

COMMONWEALTH OF VIRGINIA
VIRGINIA COMMUNITY COLLEGE SYSTEM

WORKFORCE INVESTMENT ACT

VIRGINIA WORKFORCE LETTER (VWL) #10-01

TO: LOCAL WORKFORCE INVESTMENT BOARDS
FROM: WORKFORCE DEVELOPMENT SERVICES
SUBJECT: YOUTH WORK EXPERIENCE
DATE: MARCH 31, 2010

PURPOSE

To provide guidance to local workforce areas on work experience, particularly given the interest in work experience and related activities generated by the American Recovery and Reinvestment Act of 2009.

BACKGROUND

The work experience activity is one of the program elements available to youth participants under the Workforce Investment Act (WIA).

The purpose of the work experience activity is to provide the WIA 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 investment 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 WIA eligible youth participant. The Individual Service Plan (ISP) outlines the specific course of the short-term process. The ISP should clearly indicate how this activity is going to help the youth move to employment. Documentation to this effect is necessary.

Additional Guidance Relative to Employer-Employee Relationship, Wage Issues and Unemployment Insurance:

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 WIA payments received are not subject to withholdings by the employer nor the WIA 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).

A. 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 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.

B. IRS

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

According to the IRS definition of employer-employee relationship, the relationship between the WIA 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. See references.

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;	<i>Dept. of Labor (WIA)</i>
Be for the promotion of general welfare (i.e., generally based on individual or family needs); and	<i>Low income participant (WIA eligibility)</i>
Not represent compensation for services.	<i>Youth Training activity (WIA)</i>

The payments received by participants in the WIA program youth work experience activity meet the criteria for a general welfare exception. See attachment 1 and 2. These payments should not be considered gross income for tax purposes on a 1099-MISC or W-2.

C. Unemployment Compensation

At the completion of a work experience activity the participant is not eligible for unemployment compensation. Neither the worksite nor the WIA 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 WIA 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 WIA. 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 WIA program will follow the guidelines under Virginia's Child Labor Laws concerning the occupational duties of minors. (The Virginia Department of Labor and Industry is in the process of revising a document titled "Guide for the Employment of Teenagers" at the time of writing of this guidance which can be a resource for local areas once it is available).

TECHNICAL ASSISTANCE

Please review your program policies/procedures related to work experience to ensure compliance with this guidance. Local areas are also asked to forward such documents to Raymond Cousins (rcousins@vccs.edu).

Please contact Mr. Cousins at 804-819-1686 if you have any questions concerning this guidance.

References:

Clarification from the U.S. Department of Labor, Employment and Training Administration on January 20, 2005 in response to an inquiry from the VEC.

Workforce Investment Act; Final Rules, U.S. Department of Labor, Employment and Training Administration, (20 CFR §664.460 and §664.470).

Fact Sheet #13: Employment Relationship Under the Fair Labor Standards Act. U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division.

Trainees. elaws – Fair Labor Standards Act Advisor. U.S. Department of Labor.

School-to-Work. elaws – Fair Labor Standards Act Advisor. U.S. Department of Labor.

Publication 15, (Circular E), Employer's Tax Guide. U.S. Department of Treasury, Internal Revenue Service. Who are Employees?

Publication 15-A, Employer's Supplemental Tax Guide. U.S. Department of Treasury, Internal Revenue Service. Who are employees?

Guidance and clarification from the IRS. See attachment 1 and 2

Attachment 1

From: Valentine Wanda [Wanda.Valentine@irs.gov]
Sent: Wednesday, June 17, 2009 12:02 PM
To: Raymond Cousins
Subject: RE: Workforce Investment Act Work Experience Training

Our Chief Counsel generally advises those who have enquired about these types of programs to review Revenue Ruling. **63-136, 1963-2 C.B. 19; Rev Rul 68-38, 1968-1 C.B. 446; Rev Rul 71-425, 1971-2 C.B. 76, and Rev Rul 72-340, 1972-2 C.B. 31**, for examples of programs qualifying under the 'general welfare' exclusion.

Similarly, Rev. Rul. 65-139, 1965-1 C.B. 31, and Rev Rul 74-413, 1974-2 C.B. 333, for examples of circumstances generally not qualifying for exclusion. These revenue rulings are available on the IRS website and other internet sources. However, if you have trouble researching any of these rulings, please let me know.

After you have reviewed your program under these guidelines, if there are still remaining questions, please contact me. thanks.

Wanda Valentine
Internal Revenue Service
Senior Tax Analyst, TEGE
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Fax: 202-283-9797
e-mail: wanda.valentine@irs.gov <mailto:wanda.valentine@irs.gov>

From: Raymond Cousins [mailto:rcousins@vccs.edu]
Sent: Wednesday, June 17, 2009 11:40 AM
To: Suardi Lisa E
Cc: Valentine Wanda
Subject: RE: Workforce Investment Act Work Experience Training

Could you send the info you and others have found based on the the information provided and available to date.

Raymond Cousins, MPA
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From: Suardi Lisa E [mailto:lisa.suardi@irs.gov]
Sent: Wednesday, June 17, 2009 7:46 AM
To: Raymond Cousins
Cc: Valentine Wanda
Subject: RE: Workforce Investment Act Work Experience Training

Good Morning Mr. Cousins,
I have given you information myself and several others have found based on the information provided and available to date. Apparently there is quite a discussion going on about the ARRA funding. I have a contact for you that will assist in finding an answer to your employment tax questions regarding the WIA & ARRA program. You may call Wanda Valentine at 202-283-9804 or email her at wanda.valentine@irs.gov
Lisa Suardi
FSLG

From: Raymond Cousins [mailto:rcousins@vccs.edu]
Sent: Wednesday, June 10, 2009 3:15 PM
To: Suardi Lisa E
Subject: Workforce Investment Act Work Experience Training

I received your phone message indicating that these youth participants in the work experience training under the Workforce Investment Act (WIA) are not considered statutory exclusion and are considered student workers.

Why would a trainee in our program in a training activity come under the purview of the IRS as consideration for statutory exclusion when none of the following apply because they do not receive income:

The following kinds of income often received by students are generally taxable.
Pay for services performed

Self-employment income
Investment income
Certain scholarships and fellowships

How is it that these trainees are considered workers by the fact that the training sites are located at public or private organizations, businesses, agencies, etc...? These sites are identified by youth program providers through negotiation with the various entities related to the criteria and requirements of the WIA program. Sites that do not meet the training criteria are not used.

(a) Work experiences are planned, structured learning experiences that take place in a workplace for a limited period of time. As

provided in WIA section 129(c)(2)(D) and Sec. 664.470, work experiences may be paid or unpaid.

(b) Work experience workplaces may be in the private, for-profit sector; the non-profit sector; or the public sector.

(c) Work experiences are designed to enable youth to gain exposure to the working world and its requirements. Work experiences are appropriate and desirable activities for many youth throughout the year. Work experiences should help youth acquire the personal attributes, knowledge, and skills needed to obtain a job and advance in employment. The purpose is to provide the youth participant with the opportunities for career exploration and skill development and is not to benefit the employer, although the employer may, in fact, benefit from the activities (not services) performed by the youth.

A WIA program case-manager is assigned to constantly monitor the youth participant performance to ensure that the program objectives are being achieved. The payments they received are incentives for attendance and progress. These incentive payments are provided by the WIA program not the training site.

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Attachment 2

Internal Revenue Service General Welfare Exception — Summary of Authority

Qualify

Rev. Rul. 63-136, 1963-2 C.B. 19

Benefits paid to persons undergoing training excluded under general welfare exception where no services required.

Rev. Rul. 65-139, 1965-1 C.B. 31, clarified by Rev. Rul. 66-240, 1966-2 C.B. 19

Where state hires unemployed persons to perform socially beneficial work and pays reasonable compensation for work performed, employment relationship arises and payments are not general welfare payments.

Rev. Rul. 68-38, 1968-1 C.B. 446

Payments to participants in tribal program to train enrollees in construction skills to enhance employability are excludable under general welfare doctrine; main purpose is training.

Rev. Rul. 71-425, 1971-2 C.B. 70, modifying Rev. Rul. 67-144

Holding that on facts, payments to needy persons to participate in work experience programs to help them develop work habits to enhance employability are all excluded under general welfare exception.

Do not qualify

Rev. Rul. 72-340, 1972-2 C.B. 31

Stipend paid to encourage probationers to participate in job counseling/training/work experience program are general welfare payments; training.

Rev. Rul. 74-413, 1974-2 C.B. 333

Wages paid by state to short-term employees hired to assist in disaster clean-up are not excludible under general welfare exception despite needy status of hires.