DRAFT DIRECTIVE TRANSMITTAL

Number: WSDD-141
Date: April 22, 2016

TO: WORKFORCE DEVELOPMENT COMMUNITY

SUBJECT: SUBSIDIZED EMPLOYMENT AND EMPLOYEE BENEFITS

SUBJECT MATTER HIGHLIGHTS

This policy provides guidance for determining compliance with the employee benefit provisions of the *Patient Protection and Affordable Care Act* and *Healthy Workplaces, Healthy Families Act of 2014* for subsidized work based training and employment programs under the *Workforce Innovation and Opportunity Act*.

COMMENTS DUE

May 13, 2016

Comments can be submitted through one of the following ways:

Fax	WSD, Attention: Scott Osborne at 916-654-9753
E-Mail	Scott.Osborne@edd.ca.gov (Include "draft comments" in the subject line)
Mail	WSD / P.O. Box 826880 / MIC 69 / Sacramento, CA 94280-0001

All comments received by the end of the comment period will be considered before the final directive is issued. The Workforce Services Branch does not respond individually to each comment received. However, a summary of comments will be released with the final directive. **Comments received after the specified due date will not be considered.**

If you have any questions, contact Scott Osborne at 916-654-9762.

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EXECUTIVE SUMMARY

Purpose

This policy provides guidance for determining compliance with the employee benefit provisions of the *Patient Protection and Affordable Care Act* (ACA) and *Healthy Workplaces, Healthy Families Act of 2014* (HWHFA) for subsidized work based training and employment programs under the *Workforce Innovation and Opportunity Act* (WIOA).

Scope

This directive applies to all Local Workforce Development Areas (Local Areas).

Effective Date

This directive is effective on the date of issuance.

REFERENCES

- WIOA (Public Law 113-128)
- ACA (Public Law 111-148)
- Title 26 *Code of Federal Regulations* (CFR) Chapter 43, Section 4980H
- *California Assembly Bill* (AB) 1522, "HWHFA", Chapter 317, Statutes of 2014
- AB 304, "Sick Leave: Accrual and Limitations", Chapter 67, Statutes of 2015

STATE-IMPOSED REQUIREMENTS

This directive contains no state-imposed requirements.

The EDD is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities.

FILING INSTRUCTIONS

Retain this directive until further notice.

BACKGROUND

The WIOA emphasizes the importance of establishing an integrated and job-driven workforce system. Along with this comes an increased focus on using subsidized, work-based training and employment opportunities. Subsidized, work-based training and employment typically refers to a program in which WIOA funds are used to subsidize all or a portion of a participant's hourly wage for a specific period, while the participant receives training and/or employment. Examples of these programs include, but are not limited to, on-the job training and youth work experience.

Subsidized work-based training and employment has many benefits, such as providing participants with an opportunity to gain new skills, exposure to a new profession, and experience for their résumé. It can also serve as an effective transitional tool to move an unemployed participant into permanent employment. In addition, subsidized employment can be used in some emergency response situations where there is an urgent demand for short-term wage replacement, such as in the case of a National Dislocated Worker Grant.

POLICY AND PROCEDURES

Over the past several years, two important pieces of legislation were passed related to employee benefits. The ACA was signed into federal law by President Obama in 2010. It established a federal mandate for employers to provide health insurance to eligible employees. The HWFHA was signed into state law by Governor Brown in 2014. It established a State mandate for employers to offer paid sick leave to eligible employees.

Questions have arisen regarding whether the employer of record for a subsidized work based training and employment program is required to comply with the provisions found in the ACA and/or the HWHFA. Unfortunately, the State cannot provide blanket guidance on this topic. This is due to large variances in: (1) how each subsidized training and employment program is structured, (2) the laws and regulations that govern the employee benefits, and (3) the entities which oversee the laws. For example, the US Internal Revenue Service (IRS) provides guidance and oversight for the employer shared responsibility provisions of the ACA, whereas the California Department of Industrial Relations (DIR) provides guidance and oversight for compliance with the HWHFA.

In order to determine whether the employer of record would be subject to these laws, each WIOA subrecipient must review the provisions of its subsidized training and employment contracts (e.g., hours worked, type of work, length of employment) and compare them with the applicable federal or state guidance. A high level summary of key provisions found in each law, as well as links to additional sources of information, is provided below to assist WIOA subrecipients with this process.

Patient Protection and Affordable Care Act

Signed by President Obama in March 2010, the ACA was passed in order to increase the quality and affordability of health insurance, lower the uninsured rate by expanding public and private insurance coverage, and reduce the costs of healthcare for individuals and the government.

A key component of the ACA is the employer shared responsibility provisions, sometimes referred to as the employer mandate, which is a penalty that can potentially be incurred by employers who do not offer health insurance to their full-time workers. The IRS issued final regulations as well as a press release, fact sheet, and a series of questions and answers on this mandate. This guidance includes important changes and transition rules that may be of value to employers.

Several factors can determine whether the employer of record for a subsidized work based training or employment program would be subject to this mandate, as it relates to their WIOA subsidized employment. Therefore, WIOA subrecipients should look at their subsidized training or employment contracts and compare them with the applicable federal guidance.

For more information, please reference the following resources:

- ACA Tax Provisions for Large and Small Employers
- ACA Employer Shared Responsibility Provisions
- ACA Employer Shared Responsibility Provisions - Questions and Answers
- ACA Employer Shared Responsibility Provisions - Federal Regulations

Healthy Workplaces, Healthy Families Act of 2014

Signed by Governor Brown in September 2014, the HWHFA requires employers to provide paid sick leave to specified California employees beginning July 1, 2015.

Under this legislation, an employee working in California on or after July 1, 2015, for the same employer for 30 or more days within a year, is entitled to paid sick leave. The paid sick leave accrues at the rate of one hour for every 30 hours worked and is payable at the employee's current rate of pay. Employees are entitled to begin using any sick leave they have accrued on the 90th day of employment.

The HWHFA contains very limited exceptions of who is not considered to be an employee. These exceptions include, but are not limited to, the following:

- Employees covered by a valid collective bargaining agreement which provides for paid sick days.
- In-home support services employees.
- Airline flight deck or cabin crew employees who have equivalent benefits.
- Specified retired annuitants.

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Withstanding the exceptions identified in statute, including those listed above, this law applies to all temporary, part-time and full-time employees.

According to the HWHFA, employers are required to do the following:

- Allow eligible employees to use accrued paid sick leave upon reasonable request.
- Show how many days of sick leave an eligible employee has available. This must be on a paystub or a document issued the same day as a paycheck.
- Keep records for three years that show how many hours have been earned and used by an eligible employee.

For more information on the HWHFA and to determine whether your current contracts would be subject to any of the provisions, please visit the following resources:

- AB 1522 - *Healthy Workplace Healthy Family Act of 2014*
- AB 304 - *Healthy Workplace Healthy Family Act of 2014* Amendments
- *Healthy Workplace Healthy Family Act of 2014* Information and Guidance

ACTION

Please bring this guidance to the attention of all relevant parties.

INQUIRIES

If you have any questions, please contact your Regional Advisor at 916-654-7799.

/S/ JOSÉ LUIS MÁRQUEZ, Chief
Central Office Workforce Services Division

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