



## **DEPARTMENT OF WORKFORCE SERVICES (DWS) ASSURANCES AND AGREEMENT TERMS:**

Links to Federal and State requirements may be found at <http://jobs.utah.gov/employer/resource/>

1. DWS will comply with all applicable federal, State and local laws, rules and regulations.
2. DWS will provide individual Worksite Learning Trainee Agreements that include requirements and information specific to each opportunity.
3. DWS will refer qualified trainees who understand the purpose and philosophy of the training program and are willing to participate.
4. DWS or the contracted DWS Representative will provide Workers' Compensation medical coverage only for Unpaid and Paid Internship trainees. The employer will provide Workers' Compensation for On-The-Job- Training customers. If the employer is required to provide the Workers' Compensation coverage, it will be full coverage, not medical coverage only.
5. DWS will assist in developing Worksite Learning Trainee Agreements and provide monitoring and intervention services as needed.
6. DWS may provide Bonding insurance for OJT and Apprenticeship trainees as appropriate.
7. DWS will provide the Worksite Learning Training Agreements, time sheets, and invoices (DWS Forms 353 and/or 358)
8. DWS will provide training compensation as agreed in the Worksite Learning Trainee Agreement.
9. DWS may designate representative(s) to act as its authorized agent for certain specific purposes of agreement administration. The designated staff is authorized to review and approve Worksite Learning Agreements.
10. DWS and its duly authorized representatives, shall, until expiration of three years after final payment under the agreement, have access and the right to examine any directly pertinent books, documents, papers and records of the Employer involving transactions related to this agreement.
11. DWS can terminate this agreement for any reason by giving the other party 30 days notice of its intent to terminate.

## **EMPLOYER ASSURANCES AND AGREEMENT TERMS:**

1. The Employer understands the purpose and philosophy of the selected worksite learning opportunity and is willing to participate.
2. The Employer operates from a physical location in the State of Utah. The Employer's business reputation and stability in the community is in good standing. The Employer has adequate equipment, materials, and staff to train in the agreed occupation. The Employer will comply with all applicable federal, state and local laws, rules, and regulations.
3. Persons with immediate family members employed in an administrative capacity with the Employer may be referred for Worksite Learning if the currently employed family member:
  - a. will not supervise the trainee,
  - b. will not sign time sheets or paychecks for the trainee,
  - c. does not own the company or an interest in it, and
  - d. does not, in any way, benefit from the trainees training.
4. Time and attendance and payroll records for the trainee will be maintained for at least three years after completion of training, and access to these records for the DWS, state, or federal audits will be allowed on

request by appropriate staff. The Employer agrees that the DWS and its duly authorized representatives, shall, until expiration of three years after final payment under the agreement, have access and the right to examine any directly pertinent books, documents, papers and records of the Employer involving transactions related to this agreement.

5. When trainee disciplinary action, suspension or termination appears to be necessary, the site supervisor shall give the DWS Representative advance notice if possible. At a minimum the site supervisor must contact the DWS Representative by telephone. In extreme cases, the Employer may immediately suspend a trainee for dangerous or outrageous behavior but in no case shall the trainee be terminated without prior notice to the DWS representative.
6. Any income or profit gained by the Employer as a result of this agreement will remain entirely the property of the Employer and will not be considered program income.
7. The Employer does not have a collective bargaining agreement in effect, which would be impaired by or inconsistent with this agreement. If such an agreement is in effect, written concurrence for this training agreement must be obtained from the union involved before the start of the agreement.
8. The Employer is not currently on the federal government debarment and suspension listing.
9. The Employer will provide a drug-free workplace.
10. Written modifications may be made to individual agreements subject to the approval of the DWS Representative. Modifications must be made and signed by both parties before the agreement expiration date.
11. The periods of access and examinations described above, for records which relate to: (1) appeals under the 'Disputes' clause of this Employer agreement, (2) litigation or the settlement of claims arising out of the agreement performance or (3) costs and expenses of any agreement as to which exception has been taken by DWS or its Controller or any of their duly authorized representatives, shall continue until such appeals, litigations, claims, or exceptions have been disposed of.
12. Disputes regarding compliance with the nondiscrimination and equal opportunity requirements included in Section 188 of the Workforce Investment Act (WIA), 29 U.S.C. Section 2938 shall be referred to DWS for resolution in accordance with the provisions of those sections. All other disputes arising under this agreement shall be decided as provided by this contract or applicable law.
13. As a condition to the award of financial assistance from the Department of Labor under Title I of WIA, the Employer assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:
  - a. Section 188 of the Workforce Investment Act of 1998 (WIA), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIA Title IC financially assisted program or activity.
  - b. Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color and national origin.
  - c. Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities.
  - d. The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age.
  - e. Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.
14. The Employer also assures that it will comply with 29 Code of Federal Regulations CFR part 37 and all other regulations implementing the laws listed above. This assurance applies to the Employers operation of the WIA Title I-financially assisted program or activity, and to all agreements the Employer makes to carry out the WIA Title I-financially assisted program or activity. The Employer understands that the United States has the right to seek judicial enforcement of this assurance.

15. This agreement may be terminated by DWS in whole or in part, in accordance with the provisions in 41 CFR 1-8.706.
16. Trainees under 18 years of age will not be employed in any occupation that has been found to be particularly hazardous for persons between 14 and 18 years of age (a partial list of such occupations is published in 19 CFR Part 1500, Sub-part E).
17. The Employer agrees to maintain the confidentiality of any information regarding trainees or their immediate families, which may be obtained through application forms, interviews, tests, reports from public agencies or counselors, or any other source. With the permission of the trainee, such information shall be divulged only as necessary for purposes related to the performance or evaluation of the agreement and to persons having responsibilities under the agreement, including those furnishing services to the project.

In connection with the performance of work under this Worksite Learning Employer Agreement and any related Trainee Agreements, the Employer agrees not to employ any person undergoing sentence of imprisonment at hard labor imposed by State or municipal criminal courts. The requirement does not prohibit the employment of persons on parole or probation, Federal prisoners authorized by the attorney general under 18 United States Code U.S.C. 4082 (c) (2) to work at paid employment during the term of their imprisonment, or persons who have been pardoned or who have served their term.

18. In the performance of this Worksite Learning Employer Agreement and any related Trainee Agreements, the Employer agrees to provide all trainees with safety and health protection which shall be at least as effective as that required under the Occupational Safety and Health Act of 1970 (29 USC 651 et seq.). All records pertaining to injuries and illness of the trainee shall be maintained in accordance with the provision of CFR Title 29, Part 1904. Failure of the Employer to comply with the provisions of this clause shall be grounds for the termination of this agreement or the invocation of the Debarred, Suspended, and Ineligible Bidders' procedure of the Federal Department of Labor and State of Utah Procurement regulations
19. In the performance of this Worksite Learning Employer Agreement and any related Trainee Agreements, the Employer agrees to provide all trainees with accessibility in compliance with the Americans With Disability Act 1991.
20. Hiring the trainee will cause no displacement, infringement on promotional opportunities, or other adverse effect on currently employed workers. The trainee is not replacing a worker currently on layoff or furlough status.
21. The Employer hereby assures and certifies that to the best of his or her knowledge and ability, no non-allowable activities or expenses will occur under this agreement. Should any disallowed costs occur, the Employer agrees to pay any such disallowed costs:

**NON-ALLOWABLE REIMBURSEMENT EXPENSES AND ACTIVITIES:**

- a. Cost resulting from violations of, or failure to comply with, federal, state or local laws and regulations.
  - b. Entertainment costs.
  - c. Insurance policies offering protection against debts established by the state/federal government.
  - d. Legal expenses for the prosecution of claims against the State/Federal government.
  - e. The employment or training of trainees in political activities. For any program, "political activities" means any partisan political activity or furthering the election or defeat of any candidate for public office; providing services or assigning personnel supporting or resulting in the identification of programs conducted pursuant to this agreement with (1) any partisan or non-partisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office, (2) any activity to provide voters or prospective voters with transportation or the polls or similar assistance in connection with any such election, or (3) any voter registration activity.
  - f. Legal services furnished by the chief legal officer of state or local governments or staff solely for the purpose of discharging general responsibilities as a legal officer.
22. The Employer can terminate this agreement for any reason by giving the other party 30 days notice of its intent to terminate.

## **ADDITIONAL TERMS FOR INDIVIDUAL WORKSITE LEARNING OPPORTUNITIES:**

### **Unpaid Internship Terms:**

- a. Training the trainee will cause no displacement, infringement on promotional opportunities, or other adverse effect on currently employed workers. The trainee is not replacing a worker currently on layoff. WIA funds result in an increase in employment and training opportunities over those that would otherwise be available. WIA funds do not impair existing service agreements or result in the substitution of federal funds for other funds in connection with work to be performed.
- b. DWS Representative may provide the trainee with financial assistance payment upon the Employer submitting the DWS Unpaid Internship Attendance and Evaluation (Form 358), which indicates the appropriate hours of participation as specified on the form. Trainee's participation may not exceed a forty (40) hour week.
- c. Completion of the supervisor evaluation section (Form 358) and discussion between the Employer and the trainee regarding trainee progress will occur at the same time as submission of Form 358.

### **Paid Internship Terms (Including Summer Youth Employment Opportunity):**

- a. Training the trainee will cause no displacement, infringement on promotional opportunities, or other adverse effect on currently employed workers. The trainee is not replacing a worker currently on layoff. WIA funds result in an increase in employment and training opportunities over those that would otherwise be available. WIA funds do not impair existing service agreements or result in the substitution of federal funds for other funds in connection with work to be performed.
- b. The employer will submit to DWS, in accordance with their payroll cycle, a completed DWS OJT or Paid Internship Invoice (Form 353), which indicates the number of hours worked and hourly stipend rate for the time the trainee reimbursement is requested. Trainees may not exceed a forty-hour (40) workweek. DWS will provide the trainee with the stipend payment based upon the DWS regional pathway.
- c. Completion of the supervisor evaluation section (Form 353) and discussion between the Employer and the trainee regarding trainee progress will occur at the same time as submission of invoice.
- d. Summer Youth Employment Opportunities (SYEO) applies to WIA eligible youth. The factors that distinguish SYEO from other paid internships are: service occurs during the summer, when secondary school is generally not in session; and, there is a direct connection between academic and occupational learning.

### **On- the-Job Training (OJT) Terms:**

- a. Considerations for Employers utilizing Leasing Companies and Temporary Agencies:
  1. Leasing Companies – A leasing company is the actual, legally responsible employer and the Worksite Learning Agreement must be written with them, rather than the site employer. In this case, the supervisor or other representative of the site employer must sign the agreement to show that they are aware of it. Reimbursement is paid to the leasing company, and the site employer and leasing company can decide between themselves how the reimbursement will be credited to the site employer providing the training.
  2. Temporary Agencies – If the site employer uses a temporary agency for payroll, the Worksite Learning Agreement is written with the site employer who actually provides the day-to-day supervision and training to the customer. Payments are then made to the site employer. The temporary agency is not a party to the contract, although they may be visited to monitor payroll records.
- b. The Employer intends to provide permanent employment and to maintain hours and wages beyond the agreement period. For current Trade Act Assistance (TAA), North American Free Trade Act (NAFTA), or Trade Act of 2002 trainees, the Employer will continue to employ the trainee for at least 26 weeks after completing the training, if the trainee desires to continue such employment and the Employer does not have due cause to terminate such employment.
- c. Employers new to OJT's must successfully retain the initial OJT trainee before additional OJT's can be contracted. Successful retention is defined as the customer(s) remaining employed in the third quarter after the Work Site Learning Agreement ends with wages, benefits and conditions equal to those provided to regular, similarly-situated employees.  
When successful retention has not been satisfied, additional OJT's are allowable under the following conditions:
  1. The customer was terminated due to good cause.
  2. The customer is still employed but the employment duration has not yet met the third quarter after the Work Site Learning Agreement ends.
- d. The Employer will provide benefits and working conditions equivalent to those of regular employees. The trainee will be compensated at the highest of the federal minimum wage or the prevailing wage rate of similarly situated employees, including periodic increases.

- e. OJT agreements (or placements) must be for full-time employment. The Employer can determine what is full-time employment, but it must not be less than 32 hours per week.
- f. The Employer agrees that the receipt of these OJT funds will result in an increase in employment and training opportunities and will not impair existing service agreements or result in the substitution of federal funds for other funds in connection with work to be performed.
- g. The Employer will submit the DWS OJT or Paid Internship Invoice (Form 353), which indicates the number of hours worked and hourly rate of pay for the time reimbursement is requested, by the 5<sup>th</sup> day of the month for the previous month's hours worked. DWS does not guarantee payment on invoices submitted more than 30 days after the last day of the month. In order to meet fiscal year end requirements, for hours worked during the month of June, Form 353 must be submitted no later than the 15<sup>th</sup> of July. The Employer will submit a copy of their payroll records with each invoice. Reimbursements to the Employer for more hours than actually worked by the trainee must be refunded to DWS. In addition, the Employer and the trainee will be required to sign regular invoices for training cost reimbursement.
- h. Completion of the supervisor evaluation section (Form 353) and discussion between the Employer and the trainee regarding trainee progress will occur at the same time as submission of invoice. Reimbursement shall be made only for the actual number of hours worked by the trainee for whom the Employer paid wages. Overtime hours worked will be reimbursed at the straight hourly rate only. No reimbursement shall be made for work performed prior to the beginning date of the agreement, for work performed beyond the ending date of the agreement, for holiday or sick pay, nor for periods of work stoppage.
- i. In the event that a trainee terminates his or her employment with the Employer during the prescribed training period, regardless of whether the termination was voluntary or involuntary, payment to the Employer shall be made only for the actual number of hours worked by the trainee.

**\* Registered Apprenticeship:**

- a. Registered Apprenticeships require an additional agreement with the Bureau of Apprenticeship and Training, (BAT). For further information, refer to: <http://www.utahtraining.org/>
- b. The Department of Workforce Services has Certified Apprenticeship Representatives (CAR's) available in each Region who will work with employers to develop and coordinate apprenticeship opportunities.