



## **Credits & Incentives talk with Deloitte**

California employment  
training panel

By Kevin Potter and Lesley Miller  
Deloitte Tax LLP

January 2017

*CREDITS & INCENTIVES TALK WITH DELOITTE*

## California Employment Training Panel

*KEVIN POTTER is a Managing Director in Deloitte Tax LLP's National Credits & Incentives practice. Kevin currently manages statutory credit and negotiated incentive reviews and other similar projects for large and mid-size multistate corporations. You can follow Kevin on Twitter @Kevin\_S\_Potter. LESLEY MILLER is a Manager with Deloitte Tax LLP's National Credits & Incentives practice and focuses on negotiated programs in the West and state training grants related to state and federal employment incentives. Lesley holds a Master of Public Administration from San Francisco State University and is also a Certified Economic Developer (CEcD). BRUCE KESSLER is a Managing Director in Deloitte Tax LLP's National Credits & Incentives practice based in San Francisco. Bruce focuses on negotiating incentives for a wide variety of industries. This column does not constitute tax, legal, or other advice from Deloitte Tax LLP, which assumes no responsibility with respect to assessing or advising the reader as to tax, legal, or other consequences arising from the reader's particular situation. Copyright 2016 Deloitte Development LLC. All rights reserved.*

The quantity and quality of a state's workforce is one of the important variables a company considers when seeking to locate or expand in a particular location. As noted in *Site Selection Magazine*, the shortage of trained workers, coupled with increased demand for specific skills, is one of the most significant economic development challenges facing employers.<sup>1</sup> One way that state and local economic development organizations seek to meet this challenge is by providing training grants to businesses. Such training grants enhance the ability of a business to create, develop and implement training programs designed to improve job specific skills for its workforce. Incentivizing companies to enhance their workforce skillsets through increased training can also favorably impact the size of a state's skilled labor pool and overall wage growth.

In today's economy, continual training, learning and development of employee skillsets is important for all organizations. Training grants heighten both the public and private sector focus on learning and development strategies as well as respond to the changing needs of employees and employers. By

assisting and encouraging companies to expand their employee learning and development training budgets, state and local jurisdictions, along with the employees themselves, stand to benefit from increased job retention and wage growth.

As Thomas Picketty notes in *Capital in the 21st Century*, the only predictable factor that drives earnings potential is "skills and knowledge." Further, as highlighted in the recent Deloitte *Global Human Capital Trends 2016*, 84% of executives viewed learning and training as an important or very important issue. The report notes: "[E]mployees at all levels now recognize that the 'learning curve is the earning curve,' and they are demanding access to dynamic learning opportunities that fit their individual needs and schedules."

Through programs such as employee training grants, training partnerships with local community colleges and vocational schools, specialized training programs for at-risk youths or veterans, re-training of retirees and apprenticeships, many states seek to provide a strong incentive for companies to implement wide-ranging and effective training programs for their workforce. One robust training program at the state level is the California Employment Training Panel (hereinafter the "ETP").

The ETP is a California-wide business/labor training and economic development program. Established in 1982, the ETP has been a significant force in impacting employee earnings and increasing job retention.<sup>2</sup> While originally charged with increasing the skill level of unemployed and displaced workers, the ETP has expanded its role over the years to increasingly support the retraining of incumbent workers by focusing on empowering employers to take more responsibility for training their employees. The ETP has granted large and small businesses, educational institutions and training partners over \$1.3 billion to train and retain over 900,000 workers employed by over 80,000 California businesses.<sup>3</sup>

The majority of the funding for the ETP derives from the Employment Training Tax paid by employers, which equals one-tenth of one percent of the first \$7,000 of income per employee collected as a component of the California unemployment insurance taxes.<sup>4</sup> Over the last ten years, funding has typically ranged from \$60 million to \$100 million per year. For fiscal year 2016-2017, the ETP received a budget appropriation of approximately \$76 million, with a projected contracting capacity (i.e., the amount of funding available in the form of training grants) of approximately \$90 million.<sup>5</sup>

Five types of entities are eligible for ETP grants. These include the following:

- single employers that are subject to the unemployment insurance tax;
- groups of employers, such as trade associations or economic development corporations;
- training agencies, including community colleges or occupational programs;

- Workforce Development Boards; and
- Workforce Investment Act (WIA) Grant Recipients or WIA Administrative Entities.<sup>6</sup>

The ETP allows the grant recipient to train employees in-house, using their own trainers or hiring California-based training vendors. The grant recipient is not required to partner with local universities, colleges or training institutions to prepare curriculum and deliver training. Instead of focusing on pre-employment job training necessary to train or retrain unemployed workers to meet a perceived industry need, the ETP focuses on reimbursing the costs of employer-driven training designed to enhance the skills of an already employed workforce.<sup>7</sup>

As noted in the ETP Strategic Plan 2016-2017, the success of the ETP training grants is predicated on "simple but effective principles" of an employer making decisions about training and taking responsibility for the training, thereby promoting wage increases and profitability. The ETP program also distinguishes itself by providing reimbursement for a wide variety of training—ranging from advanced technology and manufacturing skills to business skills and continuous improvement opportunities.

Course work that is not generally eligible for reimbursement includes new hire orientation, courses that are required to maintain a license, or training required by a regulatory agency. Certain computer software, safety and literacy training may also be excluded, depending on the type of training and project facts.<sup>8</sup>

The grant provided by the ETP to an eligible and approved business is a post-performance cash grant. A recipient can only earn reimbursement for training costs after a trainee completes training and is retained for a minimum time period at a required wage. Fixed fee reimbursement rates are used to determine the amount the ETP will reimburse a business for each person trained. The fixed fee rates for fiscal years 2016-2017 are based on the following: (1) the type of trainee or program and (2) the delivery model to be used for the training.

For example, for retraining an incumbent employee in a standard business, the ETP will reimburse at the rate of \$15 an hour for classroom and/or videoconference training and \$8 an hour for computer-based training. For a newly hired employee the fixed fee rate is \$20 an hour for classroom and/or videoconference training and \$8 an hour for computer-based training. Computer-based training is limited to 50% of an employee's total ETP funded training.

For priority industries, the rate for classroom training could be as high as \$26 an hour. Additionally, increased reimbursement rates of between \$18 and \$26 may be granted for training certain groups, certain advanced technology training, or to companies deemed to be in a priority industry.<sup>9</sup>

Each fiscal year, the ETP identifies "priority industries" that are incentivized with higher reimbursement rates. The priority industries for the current fiscal year include the following:

- agriculture;
- allied healthcare;
- biotechnology and life sciences;
- construction;
- green/clean technology;
- goods movement and transportation logistics;
- information technology services;
- manufacturing;
- multimedia/entertainment; and
- technical services (including architects, engineers, computer systems design and research and development).<sup>10</sup>

Additionally, certain industries are identified to receive the lowest priority in the award of training grants.<sup>11</sup>

ETP contracts last for a two-year period and may reimburse an employer up to \$900,000 per contract. During the two-year period, the first twenty-one months are reserved for training delivery, followed by a three-month employee retention period. A trainee must receive a minimum of 8 hours of qualified training. The maximum hours of training allowed are generally 200 hours per trainee. Reimbursement is earned when the training is completed and the retention period has been met. Minimum wage thresholds also apply and vary based on project designation, location, and other project facts.<sup>12</sup>

ETP contracts generally fall into three categories, as detailed below. Any of these funding categories may also receive priority industry designations.

**Out-of-state competition:** This is the ETP's main funding category and is derived from the program's original mission. Out-of-state competition is determined by a threshold analysis that considers whether the company manufactures products sold out-of-state, manufactures products that compete with products made out-of-state, provides a service that regularly competes with out-of-state service providers, or provides a service directly to out-of-state customers where revenues from this service comprise at least 25% of gross annual revenue. The maximum reimbursement allowed for single employers under this funding category is \$750,000 per contract.<sup>13</sup>

**Special employment training:** These contracts are granted to projects that train front-line workers who earn at least the state average wage. The special employment training designation is given to projects that

do not face out-of-state competition. The maximum reimbursement allowed for single employers under this funding category is also \$750,000 per contract.<sup>14</sup>

**Critical proposal:** A critical proposal designation can be granted to projects that may have a significant impact on the California economy and are evaluated on a case-by-case basis. In general, this designation is given to projects such as those with expanding operations in the state due to a new product or business function, operations moving into the state, or when a business is considering relocating outside of California. These projects are eligible for a maximum reimbursement of \$900,000 per contract.<sup>15</sup>

The wage thresholds for each designation are set at the beginning of the fiscal year. For the current fiscal year, the minimum wage ranges from \$10 per hour for new hires in out-of-state competition contracts that are located in certain high-unemployment counties to \$28.37 for special employment training projects. The average wage for priority industry projects that do not meet additional wage modification qualifications is set at \$21.28.<sup>16</sup>

## The application process

Companies interested in pursuing a training grant must first register with the ETP and complete a short online orientation. The orientation provides an overview of the ETP program and application process. Once complete, the company will receive log-in credentials to the online pre-application submission portal where they may submit a pre-application for funding.

The pre-application requests basic information about a company, including its California Employer Account Number (CEAN), the number of employees and proposed trainees, as well as an overview of the company's California operations. This pre-application helps the ETP determine whether the company is eligible to apply for a grant and which type of grant the company should consider (i.e., priority industry, special employment training, or critical proposal).<sup>17</sup>

After the ETP has determined that a company is eligible for a training grant, the company will be assigned an analyst who will schedule a project kick-off meeting. This meeting, which may occur either in-person or via conference call, serves two main purposes: (1) it allows the ETP analyst an opportunity to provide a detailed overview of the program, the application process, and the compliance/reporting requirements, and (2) it allows the analyst the opportunity to obtain a better understanding of the company's business activity, the type of training to be provided, and how that training will upgrade the skills of its California employees.<sup>18</sup>

Following the kick-off meeting, the analyst will provide the company with an application that is specific to the project. This application will note the funding category and any potential wage modifications that may be granted. Regardless of funding category, each application will request the following information:

- company history and business overview,
- justification for why training is needed,
- detailed training plan including curriculum and number of training hours,
- information on the types of employees who will receive training under the contract, and
- the company's commitment to training.<sup>19</sup>

The ETP sets application due dates for each month.<sup>20</sup> Once an application has been submitted it will be reviewed by the ETP. The analyst may request changes or additional information after the application has been submitted.

Once the application is finalized by the ETP analyst and the analyst's manager, it will be recommended for presentation to the ETP Panel, the final stage of the ETP application process.<sup>21</sup> For most projects, representatives from the company are required to attend the Panel meeting in person. This meeting provides the opportunity for a company to introduce its project to the Panel and answer any questions that the Panel may have about the company or the planned training. Once a project is approved by the Panel, the company will receive a contract from the ETP and will be eligible to receive reimbursement for approved training that occurs after the contract start date.<sup>22</sup>

## Program compliance

As the ETP provides a post-performance grant, companies are required to document all qualified training for which they plan to seek reimbursement.

*Trainee enrollment.* In order for a company to obtain reimbursement for the training incurred by a particular employee, that employee must be enrolled in the ETP's secure online portal, known as the Employment Training Management System (ETMS). The required data includes, but is not limited to: name, employee ID and social security number, home ZIP code, level of education and age group, gender, ethnicity and date of hire. Wage and termination dates, if applicable, will also be required at the end of the contract term for each trainee for which a company is seeking reimbursement. This information is used to confirm that the wage and retention thresholds were met. If a project includes the training of new hires, it will be important to regularly upload this data for all new employees so that their qualified training can be captured.<sup>23</sup>

*Training data reporting and record keeping.* In addition to enrolling trainees in the ETMS, actual training data must also be submitted. The ETP requires that the data upload must occur within 60 days of the date of training for training captured with an approved electronic learning management system or within 90 days of the date of training for training captured on approved paper rosters. If the training is captured on paper rosters, that data must be either manually entered into the ETMS system or transposed into a spreadsheet and batch uploaded in the ETMS system. The utilization of an ETP approved electronic learning management system can significantly reduce the time dedicated to and cost of compliance.<sup>24</sup>

Copies of all training rosters and/or printouts from the learning management system must be compiled and saved. These documents will be reviewed during regular ETP monitoring meetings. They will also be required in the event that the project is audited. An audit may occur up to three years from the fiscal closeout of the project or four years from the termination of a project, whichever is later.<sup>25</sup>

*Monitoring visits.* At various intervals throughout the two-year contract period, the ETP may request a monitoring meeting. During this on-site meeting, an analyst may review training data, observe trainings, interview trainees and document whether the company is on track or if there are any challenges to completing the training planned in the application. This meeting helps the analyst understand how a company is doing and troubleshoot any issues that may occur.<sup>26</sup>

*Reimbursement and project close out.* A company may seek reimbursement once a trainee has completed eight hours of qualified training.<sup>27</sup> However, if it is determined at the end of the contract period that the trainee did not meet the minimum wage or retention thresholds, the company may be required to repay the ETP or identify additional training to substitute for those hours.<sup>28</sup>

Once a company has either completed all training approved under its contract or the contract term ends, it may seek to close out its contract and request the final reimbursement payments. This requires providing additional data for each trainee that received the minimum eight hours of training. The close-out date includes the date the trainee completed its qualified training, the dates the retention period started and ended, wage after retention, and total training hours. An accounting of any previously received reimbursements for each trainee must also be provided. Upon review by the ETP, the project will be closed out and the final reimbursement submitted.

## Conclusion

As noted above, the ETP's ongoing compliance requirements can be burdensome and, as a result, some companies may be challenged in their efforts to utilize the full amount of the ETP grant awarded. In order to successfully monetize an ETP grant, businesses should consider the following:

*Be realistic:* Overestimating the amount of training hours to be completed during the contract term is not necessarily advantageous. Training must occur and be documented in order to monetize the grant. Future ETP applications may be reviewed with additional scrutiny if a company does not earn a significant percentage of the grant awarded.

*Plan ahead:* Are there expansion plans or is the company rolling out a new initiative or implementation that may require significant training? If so, start the application process well in advance of the training rollout as it generally takes at least three to six months from filing a pre-application to receiving a grant. Only training that occurs after the grant has been awarded may be reimbursed.

*Identify a champion:* The ETP program often requires coordination between multiple departments within a company. Successful projects typically have a dedicated project lead that can collect all training documentation, enroll trainees in the program, and serve as a central point of contact for the various stakeholders and the ETP.

*Capture training data:* Without proper documentation, training hours will not be reimbursed. Whether through an ETP approved learning management system or on paper rosters, training hours must be captured and reported. Uploading all enrollment and training data regularly is recommended. If possible, avoid waiting until the end of the company's contract to collect, review and upload the documentation.

<sup>1</sup> Ron Starner, *Fixing the Talent Shortage*, Site Selection Magazine (July 2016).

<sup>2</sup> See Richard W. Moore and Daniel Blake, *An Analysis of the Economic Outcomes of California Employment Training Panel Programs*, California State University, Northridge (1992).

<sup>3</sup> 2014-15 Annual Report, p. 5, <https://www.etp.ca.gov/About-Us/Annual-Reports.aspx>.

<sup>4</sup> *Rates, Withholding Schedules, and Meals and Lodging Values*, State of California Employment Development Department, [http://www.edd.ca.gov/payroll\\_taxes/rates\\_and\\_withholding.htm#Rates](http://www.edd.ca.gov/payroll_taxes/rates_and_withholding.htm#Rates).

<sup>5</sup> ETP Strategic Plan 2016-2017, Appendix at p. 20.

<sup>6</sup> <https://www.etp.ca.gov/Funding-Info/Eligible-Entities.aspx>.

<sup>7</sup> ETP Strategic Plan 2016-2017, Appendix at p. 2.

<sup>8</sup> ETP Single Employer Guide.

<sup>9</sup> <https://www.etp.ca.gov/Funding-Info/Reimbursement-Rates.aspx>.

<sup>10</sup> June 2016 Meeting minutes, <https://www.etp.ca.gov/Panel-Meetings/Meeting-Minutes.aspx>.

<sup>11</sup> <https://www.etp.ca.gov/Funding-Info/Funding-Limitations.aspx>. Examples include mortgage banking, gambling, and adult entertainment.

<sup>12</sup> ETP Strategic Plan 2016-2017, p. 2.

<sup>13</sup> Cal. Code Regs. tit. 22, § 4416.

<sup>14</sup> Cal. Code Regs. tit. 22, § 4409.

<sup>15</sup> Cal. Code Regs. tit. 22, § 4402.2.

<sup>16</sup> <https://www.etp.ca.gov/Program-Info/Trainee-Wages.aspx>. Note that wage modifications may be considered on a case-by-case basis.

<sup>17</sup> <https://www.etp.ca.gov/Application-Process/Apply-For-Funds.aspx>.

<sup>18</sup> <https://www.etp.ca.gov/Application-Process/Apply-For-Funds.aspx>.

<sup>19</sup> <https://www.etp.ca.gov/Application-Process/Sample-Applications.aspx>.

<sup>20</sup> <https://www.etp.ca.gov/Application-Process/Application-Deadlines.aspx>.

<sup>21</sup> <https://www.etp.ca.gov/About-Us/Panel-Members.aspx>. The ETP Panel consists of eight people, seven of whom are appointed by various individuals, including the Governor. The eighth Panel member is the Director of the Governor's Office of Business and Economic Development, or his or her designee.

<sup>22</sup> <https://www.etp.ca.gov/Application-Process/Apply-For-Funds.aspx>.

<sup>23</sup> <https://www.etp.ca.gov/Program-Info/Program-Administration.aspx>.

<sup>24</sup> Cal. Code Regs. tit. 22, § 4442.

<sup>25</sup> ETP regulations, p. 9, Section 5.6.

<sup>26</sup> Cal. Code Regs. tit. 22, § 4443.

<sup>27</sup> Cal. Code Regs. tit. 22, § 4440.2.

<sup>28</sup> Cal. Code Regs. tit. 22, § 4447.