

Insights

Work Opportunity Tax Credits Can Increase Diversity and Reduce Labor Shortages

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In a tight labor market with diversity, equity, and inclusion front of mind, some employers have expanded their outreach to prospective employees under the federal Work Opportunity Tax Credit (WOTC). Refining their recruiting approach may relieve staffing pressures and enhance workplace diversity, all while saving taxes. Of course, the tax credits benefit the hired employees and the employer; studies have consistently shown that WOTC's public benefit exceeds its cost to the taxpayer.

Identifying the Chronically Unemployed

The WOTC program uses the Indiana Department of Workforce Development (IDWD) to certify that an individual fits within one of eight groups who have consistently had difficulty in securing and retaining employment and then incentivizes employers to hire them:

1. AFDC/TANF Recipients: Any member of a family receiving AFDC/TANF for any nine months during the 18 months ending on the hire date.
2. Veterans: Active-duty veterans who received food stamp assistance for any 3-month period in the 15 months before the hire date.
3. Ex-felons: Individuals convicted of a felony and either convicted or released from prison within a year of hire.
4. High-Risk Youth: Individuals aged 18-24 but not yet 25 who live in a federal employer zone or enterprise community. (ECEZs) At this time, the ECEZs in Indiana are located in certain parts of Indianapolis, the Calumet region, and the town of Austin.
5. Vocational Rehabilitation Referrals: Individuals referred to employers on completion of the Individualized Written Plan for Re-employment and within two years after receipt of last vocational rehabilitation services (also includes veterans in a vocational rehabilitation program under Chapter 31 of Title 38 or the US Code).
6. Summer Youth: Individuals 16-17, but not yet 18, who live in a federal ECEZ for employment between May 1 and September 15.
7. Food Stamp Recipients: Individuals who are 18-24 and are members of a family receiving food stamp assistance within six months before the hire date (includes non-disabled adults without dependents who

received food stamps for at least three months in the five months before the hire date).

8. SSI Recipients: Individuals who have received Supplemental Security Income benefits for any month ending within 60 days before the hire date.

Earning the Tax Credit

Employees may pre-certify with IDWD or may complete a straightforward pre-hire checkbox questionnaire on IRS Form 8850. The employer then completes certification forms (ETA Form 9061 or ETA Form 9062) and submits them to IDWD within 28 days after the employee's start date. IDWD can also help connect employers with partnering agencies to locate job seekers in WOTC targeted groups.

For the effort, employers earn a tax credit of 25% of the employee's wages when the employee works 120 hours in the first year (up to a cap of \$1,500), which increases to 40% at the 400-hour mark (up to a cap of \$2,400). The cap is \$9,600 for certain qualified veterans. Assuming a 40-hour work week, the 120-hour threshold will be met in just three weeks and the 400-hour point in ten. The credit is a general business credit against income taxes (for-profit entities) and offsets payroll taxes (for non-profits), and applies to qualified employees hired through December 31, 2025.

Free Federal Bond for High-Risk Hires

An employer who hires an employee considered "high risk" might also qualify to receive a fidelity bond under a separate Federal Bonding Program. The bond covers one incident of theft, forgery, larceny, or embezzlement during the first six months of employment. These bonds are provided at no cost to the employer for employees who are not commercially bondable because they are ex-offenders, ex-addicts, have a poor financial credit history, were dishonorably discharged from the military, lack a traceable work history, or have other experiences that tarnish their credibility. The bonds are typically \$5,000 but can increase to \$25,000 if the employer can show circumstances that justify a higher bond. Bonds can be made for any job, full or part-time, in any state. www.in.gov/dwd/2459.htm

Who Benefits from WOTC?

Various studies and analysts have concluded that the WOTC program positively impacts the target groups and employers and offers broad societal benefits.¹

For the target group members, wage subsidy programs like WOTC significantly increase their probability of getting a job. Studies have also shown that wages are often higher for WOTC recipients than their non-WOTC counterparts. There are, of course, profound personal benefits to these individuals from moving out of long-term, chronic unemployment. If WOTC can defuse external obstacles to employment, such as stigma and employer apprehension, employment itself may alleviate the internal barriers. Workers' gains from work experience, job skills, education, confidence, and a steady source of income offer defenses against other internal obstacles such as stress and related health problems, poverty, and substance abuse related to long-term joblessness. The individual may also overcome impediments from physical and mental disabilities if an employer can accommodate them. Pulling down external barriers to employment should help overcome internal conditions contributing to their landing among the chronically unemployed.

As for the costs and benefits to employers, the genuine concern of higher turnover has not been borne out by existing studies.² Instead, the data shows that WOTC employees have greater loyalty to their employers and

are less likely to leave the company, despite --- or perhaps because of --- their relative lack of education, work experience, skills, and risk of substance abuse. While employers may need to invest in more training or mentoring for these workers, the WOTC subsidies should offset these costs. The tax savings may enable businesses to offer more competitive wages and bonuses to reward employees, giving them a competitive advantage and relatively less turnover. Qualms of untrustworthy or “unbondable” workers can be eased with a free bond from the Federal Bonding Program.

From a taxpayer’s perspective, employment salves many societal wounds. As targeted groups get jobs, they pay taxes on their wages. In turn, governments spend less on welfare and public assistance, alternative job training or job-finding programs, and other government subsidies and support forms. The cost of the WOTC program is paid in one year. Still, its benefits continue long after if the worker remains employed or becomes more employable after working that first job that carries them above the employment obstacles that afflict their targeted group.

It is no secret that property crimes and incarceration levels rise as unemployment rises, and, conversely, crime rates are reduced when targeted individuals move into jobs. Unemployment after incarceration contributes to a high rate of recidivism. It costs \$20,000 per year to incarcerate one offender, according to the Indiana Department of Correction,³ spending \$2,400 to help an ex-offender get a job sounds like a bargain.

While general hiring subsidies that aim to increase the number of jobs have become superfluous in the tight labor market, the WOTC hiring assistance brings chronically unemployed groups into view for employers holding those unfilled jobs. WOTC incentivizes workplace diversity and creates a public-private partnership whereby private employers can unlock the door for Americans who have been shut out of employment. Besides the tax credits, employers are rewarded by partaking in these workers’ efforts to become taxpaying citizens who contribute to the community and may even redirect their families’ destinies.

If you have any questions regarding information in this alert, please contact **Nancy J. Townsend** or any member of the firm's **Labor and Employment Practice**.

Disclaimer. The contents of this article should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult with counsel concerning your situation and specific legal questions you may have.

[1] See discussion and analyses in Peter Cappelli, *Assessing the Effect of the Work Opportunity Tax Credit 3* (2022); and Katherine English, *Conflicting Approaches to Addressing Ex-Offender Unemployment: The Work Opportunity Tax Credit and Bank the Box*, *Indiana Law Journal*: Vol. 93: Iss. 2, Article 7 (2018). Available at: <https://www.repository.law.indiana.edu/ilj/vol93/iss2/7>

[2] See Jill Marie Gunderson & Julie L. Hotchkiss, *Job Separation Behavior of WOTC Workers: Results from a Unique Case Study*, 81 *SOC. SERV. REV.* 317, 338 (2007).

[3] <https://www.in.gov/idoc/re-entry/hire/outreach/>