoring visit schedule and monitoring review tool will be used to ensure adherence to WIOA laws, regulations and policies to insure that clients are provided appropriate access to programs or activities.

ACTION:

This policy supersedes ICWDB Customized Training Policy, May 24, 2017. Please bring this policy to the attention of ICWDB, AJCC system staff and appropriate WIOA funded service providers and sub-recipients. This policy is effective immediately. All submitted forms are live documents and subject to change according to local, State, and Federal needs. Once the forms and exhibits pertaining to this policy are approved by the ICWDB, they will not require board approval if other changes occur, unless the change affects protocols. Should you have any questions, please feel free to contact ICWDB staff at (442) 265-4974, (442) 265-4959, (442) 265- 4955 or the Program and Compliance Manager (442) 265-4963.