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Workforce Investment Act (WIA) Transmittal Letter No.18

To: Local Elected Officials, WIA Local Workforce Investment Boards,
Administrative Entities, and One-Stop Operators

From: Barbara E. Riley, Director

Subject: Work Experience for Youth

I. Purpose

This communication provides guidance on paid and unpaid work experience for the youth program under Title I of the Workforce Investment Act (WIA). WIA administrative entities should convey this guidance to subrecipients and other entities that provide WIA activities and services.

II. Effective Date

September 1, 2005

III. Background

Under the Workforce Investment Act of 1998, paid and unpaid work experience is an allowable activity and one of the ten (10) youth program elements required to be competitively procured when selecting a youth service provider for this activity. On July 25, 2005, the U. S. Department of Labor granted Ohio a waiver to allow a local workforce investment board to decide whether to competitively procure paid and unpaid work experience or assign the administrative entity the responsibility for implementing this youth program element.

IV. Guidance Statements

Work experience is one of the ten (10) required program elements that must be made available to all registered youth and should be offered throughout the program year. Work experience may be competitively procured or

assigned to the administrative entity to perform the tasks for implementing this youth program element.

Work experience is a planned, structured learning experience that takes place in a workplace setting for a limited period of time. Youth are able to gain exposure to the world of work and its requirements. Work experience may be paid or unpaid. Work experience must be clearly distinguishable from public service employment.

The primary intent of the work experience element is to provide youth participants with opportunities for career exploration and skill development to gain work readiness skills in preparation for employment. Youth should acquire personal attributes, knowledge, and skills needed to obtain a job and advance in employment. Although an employer 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.

The use of work experience situations should be based on an assessment and service strategy identified in the individual service strategy (ISS).

Work experience may include, but not be limited to:

- Instruction in employability skills or generic workplace skills such as those identified by the Secretary's Commission on Achieving Necessary Skills (SCANS);
- Exposure to various aspects of an industry;
- Progressively more complex tasks;
- Internship and job shadowing;
- The integration of basic academic skills into work activities
- Supported work, work adjustment, and other transition activities;
- Entrepreneurship;
- Service learning;
- Paid and unpaid community service; and
- Other elements designed to achieve the goals of work experience.

Work experience may be conducted in the private-for profit, private non-profit and public sectors. In most cases on-the-job training (OJT) is not an appropriate work experience activity for youth participants under age 18. The local workforce investment board, known as a local board, may choose to use on-the-job training for an older youth when it is appropriately based on the needs identified by the objective assessment of an individual youth participant.

Work experience may be combined with classroom instruction relating to a particular position, occupation, industry or basic skills and abilities to successfully compete in the local labor market.

Job shadowing may be provided to participants as a work experience activity. Job shadowing is a short term unpaid activity which introduces a participant to the workplace and provides exposure to occupational areas of interest. A participant experiences the work environment to increase career awareness, observe models of behavior on the job through examples, and receives help in making career decisions. Job shadowing can reinforce the link between classroom learning and work requirements. Job shadowing is limited and allows youth to observe only.

A. Employer and Employee Relationship

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.

WIA participants are subject to the requirements of the FLSA to the extent that the activities performed in the work experience constitute employment. A local board must determine whether work experience is a training situation or an employment situation.

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. The WIA participant is not an employee of the employer site if:

1. the training, even though it includes actual operation of the facilities of the employer 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 "employer" that hosts the experience derives no immediate or significant advantage (and may experience an actual downside);
5. the participant is not necessarily entitled to 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.

If any of the above 6 conditions are not met, then the WIA participant must be considered an employee. If the worksite 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.

The WIA administrative entity or youth service provider has the option of being the employer of record for the youth participant. The administrative entity or service provider as 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 administrative entity or 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.

B. 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. The use of unpaid work experience should be limited.

For unpaid work experience, WIA funds may be used for incentives and/or a stipend for youth. Incentives and stipend encouraging successful completion are beneficial to youth.

Unpaid work experience participants may receive remuneration in cash or non-cash incentives. An incentive is remuneration to participants for successful participation and achievement of expected outcomes as defined in the individual service strategy (ISS). The incentive should equate to an achievement, and should be tied to training and education, a work readiness skill attainment and/or an occupation skill attainment goal identified in the individual service strategy.

Incentives for youth may include plaques, a certificate, gift certificates, and recognition banquets for participants, cap and gowns, class pictures, class rings, school supplies and/or calculators or a check.

WIA, title I is silent on using the term "stipend." A stipend is a fixed and regular small payment such as an allowance. Reasonable stipends are allowable expenditures for unpaid work experience for youth when the provision of stipend is included in the participant's individual service strategy. 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 eight hours.

The incentives or stipend are determined by the local board and funded by the WIA administrative entity. Stipends should be issued through a uniform payment

system. Such incentives or stipend are not considered income for WIA eligibility purposes, not required to meet minimum wage requirements, are not to be dispersed as payroll, and income tax is not to be withheld.

C. Stand Alone Activities vs. Combination of Services

Unpaid work experience must be offered in combination with other services. The services that will be provided in combination with unpaid work experience need to be identified in the local policy.

Paid work experience may be the only training activity provided along with follow-up services, or combined with other services. If offered in combination with other services, identify in the policy the types of services that will be combined with paid work experience.

When combined with other services, work experience should be concurrently or sequentially scheduled to increase the basic education and/or occupational skills of the participant. Work experience may be combined with community service or conservation service corps programs.

D. Summer Employment Opportunities (SEO)

The Summer Employment Opportunities component is one of the ten (10) required program elements that must be made available to all youth. A summer employment opportunities activity is not intended to be a stand-alone program and must be tied to an objective in the individual service strategy.

Summer youth employment involves work experience as the primary strategy and must provide direct linkages to academic and occupational learning. Summer employment may provide other activities and strategies as appropriate to meet the needs and goals of the youth. Twelve months of follow-up services must be provided to youth in the summer employment opportunities activity.

E. Local Workforce Investment Board Policy

The local board is responsible for directing policy and a service delivery strategy to the administrative entity for administering both paid and unpaid work experience. We recommend that work experience be paid. Local policy should ensure that paid work experience do not result in the loss of public assistance benefits. In developing policy, the needs, circumstances and characteristics of the youth population should be taken into consideration. At a minimum, the local board's policy should cover the following:

- **The goal of the work experience** - Work experience designed to aid participants in learning good work habits should be assigned more hours than work experience which is designed for career exploration.
- **Duration of work experience** - The duration of paid and unpaid work experience should be stated in the policy. A minimum and a maximum limitation may be set on the number of hours that may be assigned for any single work experience. When assigning hours consider the needs of the participant and the job duties to be performed.
- **Past work experience** - More hours are justified for a participant who has not worked before or who has a poor work history, and fewer hours should be assigned to participants who possess good work histories.
- **Participant barriers** - Participants with multiple barriers may benefit from more hours and those with fewer barriers may require fewer hours.
- **The complexity of the job tasks** - Jobs with tasks of higher complexity will need more hours assigned, and jobs of lesser complexity require fewer hours.

The local board must ensure that the administrative entity have a written agreement to ensure compliance with WIA and applicable regulations. The agreement, including a minor wage 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 individual, the site employer or host site, and the local board.

The written agreement which may be called a worksite agreement, job site agreement, or host site agreement should include at a minimum: 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 termination clause. The worksite or host site entity, the individual and the local board should have a copy of the agreement. The agreement must be available for audit and monitoring purposes.

F. Health and Safety Standards

The local policy should include an assurance that the health and safety standards established under Federal and state law will be followed.

Health and safety standards otherwise applicable to working conditions of employees are equally applicable to working conditions of participants in programs and activities under Title I of WIA. The State worker's 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 worker's 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.

G. Child Labor Laws

An administrative entity must 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 under 18 years of age. The Fair Labor Standards Act (FLSA), Ohio Revised Code (ORC) Chapter 4109, "*Employment of Minors*," and "Ohio Administrative Code (OAC) 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. The FLSA and the ORC can be accessed online at the following web addresses:

FLSA www.opm.gov/flsa

ORC [www. http://ohio.gov/government.stm](http://www.ohio.gov/government.stm).

Minors who are under sixteen must have an Age and Schooling Certificate (work permit). Sixteen and seventeen year olds must have evidence of proof of age and parental consent. A work permit must be obtained and proof of age and parental consent must be given for both paid and unpaid work experience. The employer must be given a work permit or parental consent before a youth begins work and must keep these documents on file. A work permit cannot be transferred from one employer to another. If a youth is assigned to another worksite or host site, a new work permit must be obtained. A youth may obtain a work permit from the local Board of Education or School.

H. Documentation to be Maintained

Documentation of the work experience must be maintained in the participant's file. Local policy and procedures should specify what documentation will be kept on file, which should include, at a minimum, the following items:

- an objective assessment and individual service strategy (ISS) indicating a need for work experience;

- justification for incentive, and description of type of payment method and amount, if applicable;
- an analysis of how the cost and duration of the work experience was determined;
- 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; and
- Time sheets, attendance sheets and performance records, as appropriate.

To ensure effective and efficient record keeping practices, local procedures should specify where certain documents will be placed in the file.

I. Appropriate Employers

Additional considerations for youth may be appropriate. The local board may encounter employers reluctant to assume responsibility for youth as employees. If an employer/employee relationship does exist, the local WIA administrative entity or youth provider may deem it advisable to be the employer of record and refer youth participants to host sites so they may receive experience.

The local board should seek employers that are committed to helping participants receive the experience and training that is required for employment beyond the work experience period. You should use employers that are willing to work closely with program staff. Employers should be flexible in working with youth who have issues that may be 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.

A selection criteria can be established to ensure that one employer is not favored at the expense of another employer. Although not required, the employer selection criteria could include using a request for proposal or a modified bid process which would also make the community at large aware of opportunities.

J. Sharing Career Opportunities and Training Information (SCOTI)

Work experience job positions are not to be entered into SCOTI Labor Exchange matching system as a job order. Work experience job positions cannot be included in the match pool because job seekers are not to be referred to these job positions. Work experience is not counted as placements for purposes of Wagner-Peyser. Keep in mind the employer offers a meaningful position for a participant to gain work experience.

K. Monitoring

The local board is responsible for ensuring periodical monitoring of the individual and the worksite or a host site to ensure that goals are being met.

V. Technical Assistance

For additional information, you may contact John Weber, Chief, Bureau of Workforce Services, at (614) 644-8836, or weberj@odjfs.state.oh.us.

VI. Reference

Workforce Investment Act of 1998, Public Law 105.220 and Subtitle E, Section 195 (10)

WIA Final Rules, 20 CFR Part 652 Sections 664.410, 664.460, 667.270 and 667.274