

PUBLIC POLICY FOR WORK EXPERIENCE OFFERINGS WITH PARTICIPANTS OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT (WIOA) TITLE IB

WIOA #20-005

I. Introduction

The Workforce Development Local Board has among its roles issuing Public Policy for the implementation of services and activities allowed under the Workforce Innovation and Opportunity Act (WIOA) with the peculiarities of the local level. To issue policies, the provisions of the local laws, regulations and conditions will be taken into consideration, such as the characteristics of the clientele, labor market and organization model of the Local Area.

One of the most used services with a clientele that is difficult to employ for a lack of significant experience is the Work Experience activity. This is why the Local Board must establish clear guidelines regarding the use and benefits of this service. This policy and procedure are established to ensure compliance with the requirements of the activity with Adults, Dislocated Workers and Young Persons.

II. Legal Base

- Federal Public Law 113-128 of July 22, 2014, 128 Stat. 1425 et seq., as amended, Workforce Innovation and Opportunity Act (WIOA) - Section 134 (c)(2)(A)(xii)(VII) and Section 129 (c)(2)(C).
- Final WIOA Regulation - Federal Register/Vol. 81, No 161, August 2016, Section 680.180 and Section 681.590(a)
- Planning Guide for WIOA Title IB Programs.
- Administrative Memorial WIA 01-2014 of the Workforce Development Program.

III. Definition

Work Experience is a programmatic activity, which may be offered to the participants identified as an allowable Career Service under the Adults and Dislocated Workers Program and as a Service Element under the Youth Program. It is conceived as a planned and structured learning experience, offered in a work area for a limited period of time, justified based on a comprehensive evaluation and Individual Work Plan developed by a Case Manager.

This activity is targeted mainly to developing the participants' good habits and basic skills necessary for the work world, facilitating their integration into the work world. So it must be designed with the objective of increasing the individuals' employability.

The Work Experience [activity] may be offered in the private sector, for-profit or not-for-profit, or in the public sector, with or without WIOA subsidized funds. The Work Experience [activity] may be with or without pay in the for-profit and non-profit private sector or in the government sector. The Fair Labor Standard Act requirements apply where an employee/employer relationship is established.

IV. Public Policy of the Local Board and Guidelines for the Work Experience [activity]

In order to use this activity, the following requirements and processes will be performed according to the program for which the client qualifies:

A. Adults and Dislocated Workers Program

1. Because it is a career service, in order to offer the service, the participant must have received basic services, at least one interview, an evaluation and done a job search unsuccessfully. This job search must be verifiable by the Case Manager.
2. It is a fundamental requirement that before the Work Experience activity, the eligible person must have passed a comprehensive, specialized and objective evaluation regarding his/her skill levels and service needs. The determination of the need for career services, in this case, the Work Experience, must be reasonably reported in the participant's record.
3. To build a learning activity of good habits and basic skills in the workplace, the Work Experience activity must not exceed six (6) months. Exceptions may be made to this limitation for the duration of the activity; however, every exception must be reasonably reported in the Individual Employment Plan. On the other hand, the Local Board in light of the Case Managers' experience, may establish limits or expand the terms of duration provided herein, subject to the needs of the clientele to be served and the skills (basic) the participants will acquire through the Work Experience activity, provided that no case under the duration term of the Work Experience may exceed one (1) year.
4. Once the participant has completed the Work Experience, s/he is expected to have the preparation to obtain unsubsidized employment. It will be determined through an evaluation if the participant developed the expected skills, as established in the Individual Employment Plan, after which, s/he will be placed in employment. If that is not the case, s/he may participate in another (different) career service or Training Services. The need for another service must be reasonably reported in the participant's record.
The same participant is not allowed to participate more than once in the Work Experience activity.

If obtaining unsubsidized employment for the participant is considered as an objective, a case-by-case evaluation will determine if it is reasonable to include an employment placement commitment clause and employment retention in the Agreement with the Work Experience collaborating entity and the percentage of placement required.

5. As a general rule, participants must receive pay for their Work Experience as long as the employer-employee relationship is configured within the activity, in which case the Fair Labor Standards Act applies. However, unpaid Work Experiences may be planned and can be coordinated with other services identified in the Work Specifications or Work Proposal.
6. Work Experiences are addressed to eligible persons with different occupational needs and pursue different purposes, so this service **cannot** be replaced by an on-the-job training (OJT) activity.
7. **Prohibition:** The Work Experience cannot be used as an excuse and/or substitute for employment in public service, subsidized with WIOA Title I funds. Although the Work Experience is offered in the public sector, it cannot be equivalent to the participant's work in a position in an agency, entity, instrumentality, public corporation or municipality. This is because the Work Experience is directed mainly towards developing good habits, abilities and basic skills in the participants to facilitate their integration into the work world and **NOT** towards being a formal employee in a position, officially classified as such. Unsubsidized employment is the objective. On the other hand, since they cannot be subsidized, the service costs that the government usually provides the public, such as services provided by firefighters and police, no employment experiences may be provided working as such.

B. Youth Program

In accordance with 20 CFR 681.600, the Youth Work Experience constitutes a structured and planned learning experience for a limited period of time, which may be offered in the public or private sectors, for-profit or not-for-profit, subsidized or not, depending on the activity designed. The payment or subsidy of wages and other related benefits may come from WIOA Title I funds, as long as these are reasonably supported in the objective evaluation and in the individual service strategy developed by the Case Manager and is documented accordingly.

The main purpose of the Work Experience is to expose the young person to the work world and provide them with the opportunity of gaining the personal attributes, knowledge and skills necessary to obtain, maintain, or improve in a job. **It is not** intended to benefit the employer, although, in fact, the employer may benefit in some way from the activities performed.

Activities included in the Youth Work Experience: the Youth Work Experience includes several options:

1. Summer Employment Opportunities or other opportunities available throughout the year.
2. Pre-learning Programs.
3. Internships and shadowing (Exploration).
4. On-the-job training.

The Youth Work Experience must include academic and occupational education. The educational component may be concurrent or sequential, which may take place inside or outside the work place.

As a policy of the Local Board the educational component is established to last at least 20 hours.

Regarding the compensation for the Work Experience, with or without pay, the provisions are as follows:

- a. Using the funds for such purposes must be justified in the individual strategy of the participant and when possible, coordinated with other federal programs, such as Carl D. Perkins.
- b. In Youth Work Experience cases subsidized by employers, the basic principle ruling the relationship between the employer and the young person is the Fair Standards Labor Act (FSLA), as amended. However, under the FLSA, trainees are not considered employees. So the relationship will not be covered under that law if the Work Experience meets the following conditions:
 - i) The training, even if it includes the practical phase in the facilities and with the employer's equipment, is similar to the training offered in vocational schools;
 - ii) The training is for the benefit of the young person or participant;
 - iii) The employer offering the training does not receive immediate benefits for the participant's activities;



- iv) The participant does not displace regular employees from the employer and works under their strict supervision;
- v) The participant does not necessarily have the right to get a job at the end of the training period;
- vi) The participant does not have the right to receive a salary for his/her training time.

When evaluating a place of work the specific circumstances of each case must be examined to determine if the Youth Work Experience will be with or without pay of wages, addressing the dispositions under the FSLA.

V. General Dispositions

- A Work Experience is provided with the purpose of developing good habits and basic work skills. At the same time, Section 195 of WIOA requires providing training and employment opportunities to those who may benefit from these opportunities and in the way they most need it, so the Work Experience activity must be directed to individuals who have never worked (those who have worked should have basic skills and good habits of employment); who have not had significant participation in the workforce or who have been without work for a long period of time and their basic skills and good habits of employment have been affected. Any exception must be properly justified by the Case Manager, taking into consideration the occupation or occupations in which they have performed, work habits and skills developed in said occupations or jobs, reasons for terminating the employment, among others.
- The duration of the Work Experience activity will be determined based on the needs of a participant determined by his/her evaluation, the occupation in which s/he will be placed. For adults and dislocated workers it will be not more than six (6) months with a maximum of 500 hours. These hours are per participant, if another participant is appointed in the same occupation, s/he will be assigned the corresponding number of hours, **not** a residual.
- Youth Work Experiences will be determined based on the type of experience to be offered, with a duration not greater than 40 hours in summer activities, 150 hours in internships and 500 hours in work experience in public and private sector locations.
- As established by the Workforce Development State Board Public Policy, no more than 20% of the Work Experience funds will be used in the public sector, state, municipal or federal government entities. The priority is for small businesses.
- The Work Experience shall take place in an adequate work environment including, but not limited to: adequate health conditions, safety, equipment, materials, etc.
- In the Youth Program, a minimum of 20% of the Program Category funds will be used for the Work Experience activities.



- The employer must guarantee that s/he has enough work for the participant; that s/he will provide adequate supervision to the participant and will cooperate with the Local Area to achieve the goals established regarding the participant.
- WIOA Title I activities participants must receive work benefits and conditions of the same level and in the same degree as other apprentices or employees working for a similar period of time and doing the same type of work as them.
- Employers must observe what is provided in Section 188 regarding Non-Discrimination and prohibition on policy activities included in Section 195 of WIOA.
- All health and safety rules established under state or federal laws applicable to the conditions of the employer are equally applicable to the participants of WIOA Title I programs and activities.
- Whenever a worker compensation state law applies, this compensation must also be provided to the participants of WIOA Title I program and activities in the same way as it is provided to other individuals in the state who have similar jobs.
- If a state worker compensation law applies to the Work Experience participant, the worker's compensation benefits must be available to the participants if they suffer any injuries during the Work Experience.
- If the state worker compensation law does not apply to the Work Experience participant, the employer must provide insurance coverage for injuries suffered by the participant during said activity.
- The employer's employees cannot be replaced totally or in part by the Work Experience participants.
- The Local Area or sub-concessionary of WIOA funds must monitor and evaluate the Work Experience activities, which will respond to the needs of the participants and follow the guidance included in WIOA, its interpretative regulation, Work Specifications or Work Proposals to obtain the expected results. LOCAL AREA
- WIOA does not provide funds to create public employment as it is one of the prohibitions of the regulation as it appears in section 683.250 (a) (2).

VI. Process to determine the places to conduct Work Experiences activities

The determination of the places where the participants will be placed will be made through the promotion to private for-profit or not-for-profit or public organizations in order to have a work collaboration process:

1. Any organization interested in having participants from the programs must submit a



proposal, as established in the organization forms. This form will include:

- Data about the company and documents indicating compliance with government requirements.
- Occupations in which the participants could be placed, with a description of the tasks to be completed, including the hours.
- Supervision commitments.
- Hours of educational component, if it will be provided within the organization.

2. Proposals will be evaluated by a committee, which will make a recommendation to the Local Board.

3. The Local Area will be responsible for the participants' compensation.

4. The organization will be notified in writing if it has been chosen as the location for placing the participants.

5. A collaboration agreement will be formalized between the Local Board and the organization, which will include the purpose of the activity and all the general provisions applicable to a work location.

6. Include anti-discrimination, and complaints clauses, etc.

7. Any placement commitment will be agreed upon.

8. Start date and end date of the agreement.

VII. Appendixes

This policy public includes the location proposal form, the proposal evaluation sheet, and the participant's evaluation.

VIII. Approval and Validity

This procedure will be effective at its approval and signature, and will remain in effect until it is amended or repealed.

In Guaynabo, Puerto Rico, on *February 7, 2020*.



Oriel Ramirez Rodríguez
President
Workforce Development Local Board