



## Bay Consortium Workforce Development Board

**Policy Number:** 20-02

**Effective Date:** February 5, 2020

**Revised Date:** August 5, 2020

**Title:** WIOA Work Experience Procedure Policy

### PURPOSE

To provide policy direction for the implementation of Work Experiences (WEXs) for WIOA eligible adults, dislocated workers and youth.

### REFERENCES

- WIOA Sec. 129 (c)(2)(C); 134(c)(2)(A);188(a)(2) and (3)
- 20 CFR 680.170; 680.830; 680.840; 681.600; 683.270 and 280.
- US DOL Wage and Hour Division

### BACKGROUND

An internship or work experience for adults and dislocated workers is defined at [20 CFR 680.170] as a planned, structured, time-limited learning experience that takes place in a workplace. An internship or work experience may be paid or unpaid, as appropriate. An internship or work experience may be provided in the private for-profit, non-profit, or public sectors.

For the WIOA youth program, work experience is similarly defined at [20 CFR 681.600] with the additional requirement that youth work experiences must include academic and occupational education.

WEXs are a contractual exchange between the WIOA service provider, WEX employer, and WEX participant. A WEX is not designed to replace an existing employee or position. Wages are provided by the WIOA service provider and paid directly to the participant developing an employer/employee relationship between the service provider and the WEX participant. Labor standards apply in any WEX where an employee/employer relationship exists, as defined by the Fair Labor Standards Act. Employers are not monetarily compensated.

WIOA includes a major focus on providing youth with work experience opportunities. WIOA prioritizes work experiences with the requirement that local areas must spend a minimum of 20 percent of local area funds on WIOA youth work experiences. WIOA youth program funds spent on paid and unpaid work experiences, including wages and staff costs must be tracked and reported as part of the local WIOA youth financial reporting.



Note:

- WIOA does not discern between “work experience (WEX)” or “internship”. The definition of both is the same.
- WIOA permits local areas to offer transitional jobs which are limited work experiences, that are subsidized and for those individuals with barriers to employment because of chronic unemployment or inconsistent work history. [20 CFR 680.830] There are limits on the amount of funds local areas may use.

## **POLICY**

WEXs must provide a planned and structured learning experience that will contribute to the achievement of the participant’s employment goals through a measurable training component.

WEX agreements must be signed by all parties prior to the start of the WEX. Work experiences for youth must include academic and occupational education.

### **A. Participant Eligibility**

All WEX participants must meet program eligibility requirements, be enrolled into the respective WIOA program, and have received an assessment resulting in the development of an Individual Service Strategy or Individual Employability Plan that documents the participant’s need for and benefit from a WEX.

Individuals who have received funding through an ITA, cohort or other WIOA funded training are also eligible for WEX. Funding for training and WEXs are separate.

### **B. Employer Eligibility**

The WEX Employer:

- Must be registered with the Internal Revenue Service (IRS) and have an account with the Virginia Employment Commission for Unemployment Insurance and carry Workman’s Compensation Insurance; [20 CFR 683.280]
- Must be licensed to operate in the Commonwealth of Virginia and provide their Federal Employer Identification Number (FEIN);
- Must have safe and healthy working conditions with no previously reported health and safety violations that have been reported but have not been corrected;
- Does not illegally discriminate in training or hiring practices because of race, color, sex, national origin, religion, physical or mental disability, political beliefs or affiliations or age; [WIOA Sec. 188(a)(2)]
- Shall not terminate the employment of any of their current employees or otherwise reduce its workforce either fully or partially (such as reduction in hours or benefits) with the intention

of filling the vacancy with a WEX participant or as the result of having a WEX participant; [20 CFR 683.270]

- Shall not allow the WEX activity to result in the infringement of promotional opportunities of their current employees; [20 CFR 683.270]
- Shall not allow the participant to be involved in the construction, operation or maintenance of any part of any facility that is used, or to be used, for religious instruction or as a place for religious worship. [20 CFR 188(a)(3)]

### **C. WEX Timeframe**

There are no regulations governing the amount of time a participant may be placed in a WEX. Typically, WEXs average between 2-10 weeks; all WIOA Service Providers will adhere to the [Fair Labor Standards Act](#) (FLSA) when determining the number of work experience hours appropriate for participants. When determining the duration of a WEX activity, the following should be considered:

- Objectives of the WEX;
- Length of time necessary for the participant to learn the skills identified in the learning plan;
- The employer having sufficient quantity of meaningful work activities for the participant; and
- Service provider budget.

### **D. Compensation**

Participants enrolled in a paid WEX shall be compensated an hourly stipend at not less than the State or local minimum wage, whichever is higher. Participants shall be paid only for the hours worked during the WEX as documented on the participant's WEX time sheet.

WEX participants shall not be paid for:

- Sick leave;
- Vacation breaks;
- Lunch breaks; or
- A holiday recognized by the service provider as a "paid holiday".

WEX participants are not authorized to work overtime.

When determining the hourly wage for a WEX participant, the following considerations should be taken into consideration. This list is not intended to be all inclusive:

- Objectives of the WEX;
- Type of work performed during the WEX;
- Skill set of the participant;
- Skill set required for the WEX; and/or
- Service provider budget.

## **E. WEX Funding Limits**

WEXs are subject to the same maximum dollar limits (\$4,000) as described in BCWDB Individual Training Account Policy 00-02.

## **PROCEDURES**

### **A. Participant File Documentation**

The following WEX documents must be located in the participant file:

- Comprehensive Assessment identifying a WEX as an appropriate service;
- Completed ISS/IEP documenting the WEX services and outcomes;
- WEX Agreement (completed prior to the start of the WEX);
- Learning Plan (completed by participating WEX Business prior to the start of the WEX);
- Pre- and Post-Assessments;
- Time cards/sheets; and
- Case notes according to BCWDB Case Note Policy 14-01.

### **B. WEX Agreement**

WEX Agreements must contain, at a minimum, the following:

- Clear statement of purpose;
- Identification of all parties including the WEX participant;
- Requirements of the employer, participant and WIOA service provider;
- WEX start and end dates;
- Training job title and responsibilities;
- Required tools, equipment or uniforms, if applicable;
- Supportive services that are needed by the participant, if applicable;
- Detailed computation of the anticipated stipend to be earned;
- Concurrence between employer and union when WEX is under a collective bargaining agreement, if applicable;
- A training plan that is incorporated by reference in the body of the contract; and
- Signature and dates of all parties to the agreement.

A single WEX Agreement may be written for group training with a single training site provided the working conditions, job description, training plan, wage rates and terms of the Agreement are the same for all participants covered by the Agreement.

### **C. Modifications**

WEX agreements may be modified. All modifications must be in writing and signed by all parties prior to the effective date of the modification. Verbal modifications of WEX agreements are not valid.

### **D. Monitoring**

Service providers must ensure regular and on-going monitoring and oversight of the WEX. Monitoring may include on-site visits and phone/email communication with the employer/trainer and participant to review the participant's progress in meeting training plan objectives. Any deviations from the WEX agreement should be dealt with promptly.

The WIOA service provider's oversight of the WEX participant's training and payroll records may be reviewed by Federal, State and local fiscal and program monitors. These entities will have the right to access, examine and inspect any site where any phase of the WEX program is being conducted. The service provider will maintain its records and accounts in such a way as to facilitate the audit. Records must be maintained for five (5) years after the conclusion of the WEX.

## **DEFINITIONS**

Learning Plan – A signed agreement between the worksite supervisor, the participant and the WIOA service provider that describes the goals and project requirements during the WEX.

Pre-Assessment – A documented evaluation of the participant's skills prior to, or at the beginning of the WEX.

Post-Assessment – A documented evaluation of the participant's skills at the end of the WEX. The assessment is intended to show improvement, or lack thereof, during the WEX.

Subsidized Work Experience – A paid, planned, structured learning experience that takes place in a workplace for a limited period of time.

Transitional Jobs – provides limited work experience that is subsidized in the public, private, or non-profit sectors for those individuals with barriers to employment because of chronic unemployment or inconsistent work history.

Unsubsidized Work Experience – An unpaid, planned, structured learning experience that takes place in a workplace for a limited period of time.

Work Experience Agreement – A written agreement between the WEX employer, the participant, and the WIOA service provider that outlines the program requirements and expected outcomes.