

Workforce Connections Programs, Services, and Activities Work Experience (WEX) – ADW	ADW-030-07
NEW	Effective Date: 11/08/2022
Policy Approved By: WC Executive Director Policy Adopted on: 11/07/2022	<i>2-P-F 11-8-22</i>

Purpose

This policy provides further guidance and establishes the Southern Nevada Local Workforce Development Board (SNLWDB) requirements for the provision of work-based training services or activities under the Workforce Innovation and Opportunity Act (WIOA).

Background

WIOA provides for a workforce development system that is accessible to all job seekers and employers, that is customer-centered, and where training opportunities are job-driven. WIOA is designed to put emphasis on activities and services that foster and promote access to better employment opportunities, training, educational, and support services to succeed in the current labor market and to match employers with the skilled workforce they need to compete in the current global economy.

Work-based training services or activities foster a great opportunity for increased business engagement and greater industry partnerships as these types of training allow employers to train their employees while continuing to be productive members of their workforce. The local workforce development system continues to promote the implementation of work-based initiatives that meet the highest levels of accountability, performance, and quality in preparing adults and dislocated workers for the current labor market.

Policy

Workforce Connections has established that a Work Experience or Internship for Adults or Dislocated Workers must be designed and structured to help a participant, at a minimum, attain a combination of basic and/or necessary skills for a successful transition into the workforce. All information required by Federal, State, and Local reporting requirements must be collected for each individual receiving WIOA Title I services. The appropriateness of any service provided to an eligible program participant must be documented in the Management Information System and the Individual Employment Plan, as appropriate or applicable.

References

- 29 U.S.C. § 3174 (c)
- Public Law (P.L.) 113-128 WIOA Secs. 3, 122, 134, 181, 189, 194, 503
- 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 29 CFR Part 38
- 20 CFR Part 678, Part 680, Part 683
- TEGL 5-08, TEGL 7-20, TEGL 12-09 19-16
- State Compliance Policies (SCP) 1.8
- WC Policies Admin-010-04, GEN-050-01, GEN-050-07

Action

Providers of WIOA Title I services must establish and implement a written policy or standard operating procedures that align with the requirements of this policy.

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I. General Provisions

A. Work Experience or Internship - Defined

For the purposes of WIOA sec. 134(c)(2)(A)(xii)(VII), an internship or work experience is a planned, structured learning experience that takes place in a workplace for a limited period of time. Internships and other work experience may be paid or unpaid, as appropriate, and consistent with other laws, such as the Fair Labor Standards Act. An internship or other work experience may be arranged within the private for-profit sector, the non-profit sector, or the public sector. Labor standards apply in any work experience setting where an employee/employer relationship, as defined by the Fair Labor Standards Act (FLSA), exists.

B. Workforce Preparation Activities

Workforce preparation activities include activities, programs, or services designed to help an individual acquire a combination of basic academic skills, critical thinking skills, digital literacy skills, and self-management skills, including competencies in:

1. Utilizing resources,
2. Using information,
3. Working with others,
4. Understanding systems,
5. Skills necessary for a successful transition into and completion of postsecondary education or training, or employment, and
6. Other employability skills that increase an individual's preparation for the workforce.

C. Additional Elements

In addition, other elements and strategies may be incorporated into a WEX model or strategy to assist the participant in achieving further work readiness goals such as:

1. Instruction in employability skills or basic workplace skills,
2. Career exploration and/or exposure to various aspects of an industry or sector,
3. Integration of basic academic skills into work activities,
4. Supported work, work adjustments, or other transition activities,
5. Entrepreneurship,
6. Leadership development activities,
7. Service learning,
8. Unpaid community services, and
9. Any other activity or incorporated element deemed necessary to assist in achieving the goals of the WEX strategy.

II. Programmatic Considerations & Requirements

A. Scope of Services

1. A work-based training activity that connects unemployed individuals with employers shall be developed and implemented after an individualized assessment that is uniquely centered on the participant's employability and career goals and objectives. This approach shall facilitate the establishment of career pathways on the Individual Employment Plan (IEP) and shall allow for an accurate description of all the elements incorporated into the WEX initiative. The IEP must contain a clear description of the WEX initiative, including but not limited to, purpose, academic and occupational components, support services needed, and a determination of need.

2. A WEX shall only be approved or permissible when the need for this activity or service has been properly identified through an assessment identifying the individual's skills, interests, need for training, and career/employment goals. Also, it must be properly recorded on the participant's IEP and the Management Information System (MIS).
3. In determining the appropriateness of the need for a WEX, special consideration shall be given to the skill requirements of the occupation, employer requirements, the academic and occupational skill level of the program participant, prior work experience, and the IEP. Skills gap analysis is required.
4. A comprehensive training plan must be developed prior to the WEX starting date. The description of training must indicate the occupational areas or skills the program participant will be trained to perform, specific measurable objectives (along with the number of hours of training required to obtain those skills), and the criteria for measuring and monitoring the attainment of those skills. Once skills have been identified and a method for measuring them has been established, trainee progress can be determined.
5. Consistent with Part 680.840 of the 20 CFR, funds provided for work experiences may not be used to, directly or indirectly aid in the filling of a job opening, that 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.

B. Allowability

A WEX may be made available only to individuals who are chronically unemployed, or have an inconsistent work history (gap in employment of at least 12 months prior to enrolling), and have a substantial barrier to employment, including but not limited to:

1. Returning citizens (offenders),
2. Displaced homemakers,
3. Refugees,
4. Individuals with disabilities,
5. Individuals with poor work history (less than six (6) months with 2-4 employers), and
6. Individuals whose prior occupation or industry has been eliminated or is in decline (must be supported by labor market information (LMI)).

C. Compensation and Funding Limit

1. Wages for work experiences must be made on an hourly basis, not less than the State or local minimum wage standards. Service providers may use the prevailing entry-level wage for a like occupation determined by the employer.
2. WEX activities are limited to a maximum of \$ 7,500.00 per enrollment/participation period. In the event of a new position or wage data cannot be provided or produced by the employer, the service provider must use the local entry-level wage for the position by utilizing Onet Online. A detailed job description with a starting entry-level wage must be provided.

D. Timeframe

Among other criteria, at a minimum, the following must be considered by the service provider when determining the duration of the WEX:

1. Career/employment goals and objectives, as clearly identified in the IEP,
2. Necessary time for the participant to learn the skills identified in the IEP,
3. Training plan identifying the learning skills and skill gaps,
4. Full description of job duties to be performed by the participant, and
5. Employer commitment to continuously train and support the program participant.

E. Monitoring of the WEX Activity

To the extent that is considered practical and appropriate, each WEX placement must be properly supervised to periodically assess at a minimum, the following:

1. Worksite safety,
2. Participant Progress,
3. Supportive services need, and
4. Potential adjustments.

F. Labor Standards

There is a wide variety of work-based training initiatives, using different training alternatives, funding streams, and methods of financially supporting unemployed workers while they are in training, including work-based training initiatives that are defined in the statute, such as on-the-job training (OJT), work experience, etc. This policy does not address every possible training strategy; instead, it is intended to provide some basic parameters related to key program areas that must be considered at the time of implementing training strategies under Title I of WIOA.

Of particular importance under the FLSA is determining whether participants placed in work-based training activities are “employees” (*in which case they may be covered by the FLSA’s minimum wage and overtime provisions*) or “trainees” (*in which case the FLSA’s provisions do not apply*). Because labor standards apply in any work experience setting where an employee/employer relationship, as defined by the FLSA exists, providers of WIOA Title I services must ensure compliance with applicable labor standards as required, applicable, or appropriate.

The U.S. Department of Labor’s Wage and Hour Division (WHD) has developed the six (6) factors below to evaluate whether an individual is considered a trainee or an employee for purposes of the FLSA:

1. The training, even though it includes the actual operation of the facilities of the employer, is similar to what would be given in a vocational school or academic educational instruction,
2. The training is for the benefit of the trainee,
3. The trainee does not displace regular employees, but works under their close observation,
4. The employer that provides the training derives no immediate advantage from the activities of the trainee, and on occasion, the employer’s operations may be impeded,
5. The trainee is not necessarily entitled to a job at the conclusion of the training period, and
6. The employer and the trainee understand that the trainee is not entitled to wages for the time spent in training.

If all the factors listed above are met, the worker is a “trainee”, an employment relationship does not exist under the FLSA and the FLSA’s minimum wage and overtime provisions do not apply to the worker. Because the FLSA’s definition of “employee” is broad, the excluded category of “trainee” is necessarily quite narrow. Moreover, the fact that an employer labels a worker as a trainee and the worker’s activities as training, and/or a state unemployment compensation program develops what it calls a training program and describes the unemployed workers who participate as trainees, does not make the worker a trainee for the purpose of the FLSA unless the six (6) factors are met [TEGL 12-09].

Consistent with Part 680.840 of the 20 CFR, funds provided for work experiences may not be used to directly or indirectly aid in the filling of a job opening that 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.

III. Worksite Assessment, Safety, and Compliance Assurances

WBT activities must be provided under an agreement with the employer. Prior to entering into an agreement with the employer, a pre-award assessment must be conducted to ensure that the employer meets the minimum standards and can provide both training and long-term employment to participants whenever applicable.

A. Assessment of Participating Employer

An assessment of the participating employer must be conducted prior to the start date of the WEX and at a minimum, must evaluate compliance with the following:

1. Federal, State, and local regulations,
2. Fair Labor Standards Act of 1938,
3. Non-discrimination and equal opportunity provisions of WIOA Sec. 188 and its associated regulations codified under 29 CFR Part 38,
4. Americans With Disabilities Act,
5. Health and safety standards, and
6. State worker compensation law requirements.

B. Safety

Providers of WIOA Title I services are required to:

1. Implement very specific written procedures to ensure that all safety-related matters are timely and accurately reported.
2. Ensure and monitor that general worksite safety measures are implemented and observed.
3. Ensure that all identified issues regarding safety at the worksite are immediately reported to Workforce Connections.
4. Ensure that program participants are properly informed of the established procedures in order to report worksite-related matters.
5. Maintain worker’s compensation insurance for each participant placed in a WEX. Please note that without such insurance coverage, the participant must not start the WEX.
6. Ensure that participating employers understand and acknowledge these requirements.
7. Ensure that general liability insurance coverage is provided by the participating employer.

C. Assurances

1. The participating employer must have a clear understanding and expectation of the skills needs, interests, and attitudes/habits that the participant may exhibit.
2. All efforts shall be made to place participants at a worksite that matches the participant's interests and abilities.
3. The participating employer must guarantee that the participant will not be involved in religious sectarian instruction or activity while participating in the WEX.
4. The participating employer must guarantee that the participant will not be involved in political activities of any form while participating in the WEX.
5. The company must certify that neither the employing company nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or excluded from participation by any federal department or agency.
6. WEX participants must not displace (including partial displacements, such as a reduction of hours of non-overtime work, wages, or employment benefits) any current employee, as of the date of the WEX training agreement or contract.
7. WIOA funds shall not be approved for training activities or services for any company that has relocated until 120 days after the relocation if that relocation resulted in the loss of employment for any employee at the previous location and the previous location was within the United States.
8. A program or activity authorized under Title I of WIOA must not impair existing contracts for services or collective bargaining agreements. When a program activity authorized under Title I of WIOA would be inconsistent with a collective bargaining agreement, the appropriate labor organization and employer must provide written concurrence before the program or activity begins.
9. A participant in a program or activity authorized under Title I of WIOA may not be employed in or assigned to a job duty if:
 - a) Any other individual is on layoff from the same or any substantially equivalent job,
 - b) The participating 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 WIOA participant,
 - c) The job is created in a promotional line that infringes in any way on the promotional opportunities of currently employed workers.

IV. Record Retention Requirements

Consistent with record retention requirements, all documentation related to the WEX activity must become part of the participant's electronic and hard file. The provider of Title I service is responsible for keeping all records that are necessary to validate the provision of services and to permit the preparation of reports and the tracing of funds to a level of expenditure adequate to ensure that WIOA funds have not been spent unlawfully.

A. The WEX Agreement

The WEX training agreement must be fully executed and will not be considered valid unless it is properly signed and dated by both the participating employer and the provider of WIOA Title I services.

B. Additional Required Support Documentation

1. Properly completed assessment of the participating employer,
2. Copy of the company's certificate of liability insurance – both commercial/industrial and workers' compensation,
3. Copy of valid business license,
4. Skills gap analysis,

5. Copy of fully executed WEX training plan,
6. Copy of job description and/or O*NET occupation profile,
7. Copy of properly signed/dated timesheets. Corrections must be done by “Cross Out”, and initialed by all parties,
8. Copy of checks issued to the WEX participant (only *legible copies*), and
9. Any other documentation considered to be related to the WEX, as appropriate.

V. Exceptions to the Established Requirements

Exceptions to the above-established requirements may be granted on a case-by-case basis. A written request must be submitted to Workforce Connections for review and approval. Supplemental information may be requested if determined necessary or appropriate.

Occupational Eligibility

A WEX shall only be allowed for occupations, which are consistent with the participant’s capabilities, are in-demand occupations that will lead to local employment opportunities enabling the participant to become economically self-sufficient, and which will contribute to the occupational development and upward mobility of the participant on a career pathway.

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