



Memorandum

To: Panel Members

Date: November 14,
2014

From: Stewart Knox
Executive Director

File:

Subject: RETRAINEE-JOB CREATION GUIDELINES

This concerns proposed revisions to the Retrainee-Job Creation Guidelines that are designed to implement Panel policy in regard to “net new jobs.” There are other related revisions and a clarification of Funding Caps by Fiscal Year. See enclosed draft, with revisions in yellow highlight.

Background

The original Job Creation program began in October 2010 in response to the economic downturn. It was designed to foster economic expansion in California by providing funds to train newly-hired employees, especially in consideration of the fact that the pool of skilled labor may be lacking in a given industry sector or geographic region.

This program has always offered a higher reimbursement rate and a lower post-retention wage, than would otherwise apply to retraining. It has also waived Substantial Contribution and Turnover Rate, similar to Critical Proposals.

As originally created, funding under this program was limited to a contract for training newly-hired employees. This program was expanded in January 2011 to allow training for newly-hired employees and incumbent workers to be funded under the same Single Employer Contract.

The re-named Retrainee-Job Creation program allowed incumbent worker training under the same contract, as tracked in a separate Job Number. For reasons of administrative feasibility, this program has never applied to Multiple Employer Contracts.

Commitment to New Hires

Since the inception of this program, trainee eligibility has required a date-of-hire no earlier than three-months prior to Panel approval, referred to as a Benchmark Date. (Guidelines, *Overview*, p.2.) Likewise, it has always required a demonstration of the employer’s commitment to hire, such as: opening a new plant/facility, adding a new production shift, or expanding current production. (Guidelines, *Employer Eligibility*, p.2.)

Originally, this program did not extend to backfilling and routine replacement of workers. It was so extended in October 2011, in response to the continued economic downturn. The reasoning was that it would be better to fill a position with the incentive of training funds, rather than allow it to remain vacant. [Note: Laid-off workers who are re-hired were always deemed eligible, and remain so under the current Guidelines.]

Proposed Revision

The Panel questioned whether eligibility should extend to refilling and routine replacement at its meeting on August 29, 2014. This issue was called to the Panel's attention during public comment against prioritizing funding for the Retrainee-Job Creation program for the remainder of FY 2014-15. [Note: Eligibility for laid-off workers who are re-hired was not called into question.]

The Panel asked staff to limit eligibility to "net new jobs" and there was a brief discussion in favor of applying the same criteria as had been recently adopted by GO-Biz in regulations for the California Competes Tax Credit program. (T10, CCR Section 800(a).)

The first revision for "net new jobs" presented to the Panel on September 19, 2014 would have required ETP to compare the number of full-time permanent employees on payroll as of the Benchmark Date, against the number on payroll at end-of-term. The comparison would be made by reviewing an employer's quarterly wage reporting to the Employment Development Department. The Panel and public expressed concern that this approach was too complex and subject to misinterpretation.

Accordingly, the revision presented today has been simplified to an employer representation. The ETP Fiscal Unit will review this aspect of Retrainee-Job Creation eligibility along with date-of-hire. The employer representation is expected to be highly reliable, based on a sample test for date-of-hire conducted in 2012 by the ETP Fiscal Unit. Of the 2410 placements tested, only two trainees had been hired short of the Benchmark Date. This is a *de minimus* error rate. [Note: As an outcome, enrollment for the two erroneous placements was reversed and the trainees were re-enrolled as incumbent workers.]

New Contract Language

The Single Employer Contract templates (ETP 100Std and ETP100SB) will be revised to reflect the "net new jobs" requirements at *Section 2, Representations* and *Section 3.5, Trainee Eligibility*. Also, a definition of "net new jobs" will be added to the templates at *Exhibit D, Definitions*. This will apply to all contracts with Retrainee-Job Creation approved today and going forward, including approval by Delegation Order.

Recommendation

Adopt the proposed revisions effective November 14, 2014, on a prospective basis.



Guidelines for: **RETRAINEE-JOB CREATION**

Effective: January 1, 2011

Revision History: 11/14/14 Limits Employer Eligibility to funding for trainees hired into “net new jobs” and removes eligibility for routine replacement of workers. Revises Funding Caps to reflect the fact that they may change each Fiscal Year. Other minor clarifications. 4/26/13 Establishes that part-time and seasonal employees are eligible when moving into a full-time permanent position; clarifies that training may begin before employment so long as the trainee is employed full-time before retention; clarifies that the post-retention wage increase does not apply for HUA wage modification except for Seasonal Workers; clarifies that MECs do not qualify for Retrainee-Job Creation. 11/06/12 Revises to reflect 2012/13 funding cap increases approved at the October Panel Meeting. 07/13/12 Revises guidelines to reflect project funding caps for Fiscal Year 2012-13. 01/09/12 Clarifies that a Retrainee-Job Creation project may be funded under SET, in which case, SET trainees shall be subject to the ETP Minimum Wage for New-hires – not SET wages; Revises “*Job/Facility Expansion*” to “*Hiring Projection*” consistent with recent ETP130 template revisions. 10/26/11 Given the Administration’s increased focus on job creation, the Panel is further incentivizing training for newly-hired workers: 10/22/11 Revises the Fixed-Fee Reimbursement Rate (from Retrainee to New-Hire rate); revises the ETP minimum wage requirement (from Retrainee to New-Hire minimum wage); revises trainee eligibility hire period (from a 9 month benchmark, to 3 months before the date of project approval or within the term of contract); revises employer eligibility to allow backfilling and routine replacement of workers; adds criteria for amending and developing projects; and, revises GoED references to GO-Biz.

These are guidelines only. If a proposal raises the need for further modifications, that will be accomplished on a case-by-case basis with direction from Executive Staff. Unless modified by these guidelines, all other program criteria apply.

BACKGROUND

Given ETP’s limited core program funding for FY 2010-11, the Panel took action in October to establish funding priorities, caps and allocations. (Panel Memo dated 10/29/10.) The Panel allocated \$2 million for Critical Proposals funded in the remainder of this Fiscal Year. For the purpose of identifying projects to be funded under this allocation, Critical Proposals will consist of two parts: 1) referrals from GO-Biz, and 2) projects defined by ETP as “*Retrainee-Job Creation*” for single employers training newly-hired employees. [Note: The standards for developing Critical Proposals from GO-Biz remain unchanged, pursuant to Title 22, CCR Section 4402.2.]

The Retrainee-Job Creation program applies only to Single Employer Contracts. Training under a Multiple Employer Contract (MEC) does not qualify for this program.

OVERVIEW

Retrainee-Job Creation training is exclusively for newly-hired employees. Trainees must be hired within 3-months before the date of project approval, or within the term of contract as long as training and retention can be completed within the term of the agreement. The Panel will consider each employer's investment in new workers, evidence of expanded or new facilities, new equipment or machinery, or other measureable investment in hiring workers and expanding their California workforce.

GUIDELINES

Employer Eligibility: Employers must provide information to support their commitment to hire new employees, such as:

- Opening specific new plants or facilities, expanding or upgrading existing facilities, and/or repurposing existing unused space/buildings or facilities;
- Expanding existing business capacity by adding a new production shift;
- Expanding existing business capacity by adding newly-hired employees to an existing function; or,
- The recall or rehire of laid-off workers (backfilling) is allowed, ~~as well as routine replacement of workers,~~ with justification to show that the company is renewing a workforce that was reduced due to economic conditions or other reasons leading to attrition.
- The employer's commitment must be for hiring into a "net new job" and the employer must represent this commitment in the funding proposal. In addition, this representation will be made a condition of contract.
 - Part-time Workers, Seasonal Workers and Temp-to-Perm Workers are included in the requirement for hiring into a net new job.
 - Retrainee-Job Creation trainees who not meet either the date-of-hire or "net new jobs" eligibility requirement must be re-enrolled in an incumbent worker Job Number appropriate to the type of training and method of delivery.
 - As used here, "net new jobs" means the number of permanent-full-time employees on the Contractor's payroll must be higher by at least the number of Job Creation trainees who complete retention, as it was at start-of-term for the ETP Agreement.
- **Projects may be funded under the core program or SET.**
- Major Seasonal Industry employers are eligible, consistent with Seasonal Worker guidelines and the trainee eligibility standards shown below.

- Small Businesses (≤ 100 employees) are eligible. The contract term may be extended to 24 months, with justification (inclusive of both Job Creation and incumbent worker trainees).

Trainee Eligibility: Trainee eligibility is linked to the date of hire. As a benchmark, a trainee must be hired within 3-months before the date of project approval, or within the term of contract. The trainee must be hired on or after this date. The trainee may also be hired term of contract. (Fiscal will perform audits of hire dates prior to final payments.)

- Newly-hired employees are incumbent workers. They are identified as Retraitees (i.e. Chart 1) and must meet performance standards for Retraitees. However, trainees only need to meet the ETP minimum wage requirement for New Hires);
- Trainees will be eligible for enrollment so long as training and retention can be completed throughout the term of contract and existing training funds allow for reimbursement.
- A trainee whose employment is “Temp-to-Permanent” may be considered newly-hired, but employment retention cannot begin until the trainee is a permanent full-time employee on the Contractor’s payroll;
- A trainee whose employment is seasonal may be considered newly hired, but employment retention cannot begin until the trainee is a permanent full-time employee on the Contractor’s payroll;
- A trainee whose employment is part-time may be considered newly-hired, but employment retention cannot begin until the trainee is a permanent full-time employee on the Contractor’s payroll;
 - Part-time status is typically <24 hours a week but may be determined case-by-case based on the Contractor’s payroll guidelines or a Collective Bargaining Agreement.
 - Seasonal status is in accordance with the Seasonal Worker guidelines.
- Trainees are eligible to begin training while still employed as temporary workers or while in a part-time or seasonal position. For these trainees, the Job Creation eligibility benchmark is measured from date-of-hire into a permanent, full-time position.

Trainee Enrollment: At the time of enrollment, the Contractor must report the trainee date-of-hire in the On-Line Forms system.

Funding Cap: Funding Caps may apply in a given Fiscal Year. (See [Funding Limitations, Project Caps.](#))

- ~~**Projects with Retrainee-Job Creation only** - Projects will be capped at \$600,000 per contract. The scale and scope of the project must be consistent with the estimated number of newly hired trainees.~~
- ~~**Projects with Retraining and Retrainee Job Creation** — In larger single employer contractor (SEC) Retraining projects at the \$450,000 cap, a Retrainee-Job Creation component can increase the total project amount above the SEC cap. The total amount of funding for projects will be determined on a case-by-case basis, given~~

the scope of the Retraining component and the estimated number of newly-hired trainees. The total amount for Retrainee-Job Creation cannot exceed \$700,000.

Reimbursement Rate: Although Retrainee-Job Creation trainees are considered incumbent workers, training will be reimbursed at the New-Hire Fixed-Fee Reimbursement Rate.

Post-Retention Wage: Although Retrainee-Job Creation trainees are considered incumbent workers, training will be reimbursed at the New Hire Fixed-Fee Reimbursement Rate. For SET-funded projects, trainees are subject to the ETP Minimum Wage for New Hires, rather than SET wages. The requirement for an increase between pre- and post-retention wages for retraining in a HUA does not apply, except for Seasonal Worker training.

Substantial Contribution: The Substantial Contribution requirement does not apply to Retrainee-Job Creation. In projects that contain both Job Creation and a non-Job Creation component, Substantial Contribution will not apply to the Job Creation Job Number.

Turnover Rate: Employers will be required to provide turnover rate information. Employers with greater than 20% turnover in the preceding year will be required to provide an explanation. However, a turnover penalty will not be assessed.

Contract Term: Contracts will be written for standard 24 month terms. Contractors that complete contract performance in less than two years should be encouraged to closeout their contracts early by submitting final invoices.

Amendments:

- **Adding a Retrainee- Job Creation Component** - A SEC may amend an active Retraining project to add a Retrainee-Job Creation component. A new job number for Job Creation trainees must be added by amendment (no modifications).
- **Adding a Retraining Component** - It is not permissible to amend an active Retrainee-Job Creation project to add a Retraining component for the purpose of transferring funds from a failing Job Creation component to Retraining.
- **Shifting Funds Between Existing Job Numbers** - Funding allocated for Retrainee-Job Creation can only be shifted to Retraining Job Numbers by amendment (no modifications) - and only if the total funding for Retraining remains capped at \$450,000 within the current FY caps.

Developing Projects with Retraining and Retrainee-Job Creation:

- A SEC may develop a project with both Retraining and Retrainee-Job Creation components. Applicants with tangible job creation targets for "net new jobs" should be encouraged to create a separate Job Number in their projects for trainees hired 3 months prior and during the term of the agreement. The number of Retrainee-Job Creation trainees will be based on a company's best projection of hiring during the

window period. Projection should be accompanied by brief narrative of business factors supporting the Job Creation numbers.

- ~~In Retraining projects that are at or near the \$450,000 cap, a Retrainee-Job Creation component can increase the total project amount the cap. The additional amount would be based on the company's projection for hiring supported by the narrative justification — not to exceed the \$600,000 Retrainee-Job Creation cap, or \$700,000 for training projects which contain retraining and job creation components. The total project amount will be determined on a case-by-case basis, given the scope of both Job Numbers.~~
- At the time of development, if a company anticipates they might hire new employees **consequently creating an increase of "net new jobs"** but is not ready to commit to a Retrainee-Job Creation component, Development Analysts should let them know that ETP will do a follow-up in three to six months to see if their anticipated hiring plans solidified, and at that time, if appropriate, a Retrainee-Job Creation Job Number for additional funding can be added to the project by Panel Amendment (**so long as total funding conforms to the FY caps in effect at the time**). Also, this factor should be identified in the ETP130 under the subheading "**Hiring Projection**" for data collection by the P&R Unit.