

## ARTICLE 22 EMPLOYEE TRAINING INCENTIVE PROGRAM

### Section 441. Definitions.

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§ 441. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Approved provider" means an entity meeting such criteria as shall be established by the commissioner in rules and regulations promulgated pursuant to this article, that may provide eligible training to employees of a business entity participating in the employee training incentive program; provided that, for internship programs, the business entity shall be an approved provider or an approved provider in contract with such business entity. Such criteria shall ensure that any approved provider possess adequate credentials to provide the training described in an application by a business entity to the commissioner to participate in the employee training incentive program.
2. "Commissioner" means the commissioner of economic development.
3. "Eligible training" means (a) training provided by an approved provider that is:
  - (i) to upgrade, retrain or improve the productivity of employees;
  - (ii) provided to employees filling net new jobs, or to existing employees in connection with a significant capital investment by a participating business entity;
  - (iii) determined by the commissioner to satisfy a business need on the part of a participating business entity;
  - (iv) not designed to train or upgrade skills as required by a federal or state entity;
  - (v) not training the completion of which may result in the awarding of a license or certificate required by law in order to perform a job function; and
  - (vi) not culturally focused training; or(b) an internship program in advanced technology approved by the commissioner and provided by an approved provider, on or after August first, two thousand fifteen, to provide employment and experience opportunities for current students, recent graduates, and recent members of the armed forces.
4. "Net new job" means a job created in this state that:
  - (a) is new to the state;
  - (b) has not been transferred from employment with another business located in this state through an acquisition, merger, consolidation or other reorganization of businesses or the acquisition of assets of another business, and has not been transferred from employment with a related person in this state;
  - (c) is either a full-time wage-paying job or equivalent to a full-time wage-paying job requiring at least thirty-five hours per week;
  - (d) is filled for more than six months;
  - (e) is filled by a person who has received eligible training; and
  - (f) is comprised of tasks the performance of which required the person filling the job to undergo eligible training.

5. "Significant capital investment" means a capital investment of at least one million dollars in new business processes or equipment.

6. "Strategic industry" means an industry in this state, as established by the commissioner in regulations promulgated pursuant to this article, based upon the following criteria:

- (a) shortages of workers trained to work within the industry;
- (b) technological disruption in the industry, requiring significant capital investment for existing businesses to remain competitive;
- (c) the ability of businesses in the industry to relocate outside of the state in order to attract talent;
- (d) the potential to recruit minorities and women to be trained to work in the industry in which they are traditionally underrepresented;
- (e) the potential to create jobs in economically distressed areas, which shall be based on criteria indicative of economic distress, including poverty rates, numbers of persons receiving public assistance, and unemployment rates; or
- (f) such other criteria as shall be developed by the commissioner in consultation with the commissioner of labor.

§ 442. Eligibility criteria. In order to participate in the employee training incentive program, a business entity must satisfy the following criteria:

1. (a) The business entity must operate in the state predominantly in a strategic industry;
- (b) The business entity must demonstrate that it is obtaining eligible training from an approved provider;
- (c) The business entity must create at least ten net new jobs or make a significant capital investment in connection with the eligible training; and
- (d) The business entity must be in compliance with all worker protection and environmental laws and regulations. In addition, the business entity may not owe past due state taxes or local property taxes; or
2. (a) The business entity, or an approved provider in contract with such business entity, must be approved by the commissioner to provide eligible training in the form of an internship program in advanced technology pursuant to paragraph (b) of subdivision three of section four hundred forty-one of this article;
- (b) The business entity must be located in the state;
- (c) The business entity must be in compliance with all worker protection and environmental laws and regulations. In addition, the business entity must not have past due state taxes or local property taxes;
- (d) The internship program shall not displace regular employees;
- (e) The business entity must have less than one hundred employees; and
- (f) Participation of an individual in an internship program shall not last more than a total of twelve months.

§ 443. Application and approval process. 1. A business entity must submit a completed application in such form and with such information as prescribed by the commissioner.

2. As part of such application, each business entity must:
  - (a) provide such documentation as the commissioner may require in order for the commissioner to determine that the business entity intends to procure eligible training for its employees from an approved provider;

- (b) agree to allow the department of taxation and finance to share its tax information with the department. However, any information shared as a result of this agreement shall not be available for disclosure or inspection under the state freedom of information law;
- (c) agree to allow the department of labor to share its tax and employer information with the department. However, any information shared as a result of this agreement shall not be available for disclosure or inspection under the state freedom of information law;
- (d) allow the department and its agents access to any and all books and records the department may require to monitor compliance;
- (e) provide a clear and detailed presentation of all related persons to the applicant to assure the department that jobs are not being shifted within the state; and
- (f) certify, under penalty of perjury, that it is in substantial compliance with all environmental, worker protection, and local, state, and federal tax laws.

3. The commissioner may approve an application from a business entity upon determining that such business entity meets the eligibility criteria established in section four hundred forty-two of this article. Following approval by the commissioner of an application by a business entity to participate in the employee training incentive program, the commissioner shall issue a certificate of tax credit to the business entity upon its demonstrating successful completion of such eligible training to the satisfaction of the commissioner. For eligible training as defined by paragraph (a) of subdivision three of section four hundred forty-one of this article the amount of the credit shall be equal to fifty percent of eligible training costs, up to a credit of ten thousand dollars per employee receiving eligible training. For eligible training as defined by paragraph (b) of subdivision three of section four hundred forty-one of this article, the amount of the credit shall be equal to fifty percent of the stipend paid to an intern, up to a credit of three thousand dollars per intern. The tax credits shall be claimed by the qualified employer as specified in subdivision fifty of section two hundred ten-B and subsection (ddd) of section six hundred six of the tax law.

§ 444. Powers and duties of the commissioner. 1. The commissioner shall, in consultation with the commissioner of labor, promulgate regulations consistent with the purposes of this article that, notwithstanding any provisions to the contrary in the state administrative procedure act, may be adopted on an emergency basis. Such regulations shall include, but not be limited to, eligibility criteria for business entities desiring to participate in the employee training incentive program, procedures for the receipt and evaluation of applications from business entities to participate in the program, and such other provisions as the commissioner deems to be appropriate in order to implement the provisions of this article.

2. The commissioner shall, in consultation with the department of taxation and finance, develop a certificate of tax credit that shall be issued by the commissioner to participating business entities. Participants may be required by the commissioner of taxation and finance to include the certificate of tax credit with their tax return to receive any tax benefits under this article.

3. The commissioner shall solely determine the eligibility of any applicant applying for entry into the program and shall remove any participant from the program for failing to meet any of the requirements set forth in subdivision one of section four hundred forty-two of this article or for making a material misrepresentation with respect to its participation in the employee training incentive program.

§ 445. Recordkeeping requirements. Each business entity participating in the employee training incentive program shall maintain all relevant records for the duration of its program participation plus three years.

§ 446. Cap on tax credit. The total amount of tax credits listed on certificates of tax credit issued by the commissioner for any taxable year may not exceed five million dollars, and shall be allotted from the funds available for tax credits under the excelsior jobs program act pursuant to section three hundred fifty-nine of this chapter, provided however, that the portion of this tax credit cap allocated to internship programs in advanced technology shall be not less than two hundred fifty thousand dollars nor more than one million dollars.