

# MERCED COUNTY WORKFORCE DEVELOPMENT BOARD

1900 Airdrome Entry · Atwater, CA 95301 · (209) 724-2000 · Fax (209) 383-4039

## POLICY BULLETIN

MCWDB PB # 16-21	Date Released: March 24, 2022
To:	All Merced County Workforce Development Board Staff and Service Providers
From:	Erick Serrato, Director, Merced County Workforce Development Board
Effective Date:	March 24, 2022
Subject:	Incumbent Worker Training
Responsible Official:	MCWDB Executive Director

## BACKGROUND

Incumbent Worker Training (IWT) is an activity authorized by Section 134(d)(4)(B) of the Workforce Innovation Opportunity Act of 2014 (WIOA). IWT provides both workers and employers with the opportunity to build and maintain a quality workforce and increase participants' and employers' competitiveness.

The intent of IWT is a work-based training and upskilling design to ensure Merced County workers can acquire and develop the skills necessary to avert layoff or increase the skill levels of employees so the worker can be promoted within the company create backfill opportunities for employers.

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. The Merced County Workforce Development Board (WDB) may reserve and use up to 20 percent of its combined WIOA Adult and Dislocated Worker formulate allocations for IWT activities.

## POLICY

### a. EMPLOYER ELIGIBILITY

While, eligible employers participating in the IWT must be a private sector, local government, for-profit, or not-for-profit place of business, the emphasis for the Merced County Workforce Development Board is placed on serving private businesses that fall within the Board's priority sectors. Participating employers must have a California Employer Account Number – an eight-digit payroll tax number issued by the Employment Development Department (EDD). WIOA requires Local Boards to determine an employer's eligibility for participating in IWT to evaluate whether training would increase the competitiveness of the employees and/or employers. 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;
- The occupation(s) for which incumbent worker training is being provided must be in demand as defined by WIOA sec. 3(23) and as determined by the WDB and labor market information by EDD;
- Other factors the Merced County Workforce Development Board may determine appropriate, 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;
  - Credential 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; and
  - Employer size.

- 
- The company must not have laid off workers within 120 days to relocate to California from another state; and
  - The company must be current in unemployment insurance and worker's compensation taxes, penalties, and/or interest or related payment plan.

#### **b. EMPLOYEE ELIGIBILITY**

For an employer to receive IWT funds, the individual(s) participating in the IWT must meet the following:

- Be employed;
- Meet the Fair Board Standards Act requirements for an employer-employee relationship;
- Meet the Selective Service requirements (for Males only); and
- Have an established history with the employer for six months or more. This may include time spent as a temporary or contract worker performing work for the employer. It should be noted that 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 most of the training employees do not meet the requirement.

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.

#### **c. FUNDING**

The WDB can use up to 20 percent of Adult and Dislocated Worker formula allocations for IWT activities. Allocations will be used for programmatic activities only and cannot be used for administrative functions. Under WIOA, layoff aversion is now a required Rapid Response activity. The Merced WDB can leverage Rapid Response funds by including IWT in a robust layoff aversion strategy. 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 is listed on the Eligible Training Provider List (ETPL).

At its December 2021 meeting, the Merced County Workforce Development authorized up to \$100,000 to be made available, annually, to support IWT.

#### **d. EMPLOYER SHARE COST**

Employers participating in IWT are required to pay for a significant cost of training individuals in IWT. This can be done through cash payments and fairly evaluated in-kind contributions. Wages paid (non-WIOA) to individuals while in training may include the wages the employer pays to the individual while attending training. 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.

#### **e. EMPLOYEE WAGES**

WIOA Title I funds cannot be spent on the wages of incumbent employees during their participation in incumbent worker training. Incumbent worker wages paid by the employer during incumbent worker training cannot be included in the cost of training.

#### **f. TRAINING METHOD**

The following are types of training methods allowable for IWT:

- Classroom training is instruction in a classroom setting provided to a group of trainees and conducted by a qualified instructor;
- Laboratory training is hands-on instruction or skills acquisition under the constant and direct guidance of a qualified trainer. Laboratory training may require using a work setting or a productive work setting, also known as a Productive Laboratory;
- Computer-based learning 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 is provided by a trainer through a video communication session; and
- E-learning instruction is delivered through a web-based system, conducted in a virtual environment utilizing a web meeting/webinar.

#### **g. RAPID RESPONSE/LAYOFF AVERSION – INCUMBENT WORKER TRAINING**

An IWT program funded with rapid response funds must be tied to a layoff aversion strategy for layoff threat. An incumbent worker training as part of layoff aversion must be beyond the standard training offered by businesses to their employees and reasonably prepare workers to address skill gaps. Rapid response resources must not supplant private funds in these situations.

The overall goal of layoff aversion is to save jobs. Layoff aversion is intended to prevent or minimize a potential period of unemployment for employees of companies that have announced layoffs or are struggling and at risk for layoffs. Layoff aversion focuses on saving jobs, putting people back to work, shortening the length of layoff, and revitalizing communities.

#### **h. REPORTING AND PERFORMANCE REQUIREMENTS**

The Department of Labor (DOL) does not consider individuals in IWT to participate in the Adult and/or Dislocated Worker program. Individuals who receive IWT are not included in the WIOA Adult and Dislocated Worker program performance calculations. DOL requires the WDB and the State to report certain participant and performance data on all individuals participating in IWT. The required information for 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, measure able skill gains, and credential attainment.

#### **i. DOCUMENTATION**

The WDB, in partnership with the employer, is responsible for ensuring all training is completed, and certificates of completion are obtained for each trainee and retained locally. Documentation and other requirements will be subject to monitoring.

#### **DEFINITIONS**

**Incumbent Worker** – An individual who is employed, meets Fair Labor Standards Act requirements for an employer-employee relationship, and has an established employment history with the employer for six (6) or more months.

**Incumbent Worker Training** – Training designed to meet the special requirements of an employer (or group of employers) to retain a skilled workforce or avert the need to lay off employees by assisting workers in obtaining the skills necessary to retain employment and conducted with a commitment by the employer(s) to retain or avert laying off incumbent worker(s) that are trained in order to increase the competitiveness of the employee and/or employer.

**Individuals with Barriers to Employment** – (WIOA Sec. 3(24) and 20 CFR 680.320(b)):

- Displaced Homemaker

- 
- Low-income individuals
  - Indians, Alaska Natives and Native Hawaiians
  - Individuals with disabilities
  - Older individuals
  - Individuals who have exited the criminal justice system
  - Homeless individuals
  - Youth who are in or have aged out of the foster care system
  - Individuals who are English language learners, low levels of literacy or facing substantial cultural barriers
  - Eligible migrant and seasonal farm workers
  - Individuals within 2 years of exhausting lifetime eligibility under Part A of Title IV of the Social Security Act
  - Single parents (including pregnant women)
  - Long-term unemployed

**Layoff Aversion** – A layoff is averted when: 1) a worker’s job is saved with an existing employer that is at risk of downsizing or closing; or 2) a worker at risk of dislocation transitions to a different job with the same employer or a new job with a different employer and experiences no time or a minimal time on unemployment.

#### **REFERENCES**

- Workforce Innovation and Opportunity Act 2014
- Employment Development Department WSD19-01
- WIOA Section 3(23)
- WIOA Section 134(d)(4)(A)(ii)
- WIOA Section 134(d)(4)(C)-(D)
- Title 20 CFR “WIOA” Sections 680.780-680.820
- Title 20 CFR Section 682.330
- Title 20 CFR 680.320(b)
- TEGL 19-16