

Title 6. Education

Chapter XI. Arkansas Economic Development Commission, Department of Commerce

Subchapter A. Generally

Part 445. Arkansas Existing Workforce Training Act of 1995 (Acts 1995, No. 791, as amended)

Subpart 1. Generally

6 CAR § 445-101. Introduction.

(a)(1) The primary purpose of the Arkansas Existing Workforce Training Program is to:

(A) Provide financial assistance in the form of a direct grant or an income tax credit to Arkansas businesses and industries for the delivery of customized, industry-specific training to upgrade the knowledge and skills of the existing workforce or a potential new workforce; and

(B) Increase the capacity of state-supported educational institutions to supply the ongoing training needs of Arkansas companies.

(2) See Arkansas Code § 6-50-701 et seq.

(b) Eligible recipients of program assistance are defined in this part.

(c) For additional information contact:

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Authority. Arkansas Code § 6-50-704.

6 CAR § 445-102. Definitions.

As used in this part:

(1) "Basic skills training" means training in those math, reading, English, communication (listening, oral, and written) and computer literacy skills that a person can reasonably be expected to have attained by the end of the twelfth grade, except in the instance of potential new workforce training;

(2)(A) "Classroom training" means instructor-led training that is provided outside of the process of the production of goods or the delivery of a service.

(B) It means the simultaneous delivery of training by a trainer to a group of trainees.

(C) Classroom training is usually delivered in an instructional setting removed from the plant floor or laboratory and does not include training delivered via:

(i) On-the-job training; or

(ii) A self-paced mode;

(3) "Company" means a business currently operating in the state that has filed an Arkansas corporate income tax return for the year prior to the year in which the application was submitted and meets eligibility criteria;

(4)(A) "Consortium" means a group of companies which includes at least three (3) eligible companies, as defined in 6 CAR § 445-103 and for fiscal purposes is either a private, not-for-profit corporation or is an organized group that has:

(i) A coordinating board or committee;

(ii) A mission statement; and

(iii) Bylaws and a bank account requiring at least two (2) consortium member signatures.

(B) Consortia may have members that are not eligible companies as long as at least three (3) of the consortium member companies are eligible companies.

(C) To receive the maximum amount of financial assistance, at least fifty percent (50%) of the participants completing each course must be employees of eligible companies;

(5)(A) "Consumable materials and supplies" means training materials, including textbooks, which are provided to each student and trainer and will not be reused in future training sessions.

(B) This does not include the purchase of equipment or food and drinks;

(6)(A) "Corporate headquarters" means the facility or portion of a facility where corporate staff employees are physically employed, and where the majority of the company's financial, personnel, legal, planning, information technology, or other headquarters-related functions are handled either on a regional basis or national basis.

(B) These facilities include establishments primarily engaged in administering, overseeing, and managing other establishments of the company or enterprise as classified in sector 551114 of the North American Industry Classification System.

(C) A corporate headquarters must be a regional corporate headquarters or a national corporate headquarters;

(7) "County or state average hourly wage" means the weighted average weekly earnings for Arkansans in all industries, both statewide and countywide, as calculated by the Division of Workforce Services in its most recent annual Covered Employment and Earnings publication, divided by forty (40);

(8) "Customized industry-specific training" means training that is developed and/or customized to meet the specific needs of the company;

(9) "Director" means the Director of the Arkansas Economic Development Commission;

(10) "Distribution center" means a facility for the reception, storage, and shipping of:

(A) A business's own products or products that the business wholesales to retail businesses or ships to its own retail outlets if seventy-five percent (75%) of the sales revenues are from out of state;

(B) Products owned by other companies with which the business has contracts for storage and shipping if seventy-five percent (75%) of the sales revenues of the product owner are from out-of-state customers; or

(C) Products for sale to the general public if seventy-five percent (75%) of the sales revenues are from out-of-state customers;

(11) "Eligible recipients" means a full-time, permanent employee of an Arkansas company or consortium who is subject to the Arkansas personal income tax;

(12) "Full-time, permanent employee" for the purposes of this program, means a person working at an Arkansas company who works at least thirty (30) hours per week;

(13) "Governing council" means the directors, or their designees, of the:

(A) Arkansas Economic Development Commission;

(B) Division of Higher Education; and

(C) Division of Career and Technical Education;

(14)(A) "Instructional hour" means the unit of time devoted to the delivery of training to a group of trainees that is used in the calculation of the allowable reimbursement.

(B) An instructional hour is sixty (60) minutes in length, including breaks, and relates to training delivered in a classroom setting only.

(C) It is not relevant to training delivered via on-the-job training or to training delivered via a self-paced mode;

(15)(A) "Intermodal facility" means a facility with more than one (1) mode of interconnected movement of freight or commerce.

(B) All businesses in this group shall derive at least seventy-five percent (75%) of their sales revenue from out of state;

(16)(A) "Internal training" means classroom training provided to company employees by company trainers that may be either full-time employees of the company or consultants paid by the company.

(B) Support for internal training can only be in the form of an income tax credit;

(17) "National corporate headquarters" means the sole corporate headquarters in the nation that handles headquarters-related functions on a national basis;

(18) "Nonretail business" means a business that derives less than ten percent (10%) of its total Arkansas revenue from sales to the general public;

(19) "Office sector business" means:

(A) Business operations that support primary business needs, including, but not limited to:

- (i) Customer service;
- (ii) Credit accounting;
- (iii) Telemarketing;
- (iv) Claims processing; and
- (v) Other administrative functions; and

(B) All businesses in this group must be nonretail businesses and derive at least seventy-five percent (75%) of their sales revenue from out of state;

(20)(A) "Partnership" means a group of eligible companies that identifies a common training need and arranges for a class or series of classes to meet this need without forming a formal consortium.

(B)(i) In this case, one (1) company serves as the fiscal agent for the group and a single application is submitted for the identified class or classes which meet the needs of the group.

(ii) The fiscal agent would assume fiscal responsibility for:

(a) Collecting each participating company's share of the training cost;

(b) Paying the training provider; and

(c) Maintaining the required records and receipts required by the Arkansas Existing Workforce Training Program.

(C) Unlike consortia, partnerships cannot include ineligible companies;

(21) "Potential new workforce" means two (2) or more eligible companies with common job skill requirements requiring a minimum of fifteen (15) new employees and conducting a minimum of fifteen (15) hours of preemployment training, thereby allowing prospective employees and employers an opportunity to evaluate each other before making employment commitments;

(22)(A) "Prerequisite literacy skills" means those basic skills needed in order to learn the content of a given training course.

(B) Necessary prerequisite skills will vary depending on the course and should generally be determined using a test suited to the purpose;

(23) "Region" or "regional" means a geographic area comprising two (2) or more states including this state;

(24) "Regional corporate headquarters" means a site that:

(A) Is the sole corporate headquarters within the region; and

(B) Handles headquarters-related functions on a regional basis;

(25) "Scientific and technical services business" means a business:

(A) Primarily engaged in performing scientific and technical activities for others, including:

(i) Architectural and engineering design; and

(ii) Computer programming and computer systems design;

(B) Selling expertise;

(C) Having production processes that are almost wholly dependent on worker skills; and

(D) Deriving at least seventy-five percent (75%) of their sales revenue from out of state;

(26) "Skills upgrade training" means new skills and knowledge development necessary to:

(A) Enhance productivity;

(B) Improve performance; and

(C) Make the company more competitive;

(27) "State-supported educational institution" means a secondary or post-secondary Arkansas educational institution that receives the majority of its funding from state or local tax revenues except that, for purposes of this rule, Texarkana College may be considered a state-supported educational institution for the purpose of delivering training services to eligible companies located in Miller County, Arkansas,

provided Texarkana College continues to waive out-of-state tuition for residents of Arkansas; and

(28)(A) "Training consultant" means a person whose primary source of income comes from charging clients for the delivery of customized training or a person who has formed a business, is a partner in a business, or works for a business whose primary purpose is to provide customized training to clients.

(B) The use of training consultants in this program is to be initiated only by a state-supported educational institution or an Arkansas Economic Development Commission representative.

Authority. Arkansas Code § 6-50-704.

6 CAR § 445-103. Qualification requirements.

To qualify for the Arkansas Existing Workforce Training Program, a business must:

(1) Be classified in one (1) of the following:

(A) Manufacturers classified in sectors 31-33 in the North American Industry Classification System;

(B) Manufacturers classified in sectors 20-39 according to the Standard Industrial Classification standards but which are classified under the North American Industry System in another sector;

(C)(i) Businesses primarily engaged in:

(a) The design and development of prepackaged software;

(b) Digital content production and preservation;

(c) Computer processing and data preparation services; or

(d) Information retrieval services.

(ii) All businesses in this group shall derive at least seventy-five percent (75%) of their sales revenue from out of state;

(D)(i) Businesses primarily engaged in motion picture productions.

(ii) All businesses in this group shall derive at least seventy-five percent (75%) of their sales revenue from out of state;

(E)(i) Intermodal facilities or distribution centers.

(ii) All businesses in this group shall derive at least seventy-five percent (75%) of their sales revenue from out of state;

(F)(i) Office sector businesses.

(ii) All businesses in this group shall derive at least seventy-five percent (75%) of their sales revenue from out of state;

(G)(i) Firms primarily engaged in commercial, physical, and biological research.

(ii) All businesses in this group shall be classified in the North American Industry Classification System code 541710;

(H)(i) National or regional corporate headquarters.

(ii) All businesses in this group shall be classified in the North American Industry Classification System code 551114, provided that a national or regional headquarters serves more than one (1) state;

(I)(i) Scientific and technical services businesses.

(ii) All businesses in this group shall derive at least seventy-five percent (75%) of their sales revenue from out of state;

(J)(i) Building trade industries.

(ii) All businesses in this group as classified in the North American Industry Classification System codes 236 and 238.

(iii) Businesses classified in a North American Industry System code 23899 shall not qualify as building trade industries;

(K)(i) Air transport businesses.

(ii) All businesses in this group as classified in the North American Industry Classification code 488190.

(iii) These businesses are primarily engaged in:

(a) Aircraft maintenance;

(b) Repair services; and

(c) Aircraft testing; and

(L) The Director of the Arkansas Economic Development Commission may classify a nonretail business as an eligible business if the following conditions exist:

(i) The business must derive at least seventy-five percent (75%) of its sales revenue from out of state; and

(ii) The business proposes to pay wages in excess of one hundred ten percent (110%) of the county or state average wage, whichever is less;

(2) Submit a valid application to the Arkansas Economic Development Commission at least ten (10) business days before training begins;

(3) Provide assurance that the participants involved in the proposed training program possess the prerequisite literacy skills;

(4)(A) Clearly tie the proposed training to specific business goals and performance objectives, such as:

(i) Reduction of cycle time;

(ii) Scrap;

(iii) Rework;

(iv) Inventory; or

(v) Various other quality objectives.

(B) The application must state the specific business goals and how the proposed training program will assist in meeting these goals;

(5) Provide assurance that Arkansas Existing Workforce Training Program funds will not be used for training that is authorized under another state or federal program; and

(6)(A) Provide training that upgrades the knowledge and skills of the existing worker.

(B) The intent of the Arkansas Existing Workforce Training Program is to provide employees with company-specific, skill-specific, and/or specialized equipment-specific skills that enhance their knowledge and skill level.

(C) It is not the intent to provide courses on company administrative issues and/or policy and procedures or courses that the majority of employees go through that cover all general information.

(D) Therefore, the following courses/topics are not eligible:

- (i) Labor relations;
- (ii) Grievance processes;
- (iii) Disciplinary issues;
- (iv) Complaint procedures;
- (v) Discrimination;
- (vi) Quid pro quo;
- (vii) Employee fair treatment;
- (viii) Harassment;
- (ix) Employee rights;
- (x) Family Medical Leave Act;
- (xi) Sexual harassment;
- (xii) Violence in the workplace; and
- (xiii) Cultural diversity when dealing with these topics/issues.

Authority. Arkansas Code § 6-50-704.

6 CAR § 445-104. Powers and duties of the Arkansas Economic Development Commission.

(a) The Arkansas Existing Workforce Training Program will be jointly administered by the:

- (1) Arkansas Economic Development Commission;
- (2) Division of Career and Technical Education; and
- (3) Division of Higher Education.

(b) All decisions regarding the eligibility of an applicant, an individual application, or parts of an application will be made by a governing council comprising the directors of the three (3) administering agencies or their designees.

(c) All day-to-day administrative functions required to operate the program will be carried out by the commission.

Authority. Arkansas Code § 6-50-704.

6 CAR § 445-105. Terms of financial assistance.

(a)(1) Arkansas Existing Workforce Training Program applications, whether for tax credits or for direct assistance, will only be accepted and considered for approval when completed by coordinators who have completed the Arkansas Economic Development Commission's Arkansas Existing Workforce Training Program application training process.

(2) These are designated coordinators from:

- (A) A state-supported educational institution;
- (B) The commission; or
- (C) An established training consortium.

(b) Classroom training.

(1) For companies or consortia that use state-supported educational institutions to deliver classroom training to their employees, the amount of support, whether in the form of a grant or tax credit, a company or consortium receives shall be the lesser of:

(A) One-half (1/2) of the amount paid by the company/consortia to the state-supported educational institution for the training, or:

(i) One hundred dollars (\$100) per instructional hour multiplied by the number of instructional hours and at least fifty percent (50%) of the participants completing each course must be from eligible companies;

(ii) Thirty-five dollars (\$35.00) per instructional hour multiplied by the number of instructional hours for eligible safety-related training; or

(iii) Thirty-five dollars (\$35.00) per instructional hour multiplied by the number of instructional hours for all courses if less than fifty percent (50%) of the participants completing each course are from eligible companies.

(2) For companies that use their own employees or company-paid consultants to deliver classroom training to their employees, the amount of the Arkansas income

tax credit, set by the governing council, shall not exceed twenty-five dollars (\$25.00) per instructional hour.

(3)(A) The minimum class size needed to receive full benefits is five (5) trainees.

(B) For classes smaller than five (5), the amount of support will be reduced proportionally.

(c) Training delivered by means other than classroom training.

(1)(A) Computer-based training, training delivered via interactive videos, or distance learning has variable costs.

(B) Applications involving these types of training will be evaluated on a case-by-case basis.

(2) Applicants must include, at a minimum, but are not limited to, the following information to be considered:

(A) The number of students to be trained;

(B) The number of training hours per student; and

(C) The cost per instructional hour to deliver the training.

(d) **Determination of benefits.** Using an internal trainer or training consultant paid by the company - (Arkansas Income Tax Credit Only):

(1)(A) For companies that use an internal trainer to deliver classroom training to their employees, the amount of the tax credit shall be based on a rate, set by the governing council, not to exceed twenty-five dollars (\$25.00) per instructional hour multiplied by the number of instructional hours delivered.

(B) The company's cost per instructional hour is determined by adding the company's cost for the instructor while in class (salary plus fringe), including the company's cost for expendable materials and supplies for the course;

(2)(A) For companies that use a training consultant to deliver classroom training to their employees, the amount of the tax credit shall be based on a rate, set by the governing council, not to exceed twenty-five dollars (\$25.00) per instructional hour multiplied by the number of instructional hours delivered.

(B) The company's cost per instructional hour is determined by dividing the training consultant's fees for the eligible training by the number of instructional hours delivered; and

(3) If fewer than five (5) trainees attend a course, the instructional hour rate will be reduced proportionally.

(e) **Restrictions.**

(1) The maximum combined Arkansas Existing Workforce Training Program support in the form of financial assistance and/or tax credits for any one-company site (including a company's participation in a consortium) cannot exceed fifty thousand dollars (\$50,000) per calendar year.

(2)(A) The total amount of tax credits that can be approved per calendar year cannot exceed four hundred fifty thousand dollars (\$450,000) for all applicants.

(B) Tax credits will be reserved on a tax year basis, but total tax credits approved will not exceed four hundred fifty thousand dollars (\$450,000) during any calendar year.

(C) Tax credits will be reserved on a first-come, first-served basis.

(3)(A) An individual application will not be accepted if the financial assistance or tax credit is less than four hundred dollars (\$400).

(B) Neither tax credits nor financial assistance checks will be issued for an amount less than four hundred dollars (\$400).

(4) Courses that contain less than two (2) instructional hours in length will not be eligible for reimbursement.

(5) The Arkansas Existing Workforce Training Program does not financially support, directly or indirectly, wages paid by the company to trainees.

(6)(A)(i) Neither grant funds nor tax credits shall be used to support any training that is mandated by any state or federal law or regulation.

(ii) Certain safety training courses will be allowed.

(iii) The governing council will determine allowable courses.

(B) It is not the intent of this program to support training that does not raise the skills of the workers and increase their earning potential.

(7) The Arkansas Existing Workforce Training Program, as a customized industry-specific training program, does not pay tuition costs for company employees who enroll in regular educational institution programs and/or apprenticeship training programs.

(8)(A)(i) One of the primary objectives of the Arkansas Existing Workforce Training Program is to develop the capacity within our state-supported institutions to meet the customized training needs of businesses and industries.

(ii) Trainers who are full-time faculty or adjunct faculty at a state-supported educational institution meet this objective.

(iii) Persons in the private business of delivering training do not.

(B)(i) Therefore, the Arkansas Existing Workforce Training Program does not allow training consultants to sell their training services to business and industry and then have the training channeled through a state-supported educational institution after the fact in order to gain a higher rate of reimbursement for the company.

(ii) Therefore, if the instructor is hired in this way, the company will only qualify for a tax credit at a rate, set by the governing council, not to exceed twenty-five dollars (\$25.00) per instructional hour.

(9)(A) In situations where full-time employees of an eligible company are also adjunct faculty of a state-supported educational institution and are delivering training to their primary employer, the company cannot claim the higher rate of financial support.

(B) The internal trainer rate applies in this instance.

(10)(A) Tax credits are earned in the tax year in which the training is completed and the final report is received.

(B) Because tax credits cannot be carried forward, a final report for training that concludes within a company's tax year must be mailed in and received by the commission no later than ten (10) days following the end of the company's tax year in order to earn the tax credit.

(C) There is an annual limit of four hundred fifty thousand dollars (\$450,000) on the total tax credits that can be issued to all companies.

(D) Therefore, tax credits are issued when the final report is received.

(11)(A) Financial assistance is earned in the calendar year in which the training is completed and the final report is received.

(B)(i) Final reports for financial assistance must be mailed in and received at the commission no later than one (1) month following the completion of training in order to earn financial assistance.

(ii) Final reports that are not received within this time frame will not be accepted and no financial assistance will be earned.

(C)(i) For applications containing more than one (1) course, the ending date of the last course to be completed will be used as the ending training date.

(ii) The commission must approve any extension of the ending training date or dates.

(12) For companies requesting an income tax credit, a single tax credit certificate will be issued within thirty (30) days following the end of the company's tax year for all projects submitted during that tax year.

(f) Eligibility of training consortia.

(1)(A) A training consortium is a formal organization of businesses and industries, organized to identify common training needs in the community and to arrange customized business/industry-specific training to meet the identified training needs.

(B)(i) The role of a consortium is to "broker" training for its members.

(ii) It is not the role of a consortium to be a training provider.

(iii) A training provider's primary function is to provide educational or training services.

(2)(A) A consortium may have members that are not eligible companies as long as at least three (3) of the consortium member companies are eligible companies.

(B) Companies participating in training which are not eligible companies must be joined in the training and complete the training with an equal or greater number of eligible company participants to receive the higher rate of reimbursement.

(C) If the number of eligible participants in a class falls below fifty percent (50%), the amount of assistance is reduced to thirty-five dollars (\$35.00) per instructional hour.

(3) In order to be recognized as a training consortium, the following conditions must be met:

(A) The consortium must possess a federal Taxpayer Identification Number assigned by the Internal Revenue Service;

(B) The consortium must have officers, elected by the membership, and the person serving as president (director, chairperson, etc.) must sign the application;

(C)(i) The person signing the application for assistance on behalf of the consortium must be willing to assume fiscal responsibility for expending the assistance funds for the purpose stated in the application.

(ii) If the consortium is a not-for-profit corporation, the board of directors would be the responsible party;

(D) A consortium must maintain and provide a current list to the Arkansas Existing Workforce Training Program's governing council of the consortium officers, their company affiliation, consortium responsibilities, and designate which officers are fiscally responsible to sign Arkansas Existing Workforce Training Program applications and final reports;

(E) A consortium must provide a list of all the participating businesses, their North American Industry System codes, and the proportion of the total financial assistance allocated to each business following the completion of a training project in order for payment to be made;

(F) When an eligible consortium uses a state-supported educational institution to provide their classroom training, financial support can only be in the form of a grant; and

(G) When training is conducted for one (1) company only, the individual company shall submit the Arkansas Existing Workforce Training Program application.

(g) Eligibility of partnerships.

(1) Two (2) or more eligible companies may join together to develop a minimum class size of at least five (5) trainees in order to:

(A) Receive the full financial benefit of the Arkansas Existing Workforce Training Program;

(B) Avoid having the amount of support reduced proportionally; and

(C) Assure the most efficient use of training opportunities.

(2) A partnership must provide a list of all the participating businesses, their North American Industry System codes, and the proportion of the total financial assistance allocated to each business following the completion of a training project in order for payment to be made.

(3) Unlike consortia, partnerships cannot include ineligible companies.

(4) Financial support for eligible partnerships can only be in the form of a grant.

(h) Eligibility of state-supported institutions for train-the-trainer assistance.

(1) In most cases, the reasonable costs of training a regular or adjunct faculty member of a state-supported educational institution to deliver company-specific training will be up to fifty percent (50%) of the cost to the educational institution for the training.

(2) The following conditions apply:

(A) The costs of upgrading the skills of regular or adjunct faculty (not including the faculty member's salary) of a state-supported educational institution may be allowed when the skills upgrade is directly related to an industry-specific training project, if:

(i) A documented need exists; and

(ii) No qualified instructor can be found;

(B) The maximum amount allowed for train-the-trainer:

(i) Will depend on the current and anticipated future demands for training in the subject area; and

(ii) Cannot exceed fifty percent (50%) of the institution's cost; and

(C)(i) Train-the-trainer will not be approved for an educational institution's faculty or adjunct faculty to gain the skills needed exclusively to teach a college credit course.

(ii) Assistance for training trainers will be paid directly to the educational institution.

Authority. Arkansas Code § 6-50-704.

6 CAR § 445-106. Administration of benefits.

(a) Company responsibility.

(1) Participating companies are responsible for all costs associated with the training of company employees.

(2) A portion of the costs incurred by the company may be offset by the Arkansas Existing Workforce Training Program, subject to:

- (A) Funds and tax credit availability;
- (B) Limitations set forth in these rules; and
- (C) Regulations and the approval of the governing council.

(b) Payments.

(1) Payments will be made or tax credits will be issued after:

- (A) The training is completed; and
- (B) The final report is received at the Arkansas Economic Development

Commission.

(2) All payments to companies, consortia, or educational institutions and all tax credits to companies by the program will be on a cost reimbursement basis, supported by auditable documentation.

Authority. Arkansas Code § 6-50-704.