

WIOA
Work Experience Guidance

This document reviews the work experience element available to youth participants under the Workforce Innovation and Opportunity Act. It offers guidance in the areas of:

- Employer-Employee Relationships
- Wage Issues
- Unemployment Insurance
- Health and Safety Standards
- Child Labor Laws

Please review and keep a copy for your records.

Background

The work experience activity is one of the program elements available to youth participants under the Workforce Innovation and Opportunity Act (WIOA).

The purpose of the work experience activity is to provide the WIOA eligible youth with opportunities for career exploration and skill development. It should be a planned, structured learning experience that takes place in a workplace for a limited period of time. It is designed to afford youth an opportunity to gain exposure to the working world and its requirements. It should help youth acquire the personal attributes, knowledge and skills needed to be better prepared to enter and be successful in employment. The primary intent of work experience is to benefit the participant, although the employer may, in fact, gain from the activities performed by the youth. Local workforce boards and service providers should ensure that the work experience training is appropriate based on the needs identified by the objective assessment of an individual WIOA eligible youth participant. The Individual Service Strategy (ISS) outlines the specific course of the short-term process. The ISS should clearly indicate how this activity is going to help the youth move to employment. Documentation to this effect is necessary.

A primary purpose of this guidance is designed to inform local areas that due to the nature of the activity, payments received by participants during their enrollment in work experience are not subject to payroll withholdings, such as federal and state taxes, nor are work experience sites required to make unemployment insurance payments. During the period of a participant's enrollment in a paid work experience activity, the WIOA payments received are not subject to withholdings by the employer nor the WIOA program. The payments are incentives for participation in a training activity, not compensation for services to an employer based on guidance from the Fair Labor Standards Act (FLSA) and Internal Revenue Service (IRS).

Fair Labor Standards Act

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 for purposes of FLSA exemption. The WIOA participant is not an employee of the employer site if:

1. The training, even though 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.
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 WIOA participant must be considered an employee.

IRS

The relationship between the WIOA program and employer that volunteers to provide the worksite for the work experience activity for the WIOA program does not make the participant an employee.

According to the IRS definition of employer-employee relationship, the relationship between the WIOA participant and the employer that provides the site for the work experience activity does not constitute an employer-employee relationship, hence, the payments received by the participant should not be treated as gross income for purposes of withholdings. In addition, the following should also be noted with regard to IRS- defined General Welfare Exceptions (GWE).

Section 61(a) of the Internal Revenue Code provides that, except as otherwise provided by law, gross income means all income from whatever source derived, including but not limited to compensation for services and gross income derived from business.

However, under the general welfare exception, the IRS has held that payments to individuals by governmental entities under legislatively provided social benefit programs for the promotion of the general welfare are not considered in the recipient's gross income. To qualify under the general welfare exception, payments must:

<u>Condition</u>	<u>Relation</u>
Be made from a governmental fund	Department of Labor (WIOA)
Be for the promotion of general welfare (i.e. generally based on individual or family needs)	Low income participant (WIOA eligibility)
Not represent compensation for services	Youth training activity (WIOA)

The payments received by participants in the WIOA program youth work experience activity meet the criteria for a general welfare exception. These payments should not be considered gross income for tax purposes on a 1099-MISC or W-2.

Unemployment Compensation

At the completion of a work experience activity the participant is not eligible for unemployment compensation. Neither the worksite nor the WIOA program should contribute any funds to the state's unemployment insurance fund because the participant is not an employee.

Beginning immediately, do not withhold any taxes or treat as taxes any payments for youth in a WIOA paid work experience training activity.

Other considerations for the Work Experience Activity:

1. Health and Safety Standards
Health and safety standards established under federal and state law otherwise applicable to working conditions of employees are equally applicable to participants in work experience

activities under Title I of WIOA. The administrative entity must secure insurance coverage for injuries suffered by the participant in work experience.

2. Child Labor Laws

An administrative entity must ensure compliance with child labor laws. Even though the participants are not considered employees and do not receive wages, no work permit is required under Virginia's Child Labor Laws. However, the WIOA program will follow the guidelines under Virginia's Child Labor Laws concerning the occupational duties of minors.