WIOA Restrictions on Subminimum Wage: What They Mean

November 7, 2016

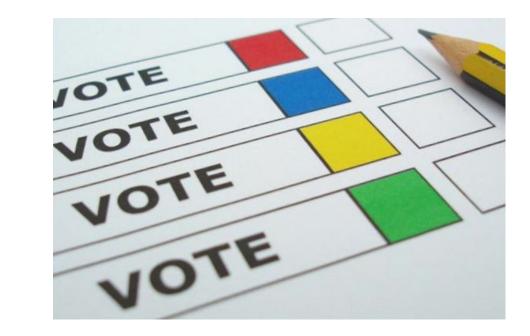
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Time for a Poll



SUBMINIMUM WAGE BACKGROUND

FAIR LABOR Standards act



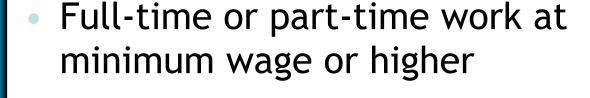
- Payment of subminimum wage to individuals with disabilities permitted under **Section 14C** of the Fair Labor Standards Act
- New restrictions on subminimum wage went into effect on July 22, 2016 under Section 511 of the Workforce Innovation and Opportunity Act (WIOA)
- Section 511 is part of overall national efforts under WIOA and other initiatives to increase
 Competitive Integrated
 Employment

"It's illogical to assume that change will not happen."



Mr. Spock

"COMPETITIVE
INTEGRATED
EMPLOYMENT"
UNDER WIOA



- Wages & benefits similar to those without disabilities performing the same work
- Fully integrated with co-workers without disabilities



What's "Integrated" Under WIOA?



- Must be in a location typically found in the community
- Both within the work unit and entire workplace, must interact with co-workers, customers, and vendors to the same extent as employees without disabilities in comparable positions
- Provides opportunities for advancement similar to those without disabilities in comparable positions
- Interacting only with supervisor and CRP staff is insufficient

FROM WIOA EXPLANATORY COMMENTS

- Group and enclave employment settings operated by businesses formed for the purpose of employing individuals with disabilities will not satisfy the definition of competitive integrated employment.
- Factors that generally would result in a business being considered "not typically found in the community," include:
 - 1. the funding of positions through Javits-Wagner-O'Day Act (JWOD) contracts
 - AbilityOne, federal set-aside program
 - 2. Subminimum Wage
 - 3. Compliance with a **mandated direct labor-hour ratio** of persons with disabilities.

Massachusetts and Subminimum Wage

- Adults earning subminimum wage are primarily served by DDS
- Ending of sheltered work reduced use of subminimum wage in Massachusetts
- Individuals are still employed at subminimum wage in group settings, enclaves, individual jobs
- 44 organizations in MA with 14(c) certificates





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Section 511 Requirements WIOA Regulations August 2016



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THE PURPOSE OF SECTION 511

- Limit use of subminimum wage
- Divert youth from entering subminimum wage employment
- Move individuals from subminimum wage employment into competitive integrated employment

Section 511 is <u>not</u> intended as a compliance requirement in order to pay individuals subminimum wage

SECTION 511: WHO'S RESPONSIBLE?





The public Vocational
Rehabilitation system
(MRC and MCB) has primary
responsibility for
implementing Section 511, in
conjunction with education
agencies and service
providers

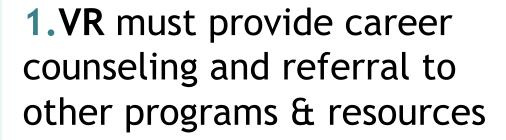
SECTION 511: Who does it APPLY TO?

- Individuals currently earning subminimum wage
- Youth 24 and under considering subminimum wage employment

"Who are known" issue

- Per WIOA regulations, Section 511 applies only to individuals
 "who are known" to VR
- VR may know of an individual with a disability through the VR process, self-referral, or by referral from the client assistance program, another agency, or entity
- Directives from USDOL to 14(c)
 certificate holders state that individuals
 may not be paid subminimum wage
 unless Section 511 is complied with

STEPS REQUIRED
FOR INDIVIDUALS
CURRENTLY
EARNING
SUB-MINIMUM
WAGE





2.Individual is to be informed by employer (payer of subminimum wage) of self-advocacy, self-determination, & peer mentoring opportunities not provided by employer

HOW OFTEN DO REVIEWS OF INDIVIDUALS CURRENTLY EARNING SUBMINIMUM WAGE NEED TO BE DONE?

- Six months after beginning subminimum wage employment
- Annually thereafter

All initial annual reviews must be completed by July 22, 2017

REQUIREMENTS FOR CAREER COUNSELING AND INFORMATION & REFERRAL BY VR

- Must be understandable to individual
- Information and referral must be for services designed so that individual can explore and obtain competitive integrated employment
 - > **Not** for subminimum wage employment or result in subminimum wage employment
- VR may subcontract for these services but not to a holder of a 14(c) certificate
- Must facilitate informed choice and decisionmaking regarding employment options and services



Olmstead Guidance





 "Individuals' and their families' initial response when offered integrated options may be reluctance or hesitancy."

USDOJ: INFORMED CHOICE REQUIREMENTS



Affirmative steps must be taken to ensure individuals have an opportunity to make an informed choice about working in integrated settings.

- 1. Providing information about the **benefits of working** in integrated settings.
- 2. Facilitating **visits or other experiences** in such settings: situational assessment, informational interviews, job shadowing, job tours, etc.
- 3. Peer-to-Peer Opportunities: a) Individuals with disabilities meeting with peers working successfully in integrated employment; b) Families meeting with others whose family members are working successfully in integrated employment.
- **4. Identify and address any concerns or objections** raised by individual or relevant decision-maker.

- Peer mentoring: Individuals with disabilities providing guidance, counseling, and advice to other individuals with disabilities based upon their own experiences and training and the experiences of others they know.
- Self-advocacy: Developing the skills, knowledge, and confidence to stand up for oneself and using appropriate means to obtain one's goals.
- **Self-determination:** Having the abilities, attitudes, skills, and opportunities to play an active and prominent role in living and planning one's life and future.

INDIVIDUALS 24 & UNDER

BEFORE BEING PLACED
IN SUB-MINIMUM WAGE
EMPLOYMENT





- Pre-employment transition services from VR or transition services from local educational agency
- 2. Either being determined ineligible for VR or unable to achieve the goal of competitive integrated employment after a reasonable period of time
 - 3. As with those currently earning subminimum wage, provision by VR of career counseling & referrals

To be done within 30 days of determination of ineligibility or unsuccessful case closure

What is a reasonable period of time for VR services prior to unsuccessful case closure?

- Must be consistent with disability-related and vocational needs of individual, as well as anticipated length of time required to complete services identified in the VR Individual Plan for Employment (IPE)
- For an individual with a goal of supported employment, a reasonable period of time is up to 24 months, unless there is agreement to extend the services longer





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LEA may still contract with 14(c) certificate holders for other services.

CAN LOCAL EDUCATIONAL AGENCIES PAY STUDENTS WITH SUBMINIMUM WAGE DIRECTLY?



Yes, but...

- The LEA must have a 14(c) certificate
- The student must still go through the 511 process for youth
 - These requirements make it (purposefully) very challenging for LEAs to pay subminimum wage

RESPONSIBILITIES OF SUBMINIMUM WAGE EMPLOYERS

- Individuals cannot be paid subminimum wage unless all requirements under Section 511 have been complied with
- Must ensure that all requirements
 have been met and review any
 relevant documentation provided by
 the individual
 - ➤ This documentation is provided to the individual by VR
- In the event of an investigation by USDOL, lack of compliance may result in the payment of back wages

CAN INDIVIDUALS REFUSE TO PARTICIPATE IN THE 511 PROCESS?

Yes, but....

- Refusal to participate must be fully documented per the specifications in the WIOA regulations
- If a <u>youth</u> who is considering subminimum wage employment refuses to participate, they cannot be paid subminimum wage

Documentation Requirements for Individuals Currently Earning Subminimum Wage

Documentation	Entity Responsible	Deadline
Documentation of career counseling and information services	VR Agency	Provided to individual within 45 calendar days after completion (90 days under extenuating circumstances)
Documentation of refusal to participate in Section 511 processes	VR Agency	Provided to individual within 10 calendar days of refusal
Documentation of provision of information on local self-advocacy, self-determination, and peer mentoring training opportunities	14(c) provider (employer)	

Documentation Requirements for Youth Considering Subminimum Wage Employment

Documentation	Entity Responsible	Deadline
Documentation of completion of Transition Services under IDEA	Local Educational Agency	Transmitted to VR within 30 calendar days after completion of services (60 days under extenuating circumstances)
Documentation of all three required 511 activities for youth prior to entering subminimum wage employment	VR Agency	Provided to youth within 45 calendar days of completion (90 days under extenuating circumstances)
Documentation of youth refusal to participate in IDEA transition services	Local Educational Agency	Transmitted to VR within 5 calendar days after refusal
Documentation of youth refusal to participate in 511 process	VR Agency	Provided to youth within 10 calendar days of refusal

Leveraging Section 511

- Use the annual review process to discuss and explore competitive integrated employment options, and to access VR services
 - > Possibly link with ISP
- Educate individuals and families about their rights under Section 511
- Identify and develop high quality peer mentoring, self-advocacy, and self-determination opportunities