

**WDA 16**

A proud partner of the

American Job Center network

**Policy Letter 5-2017**

**Policy: Work Experience for WIOA and CCMEP Youth**

**I.PURPOSE**

To establish implementation of Work Experience for youth under Title I of the Workforce Innovation and Opportunity Act (WIOA)and under Ohio’s Comprehensive Case Management and Employment Program (CCMEP). Work experience is designed to aid participants in a structured environment, learning good work habits with the focus on career exploration.

**II. WORKFORCE DEVELOPMENT BOARD APPROVAL**

Motion 42-2017 approved on 12/15/2017.

This replaces Motion 14-2009, approved on May 20, 2009 (Policy Letter 03-2005)

**III.BACKGROUND**

Under the Workforce Innovation and Opportunity Act, paid and unpaid work experience is an allowable activity and one of the fourteen (14) youth program elements required to be competitively procured when selecting a youth service provider.

**IV.DEFINITIONS**

Incentive: remuneration to participants for successful participation and achievement of expected outcomes as defined in the individual service strategy (ISS).

Internship: a system of gaining on-the-job experience by placement in a work environment for a period of time with the goal to build technical and job awareness skills. Internships may be paid or unpaid.

Job shadowing: a short-term unpaid activity which introduces a participant to the workplace and provides exposure to occupational areas of interest to increase career awareness. Job shadowing is limited and allows youth to observe only.

On-the-job training (OJT): training by an employer that is provided to a paid participant while engaged in productive work in a job that:

* Provides knowledge or skills essential to the full and adequate performance of the job;
* Is made available through a program that provides reimbursement to the employer of a percentage of the wage rate of the participant; and
* Is limited in duration as appropriate to the occupation for which the participant is being trained, taking into account the content of the training, prior work experience of the participant, and the service strategy for the participant.

Pre-apprenticeship programs: programs or set of strategies designed to prepare individuals to enter and succeed in Registered Apprenticeship programs and have a documented partnership with at least one, if not more, Registered Apprenticeship programs.

Stipend: a fixed and regular small payment such as an allowance.

Summer employment opportunities: an activity conducted mainly during the summer months which involves work experience as the primary strategy and must provide direct linkages to academic and occupational learning.

Work experience: a planned, structured learning activity that takes place in a workplace setting for a limited period of time.

**V. IMPLEMENTATION**

Work experience is one of the fourteen (14) required program elements that must be made available to all registered youth and should be offered throughout the program year. It is a planned, structured learning activity that takes place in a workplace setting for a limited period of time and has an academic and occupational education component. Work experience may be paid or unpaid.

The primary intent of work experience is to help the youth understand proper workplace behavior and what is necessary in order to attain and retain employment. Work experiences should help youth acquire the personal attributes, knowledge, and skills needed to obtain a job and advance in employment. Work experience can serve as a stepping stone to unsubsidized employment and is an important step in the process of developing a career pathway for youth. All work experiences should expose youth to realistic working conditions and task as much as possible.

Work experience must be based on identified needs of the individual youth. Use of work experience situation must be based on an objective assessment and identified on the youth's individual service strategy (ISS), Comprehensive Assessment and/or Individual Opportunity Plan (IOP).

Paid and unpaid work experience must include academic and occupational education. The types of work experiences include the following categories:

* Internship and job shadowing;
* Summer employment opportunities;
* On-the-Job training; and
* Pre-apprenticeship programs.

Work experience may be conducted in the private-for profit, private non-profit and public sectors. Although a business, public agency or non-profit (hereafter collectively referred to as " work experience provider") may also receive some benefit from work experience in the form of work being done or recruiting a potential new employee, the primary goal of work experience is to benefit the participant.

Per section 129 (c)(4) of the WIOA, not less than 20% of the youth program funds shall be used to provide youth participants with paid and unpaid work experiences.

1. **Appropriate Employers**

WDB16 will seek employers that are committed to helping participants receive the experience and training that is required for employment beyond the work experience period. Employers must be willing to work closely with program staff and be flexible in working with youth who have barriers to employment.

Attention must be given to ensure that work experience arrangements do not unfavorably impact current employees and do not impair existing contracts for services or collective bargaining agreements. Work experience, including internships, in the private for-profit sector must be structured so as not to appear to be subsidizing private for-profit operations. The work of the participant should not materially impact the profit margin of a private-for-profit company.

WDB16 may encounter employers reluctant to assume responsibility for youth as employees. If an employer/employee relationship does exist, the youth provider may deem it advisable to be the employer of record and refer youth participants to host sites so they may receive experience.

1. **Determining "Trainee" versus "Employee"**

Work experience may be paid or unpaid. It is expected that work experience will be paid in most cases and the federal Fair Labor Standards Act (FLSA) will apply in any situation where an employer/employee relationship exists. WIOA participants are subject to the requirements of the FLSA to the extent that the activities performed in the work experience constitute employment.

WDB16 shall ensure that the youth provider makes a determination regarding whether work experience is a "training" situation or an "employment" situation, based on the following information.

Trainee

Because the FLSA's definition of "employee" is broad, the excluded category of "trainee" is necessarily quite narrow. In general, the more a training program is centered on a classroom or academy as opposed to the work experience provider's actual operations, the more likely the activity is training. The more the training is providing the participants with skills that can be used in multiple employment settings, as opposed to skills particular to one work experience provider's operations, the more likely the participant is a trainee.

According to the Wage and Hour Division of the U.S. Department of Labor, Employment Standards Administration, if all of the following six (6) items exist, the work experience can be considered a "training" situation and an employment relationship does not exist under the FLSA:

1. The training, even though it includes actual operation of the facilities of the work experience provider is essentially a training experience similar to a vocational school;

2. The participant is primarily the beneficiary of the experience;

3. Regular employees are not displaced and the experience is closely supervised/observed;

4. The work experience provider that hosts the experience derives no immediate or significant advantage (and may even be adversely impacted);

5. The participant is not guaranteed a job at the conclusion of the experience; and

6. There is mutual understanding between the participant and the host agency that the participant is not entitled to wages for this time because the activity is essentially a training experience.

As the participant is a "trainee" and an employment relationship does not exist under the FLSA, the FLSA's minimum wage and overtime provisions do not apply to the participant.

Employee

On the other hand, if the youth participants are engaged in the primary operations of the work experience provider and are performing productive work (for example, filing, performing other clerical work, or assisting customers), then receiving some benefits in the form of a new skill or improved work habits is unlikely to make the participant a trainee, given the benefits received by the work experience provider.

If the worksite uses the youth participants as substitutes for regular full time or part time employees, it is more likely that the participants are employees as opposed to trainees. Also, if the work experience provider would have needed to hire additional employees or require overtime had the participants not performed the work, then the participants are likely employees.

Employer of Record

1. Employer - If the work experience provider is relying on the participant to perform real work, i.e., to be productive, then the situation should be recognized as an employer-employee relationship. In this situation, the site employer is the employer of record. Participants must receive no less than the applicable state or federal minimum wages, related benefits are required and payroll taxes should be deducted. The employer of record will be responsible for paying all taxes and providing similar benefits as are available to other employees.

2. Youth Provider - The youth provider has the option of being the employer of record for the youth participant. The employer of record is responsible for paying the participant and negotiating with the host site the activities that will be performed by the participant. The work experience may occur at the youth service provider location or the participant may be referred to a host site to receive the work experience. The host site is the location where work experience tasks will occur.

"Trainee" versus "Employee" when Job Shadowing

If the employer is providing job shadowing opportunities whereby the participant learns certain functions under the close and constant supervision of regular employees, but performs no or minimal work, this type of activity is more likely to be a bona fide training program. However, if the participant receives the same level of supervision as employees, this would suggest an employment, rather than training, relationship.

1. **Child Labor Laws**

WDB16 will ensure compliance with child labor laws. The employer must comply with all applicable federal laws and with state child labor laws if the participant is less than 18 years of age. The Fair Labor Standards Act (FLSA); Ohio Revised Code (O.R.C.) Chapter 4109 Employment of Minors, and Chapter 3331 Age and Schooling Certificates; and Ohio Administrative Code (O.A.C.) Chapter 4101:9-2 Employment of Minors in Occupations Hazardous or Detrimental to Health and Well-Being, are primary legislation which governs the employment of minors at the federal and state levels.

Proof of age and parental consent must be given for both paid and unpaid work experience. Minors participating in a work experience while school is in session also require a work permit. Minors who are under 16 also must have an Age and Schooling Certificate (work permit).

1. **Health and Safety Standards**

WDB16 will apply the same health and safety standards otherwise applicable to working conditions of employees to working conditions of participants in programs and activities under Title I of the WIOA.

The state workers' compensation law may or may not apply to a participant in work experience depending on the work experience arrangements and employer's benefits. If the state workers' compensation law does not apply to a participant in work experience, the administrative entity must secure insurance coverage for injuries suffered by the participant in work experience.

1. **Unpaid Work Experience**

Unpaid work experience is an activity exposing participants to the working environment, and an individual does not expect payment for tasks performed. An employer and employee relationship must not exist, which means that all six conditions listed in Section V.B. of this policy letter must be met.

The Youth Program provider will consult with other public assistance case managers, where applicable, to ensure that the receipt of incentives or stipends do not negatively impact the youth participant's receipt of public assistance.

Incentives

WDB16 approved incentives are described in WDB16 Policy Letter 03-2017, Youth Incentives for all youth work experience.

Stipends

WIOA, Title l is silent on using the term "stipend." Reasonable stipends are allowable expenditures for unpaid work experience for youth when the provision of stipend is included in the participant's IOP. A youth may receive a stipend for an entire day if at least 51% of the youth's time is spent in unpaid work experience. For example, if a youth spends five hours per day in unpaid work experience and three hours in GED, the participant may receive a stipend for the day.

Duration of Work Experience

The duration of paid or unpaid work experience is a minimum of 160 hours and a maximum of 1040 hours, per placement, at any one (1) work site during a 12 month period. The length of a participants work experience activity will take into account past work experience, barriers and the complexity of the job tasks. **The maximum hours may be increased at the discretion of the program operator.**

Wages

For all paid work experience, wages will be at least the state minimum wage rate, with operators having the discretion to pay more based on the occupation.

1. **Worksite/Job Site/Host Site Agreement**

WDB16 will ensure that the youth provider has a written agreement to ensure compliance with the WIOA and applicable regulations. The agreement is a written document that details terms and conditions of paid and unpaid work experience and the expectations of the parties to the agreement. The written agreement is between the participant, the site employer or host site, and the youth provider.

The written agreement (worksite agreement/ job site agreement), will include : the duration, remuneration, tasks, duties, supervision, health and safety standards and other conditions of work experience such as consequences of not adhering to the agreement and a termination clause. The worksite or host site entity, the participant and the youth provider should all be given a copy of the agreement. The agreement will be available for audit and monitoring purposes.

**VI. Documentation to be Maintained**

Documentation of the work experience will be maintained in the participant's file. The following documents, as appropriate, will be kept in the participant's file:

* An objective assessment, ISS, Comprehensive Assessment, and/or IOP indicating a need for work experience;
* Justification for incentive/stipend, and description of type of payment method and amount, if applicable;
* A copy of the agreement between the participant, the worksite or host site and the local workforce investment board, including any attachments to the agreement, such as a training plan;
* Time sheets, attendance sheets and performance records, as appropriate; and
* Documentation of receipt of incentives, stipends and supportive services received by the participant.

These documents shall be maintained in files by either the WIOA Youth Provider/Operator, or by the Lead Agency.

**VII. Tracking Youth Work Experience**

Not less than 20% of funds WIOA allocated to the local area be used to provide in-school and out-of-school with paid and unpaid work experiences. To ensure this is met WDB16 will track program funds spent on paid and unpaid work experiences and report such expenditures as part of the local WIOA youth financial reporting. Program expenditures on the work experience program element include wages as well as staffing costs for the development and management of work experiences. Local area administrative costs are not subject to the 20% minimum work experience expenditure requirement.

**VIII. Monitoring**

WDB16 will ensure oversight of the program. WDB16 will periodically monitor the participant and the worksite or a host site to ensure that goals are being met and adherence to State of Ohio guidance and WIOA law and regulations.

Through the state's monitoring system, program monitors will review the local area's use of work experience in the WIOA youth program, including a participant file review, during the annual onsite monitoring review for compliance with federal and state laws and regulations. Any issues will be handled through the state's monitoring resolution process.

**VIV. Applicability for Adult and Dislocated Workers Work Experience**

This policy also applies to Adult and Dislocated Worker Work Experience, as applicable. When applied to these populations, the following sections of this policy are excluded: V. C. Child Labor Laws, V. E. Incentives, VI. Documentation: IOP (Adults and Dislocated workers complete IEPs), and VII. Tracking Youth Work Experience.

End