

SETA

Sacramento Employment and Training Agency (SETA)

On-the-Job Training/Subsidized Employment (OJT/SE)

Policies and Procedures

INTRODUCTION

The purpose of this document is to establish clearly defined policies and procedures for the Sacramento Employment and Training Agency's (SETA) On-the-Job Training/Subsidized Employment (OJT/SE) program.

OJT/SE is an activity designed to place low-skilled adults who are unemployed, into full-time jobs in high skill occupations on a "hire first" basis where supervision and training are provided by the employer. OJT/SE affords customers the opportunity to be trained or retrained while acquiring the work skills necessary to succeed in and retain employment while contributing to an employer's productivity.

Employers may be eligible for reimbursement of up to 75 percent of the wages paid to customers if WIOA funded and up to 100 percent of wages if CalWORKs funded to compensate for the employer's costs for additional supervision and training related to the OJT/SE. An OJT/SE contract must be limited to the period of time required for a customer to become proficient in the occupation for which the training is being provided. In determining the appropriate length of the contract, consideration should be given to the skill requirements of the occupation, the academic and occupational skill level of the customer, prior work experience, and the customer's Individual Employment Plan.

1. Forms/Reporting:

- A. Service providers must utilize the standard contract form, *SETA OJT/SE Contract*, which may not be altered or modified in any way. Service Providers OJT/SE employer must execute one OJT/SE contract and all contracts must be numbered. Individual Employer OJT/SE contracts may cover multiple trainees. The *OJT/SE and Trainee Information* and *Elements of Training/Monthly Evaluation Forms* for each trainee hired.
- B. A copy of each *SETA Standard Form OJT/SE Contract* must be submitted to the SETA program monitor within ten (10) working days of execution. All eligibility, Right-to-Work, selective service (if applicable), and critical occupation data must be verified by the service provider and scanned into the CalJOBS system. Additionally for each trainee, a copy of the *OJT/SE and Trainee Information Form*, the *Elements of Training/Monthly Evaluation* and, if applicable, any modifications or changes to an OJT/SE contract, must be submitted to the SETA Monitoring Unit for approval utilizing the *OJT/SE Contract Modification Request Form*.

C. Monthly Evaluations of skills Attainment:

OJT/SE service providers will track the progress of the OJT/SE participants through scheduled performance reviews through the monthly collection of *completed Elements of Training/Monthly Evaluation* from the employer. The reviews, scheduled monthly, should be conducted to ensure that the trainee is making progress during the training phase of the OJT/SE. A variety of tools to assess the progress should be used including, but not limited to, onsite visits, employer evaluations, and trainee self-evaluations. Employers should complete a survey upon completion of the OJT/SE for the trainee, which will further measure if the trainee has attained the skill and experience needed and as reflected in the training plan resulting in the successful transition from a subsidized to an unsubsidized position with the employer.

D. Service providers shall comply with all fiscal and program reporting requirements as outlined in applicable subgrant or delegate agreement.

2. Duration of OJT/SE:

- A. Training of employees pursuant to an OJT/SE contract must be limited to the period of time required for the trainee to become proficient in the occupation for which the training is being provided. In determining the appropriate length of the training, consideration should be given to the skill requirements of the occupation, the academic and occupational skill level of the trainee, prior work experience, and the trainee's IEP. The period of reimbursement to the employer for each trainee hired under an OJT/SE agreement shall not exceed 6 months of training [including time spent in related classroom training during which wages are paid by the employer].
- B. The duration of an OJT/SE may be expressed as a number of hours, days, or weeks the trainee is expected to work during the training period if the trainee works full-time. "Full-time" should be based on industry or job standards. If such standards do not exist or cannot be found, "full time" shall mean at least 32 hours per week. SETA realizes that part-time employment may best meet the needs of some individuals. Barriers of trainees placed in part-time employment must be justified in the IEP.
- C. Average training time shall be based on occupational or industry standards, taking into consideration the employer's training plans and the trainee's IEP. The type(s) and length, as well as the basis or rationale for the OJT/SE, shall be recorded on each trainee's IEP.
- D. OJT/SE will not be allowed for intermittent seasonal positions (less than six months).

3. Prohibited Worksites:

WIOA OJT/SE contracts cannot be developed with employers that are:

- A. Casinos or other gambling establishments, swimming pools, aquariums, zoos and golf courses
- B. Companies that will or may displace workers
- C. Companies that have relocated all or part of their business within the previous 120 days where the relocation action has resulted in the loss of employment of any employee at the original location
- D. Debarred, suspended, or otherwise excluded from or ineligible for participation in Federal programs or activities
- E. Falsely labeling products "Made in America"
- F. Identified as exhibiting a "pattern of failure".

4. OJT/SE Training Payments:

- A. OJT/SE payments to employers are deemed to be compensation for the extraordinary costs associated with training workers and the costs associated with the lower productivity of trainees. Employers are not required to document such extraordinary costs.

- B. OJT/SE payments are for regular wages only (up to 40 hours per week, 8 hours per day). OJT/SE training payments may not be based on overtime, shift differential, premium pay and other non-regular wages paid by the employer to trainees. OJT/SE training payments may not be based upon periods of time such as illness, holidays, plant downtime or other events in which no training occurs. OJT/SE will not be allowed for those occupations that rely solely on commission as the source of income. In OJT/SE contracts for salary plus commission positions will not be subsidized. OJT/SE will not be allowed for any piecework employment.
- C. Service Providers must collect and review hard copies of timesheets and pay records from the employer prior to OJT/SE training reimbursement. Copies of timesheets and pay records must be legible. Scribbling and white out on timesheets is prohibited. The customer or employer may denote a correction by crossing the error out with a line and initialing the correction on the timesheet.
- D. Limited English proficient (LEP) trainees shall be provided services to the maximum extent feasible in manners that are culturally and linguistically compatible language and cultural backgrounds.
- E. OJT/SE trainees must be compensated by the employer at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience and skill. Such rates must be in accordance with applicable law, but in no event less than the higher of the minimum wage specified under the Fair Labor Standards Act of 1938, as amended, or the applicable State or local minimum wage, or if such laws are not applicable, the wage shall not be substantially less favorable than the wage normally paid for similar work in that labor market.

Employers may pay participants more than the state average wage, \$28.49; however, the employer cannot receive a training reimbursement beyond the capped level or the level negotiated under an OJT/SE contract. Trainees must be provided with the same employment benefits (including health benefits) and working conditions at the same level and to the same extent as other trainees or employees working a similar length of time and doing the same type of work.

- F. The daily hours of work and the weekly hours of work shall not exceed those customary to the occupation.

5. Suitability of Trainees:

- A. Only those trainees who have been assessed and for whom OJT/SE has been determined as an appropriate activity in the trainee's Employability Plan/IEP may be referred to an employer for participation in OJT/SE.
- B. The training reimbursement percentage is applied against the trainee's wage rate unless the wage rate exceeds California's average hourly rate of \$28.49. In that case, the training reimbursement percentage must be applied against the California's average hourly rate. In establishing the hourly rate, employers are required to compensate OJT/SE participants at the same rate as trainees or employees who are in similar occupations with the same employer and who have similar training, experience, and skills.
- C. OJT/SE contracts may be written for eligible employed workers when: (a) the requirements in WIOA Final Regulation §680.700 are met; and (c) the OJT/SE relates to the introduction of new technologies,

introduction to new production or service procedures, upgrading to new jobs that require additional skills, or workplace literacy.

6. Employer Eligibility:

- A. An OJT/SE agreement shall not be entered into with an employer who has previously exhibited a pattern of failing to provide OJT/SE trainees with continued, long-term unsubsidized employment with wages and employment benefits (including health benefits) and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work.
1. For employers with at least two OJT/SE trainees within a single calendar year, "pattern of failure" means that two or more trainees, within the previous year, have been terminated prior to the completion of their training under the OJT/SE contract(s), or have completed their training, but have not been retained in unsubsidized, long-term employment. "Long-term employment" means continuous employment of at least six months after the completion of the OJT/SE contract with wages, benefits and working conditions the same as similarly situated employees.
 2. In situations where OJT/SE trainees quit voluntarily, are terminated for cause, are released due to unforeseeable changes in business conditions, or are terminated for other reasons that are outside of the control of the employer (e.g., death), such terminations shall not be included in the determination of a pattern of failure. Service providers must provide documentation to SETA to clearly and unequivocally indicate that any exclusion meet these specified conditions.
 3. Service providers shall assess employers at least bi-annually to determine if they have exhibited a pattern of failure over the preceding year. Any employer found to have exhibited a pattern of failure as defined above shall be ineligible to participate in the OJT/SE program for a period of at least one year.
- B. Employment and employee leasing agencies that meet the other requirements of these Policies and Procedures may be eligible for OJT/SE contracts when the contract specifies the source of training and specifies that the payments are for the extraordinary training costs of the entity providing the training. A temporary employment agency may serve as the employer of record for purposes of providing OJT/SE to a trainee only when such trainees are treated as direct hires of the temporary employment agency and not when such agency provides probationary, seasonal, temporary, or intermittent employment. Procedures must ensure that an employer-employee relationship will exist between the employment agency and the OJT/SE trainee, and that the employer is capable of providing job training to enable the trainee to perform as a regular employee of the employer's establishment.
- C. Employers must be able to show they have the necessary equipment, materials and supervision to provide the contracted training, and valid licenses to do business.
- D. Except for purposes directly connected with, and necessary for the administration of the program, OJT/SE employers shall ensure that no information in their possession about, or obtained from, a trainee, will be disclosed in a form identifiable with the trainee without the trainee's consent.

- E. An OJT/SE employer must advise the service provider or SETA, whichever is applicable, whenever any trainee fails or refuses to participate or accept an offer of employment.
- F. No funds provided by SETA shall be used for OJTs/SEs for employees of a business, or a part of a business, that has relocated from any location in the United States, until the company has operated at that location for at least 120 days, if the relocation has resulted in any employee losing his or her job at the original location.
- G. Employers shall not place more than five (5) trainees under the direction of one supervisor.

7. Multiple OJT/SE Enrollments:

A customer that previously participated in OJT/SE may enroll into another OJT/SE on a case-by-case basis contingent upon the following:

- A. Service provider must obtain approval from SETA prior to new OJT/SE enrollment.
- B. Customer is eligible for an OJT/SE, and still has an open case in the CalJOBS system.
- C. Eligibility must be verified and approval received from DHA, as well, for CalWORKs clients enrolling in another OJT/SE.
- D. Service provider must provide justification for another OJT/SE enrollment including:
 - 1. The benefit to the customer for another OJT/SE.
 - 2. How the customer addressed the barrier(s) from the previous OJT/SE to ensure a positive outcome for another OJT/SE.

9. Labor Standards:

The following labor standards shall be adhered to in accordance with federal, state, local and SETA policies and procedures:

A. Health and Safety Standards

- 1. Health and safety standards established under federal, state, and local laws otherwise applicable to working conditions of employees are equally applicable to working conditions of trainees engaged in SETA-funded programs and activities.
- 2. When allegations of unlawful working conditions have been made, referrals to the employer will be withheld until a thorough investigation has been completed and the employer is cleared of the allegation.

B. Workers' Compensation Coverage

1. To the extent that a state workers' compensation law applies, workers' compensation must be provided to trainees in programs and activities funded through SETA on the same basis as the compensation is provided to other individuals in the State in similar employment. The service provider must obtain documentation of workers' compensation coverage that includes the name and policy number of the insurance company.
2. To the extent that such law is not applicable, the SETA-funded service provider, and/or the OJT/SE employer, shall secure insurance coverage for injuries suffered by such trainees.

C. Benefits/Employment Conditions

1. Trainees in an OJT/SE shall be provided benefits and working conditions at the same level and to the same extent as other trainees or employees working similar lengths of time and doing the same type of work at the OJT/SE employer site.
2. Service providers and employers must comply with the provision found in the Affordable Care Act (ACA), signed into federal law in 2010, which establishes federal mandates for employers to provide health insurance to eligible employees.
3. Service providers and employers must comply with the Healthy Workplaces, Healthy Families Act (HWHFA), signed into State law in 2014, which establishes a State mandate for employers to offer paid sick leave to eligible employees.

D. Displacement

1. Employers must be able to provide assurances that they are not in violation of federal, state or local labor laws. Employers cannot be involved in a strike, lockout or other labor dispute.
2. A trainee in a SETA-funded program or activity must not displace (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits) any currently employed employee (as of the date of the participation).
3. A SETA-funded program or activity must not impair existing contracts for services or collective bargaining agreements. When a SETA-funded program or activity would be inconsistent with a collective bargaining agreement, the appropriate labor organization and employer must provide written concurrence before the program or activity begins.
4. A trainee in a SETA-funded program or activity may not be employed in or assigned to a job if: (1) Any other individual is on layoff from the same or any substantially equivalent job; (2) The employer has terminated the employment of any regular, unsubsidized employee or otherwise caused an involuntary reduction in its workforce with the intention of filling the vacancy so created with the SETA-funded trainee; or (3) The job is created in a promotional line that infringes in any way on the

promotional opportunities of currently employed workers as of the date of the participation; or, (4) The employer has reduced their workforce via lay-offs in the six (6) month period prior to program participation.

5. Regular employees and program trainees alleging displacement may file a complaint under the applicable grievance procedures.
6. The quality of training shall meet local employers' requirements so that the individual will be in a competitive position within the local labor market.

E. Union Activities

1. SETA funds must not be used to directly or indirectly assist, promote or deter union organizing.
2. Where a labor organization represents a substantial number of employees who are engaged in similar work or training in the same area as that proposed to be funded, an opportunity shall be provided for such organization to submit comments with respect to such proposal.
3. SETA funds cannot be used directly or indirectly to aid in the filling of a job opening, which is vacant because the former occupant is on strike, or is being locked out in the course of a labor dispute, or the filling of which is otherwise an issue in a labor dispute involving a work stoppage.

F. Davis-Bacon Act Compliance

All laborers and mechanics employed by contractors or subcontractors in any construction, alteration, or repair, including painting and decorating, of projects, buildings, and works which are federally assisted, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. §276a-276a-5). The provisions of this subsection shall not apply to a bona fide trainee in a training program. Such trainees shall not be discriminated against solely because of their status as trainees.

G. Noncriminal Grievance Procedure at Employer Level

1. SETA and service providers shall assure that employers have a grievance procedure relating to the terms and conditions of employment available to their trainees.
2. Employers under paragraph 1 of this section may operate their own grievance system or may utilize the grievance system established by SETA under this subpart, except as provided for in paragraph 3 of this section. Employers shall inform trainees of the grievance procedures they are to follow when the trainee begins employment, and must make reasonable efforts to assure that the information is understood by trainees, including youth and those who are limited English proficient.

3. If an employer is required to use a certain grievance procedure under a covered collective bargaining agreement, then those procedures should be followed for the handling of complaints under this section.
4. An employer grievance system shall provide for, upon request by the complainant, a review of an employer's decision by SETA, and the State if necessary.

10. Political Activity/Lobbying:

No SETA funds shall be utilized by service providers or employers to provide financial assistance for any program that is involved in lobbying and political activities.

11. Sectarian Activities:

- A. Employer shall use all funds consistent with the Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution. Employer shall not expend any program funds for inherently religious activities, such as worship, religious instruction, or proselytization. If employer conducts such activities, it must offer them separately, in time or location, from OJT/SE programs or services, and participation must be voluntary for trainees.
- B. Employer shall retain its independence from Federal, State, and local governments and may continue to carry out its mission, including the definition, practice and expression of its religious beliefs, provided that it does not expend any direct funding to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, employer may use space in its facilities to provide services without removing religious art, icons, scriptures, or other symbols. In addition, employer retains authority over its internal governance and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.
- C. There will be no employment or training of participants in sectarian activities.
- D. In providing training, employer shall not discriminate against a trainee or prospective trainee on the basis of religion or a religious belief.

12. Nondiscrimination/Equal Opportunity:

- A. Service Providers and employers shall fully comply with the nondiscrimination and equal opportunity provisions of WIOA section 188 and its implementing regulations found at 29 CFR, part 38.

NONDISCRIMINATION – WIOA Section 188

- (1) Federal Financial Assistance - For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), on the basis of disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), on the basis of sex under title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.),

programs and activities funded or otherwise financially assisted in whole or in part under this Act are considered to be programs and activities receiving federal financial assistance.

- (2) Prohibition of Discrimination Regarding Participation, Benefits, and Employment – No individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, denied employment, harass or allow harassment against any employee or participant in the administration of or in connection with, any such program or activity because of sex, race, color, age, color, religion, sex (including pregnancy, childbirth, and related medical conditions, sex stereotyping, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief.
- (3) Prohibition on Discrimination on Basis of Trainee Status - No person may discriminate against an individual who is a trainee in a program or activity that receives funds under this title, with respect to the terms and conditions affecting, or rights provided to, the individual, solely because of the status of the individual as a trainee.
- (4) Prohibition on Discrimination Against Certain Non-Citizens - Participation in programs and activities or receiving funds under this title shall be available to citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees, and parolees, and other immigrants authorized by the Attorney General to work in the United States.

- B. Employers shall not impose requirements as to duration of residence as a condition of participation for the provision of assistance or services.
- C. Nondiscrimination and equal opportunity requirements and procedures, including complaint processing and compliance reviews, are governed by the regulations implementing WIOA section 188, codified at 29 CFR part 38, and are administered and enforced by the DOL Civil Rights Center.
- D. Funds may be used to meet a service provider’s obligation to provide physical and programmatic accessibility and reasonable accommodation/modification in regard to the program, as required by section 504 of the Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act of 1990, as amended, section 188 of WIOA, and the regulations implementing these statutory provisions.
- E. Employers shall ensure that women have the same opportunities as men to participate in any program.

13. Miscellaneous Policies and Procedures:

- A. Service providers must conduct onsite visits of each OJT/SE employer within the first 30 days of the commencement of training and document the visits in CalJOBS case notes to verify compliance with terms and conditions of OJT/SE contracts. Qualifying visits could include meetings to execute OJT/SE contracts, as well as meetings to collect completed Monthly Evaluation forms.
- B. OJT/SE service providers must target industries with employment opportunities available in the local area as reflected in the Critical Occupational Clusters Report. Current information can be found at www.careergps.com. The occupational forecast data report is updated quarterly. Service providers are required to verify the training occupation is a critical occupational cluster prior to OJT/SE enrollment. The critical occupational cluster verification must be scanned into the CalJOBS system.

ATTACHMENT A

- C. An OJT/SE contract cannot be entered into if a director, officer, trustee or employee of the employer holds a seat on the SETA) Governing Board.
- D. An OJT/SE contract will not be approved for sites that are funded in any part by SETA.
- E. "Volunteerism" or tryout of a potential OJT/SE employee by an employer is a violation of law relative to the Labor Code. However, potential trainees may observe a job on a limited basis not to exceed four hours.
- E. A waiver of any SETA Policy must be approved by SETA's Quality Control Monitoring and Evaluation Supervisor prior to execution of the OJT/SE contract with the employer. All waiver requests must be justified fully and concisely. Each waiver will be approved or denied on a case-by-case basis.