

## **Section 511 of WIOA: What Does It Mean for Individuals With Disabilities?**

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When the Rehabilitation Act was finally reauthorized in July 2014 under the Workforce Innovation and Opportunity Act (WIOA), one of the most sweeping – and admittedly controversial – changes was the addition of Section 511. This section is entitled “Limitations on Use of Subminimum Wage” and its primary goal is to ensure that individuals with disabilities, especially youth with disabilities, are given an opportunity to “prepare for, obtain, maintain, advance in or re-enter competitive, integrated employment.” Not coincidentally, this goal coincides with the central purpose of the VR program.

It is also important to note that the provisions of Section 511 go into effect two years after the enactment of the statute on July 22, 2016.

### Key Statutory Changes

Essentially, Section 511 imposes new and specific limitations on employers who hold special wage certificates – commonly referred to as 14(c) certificates -- under 29 U.S.C. 214(c) of the Fair Labor Standards Act (FLSA). Such a certificate allows an employer to legally pay an individual with a disability less than the statutory minimum if his/her disability impacts the work being performed.

However, as a direct result of WIOA, certain criteria must now be satisfied by employers before they can hire (1) individuals with disabilities who are age 24 or younger (youths) or (2) continue to employ individuals of any age while paying them a rate that is less than minimum wage (\$7.25/hour).

More specifically, an entity – as well as contractors and subcontractors of the entity – may not compensate an individual with a disability *who is age 24 or younger* (emphasis added) at a subminimum wage rate unless one of the following conditions is met:

- The individual is currently employed by an entity that holds a valid 14(c) certificate; or
- The individual -- before beginning work for the employer -- has completed and produced documentation indicating completion of each of the following activities:
  - The individual has received pre-employment transition services; and
  - The individual has applied for VR services. In this case, the individual has either been determined ineligible for VR services or, alternatively, the individual has a

written Individualized Plan for Employment (IPE). Despite the existence of this plan, after a reasonable period of time, efforts to progress toward the employment outcome have been unsuccessful. and the VR case has been closed; and

- The individual has been given career counseling as well as information and appropriate referrals to other programs that offer employment-related services so that the individual can continue to work toward the goal of competitive, integrated employment.

Again, only after all three of the above criteria have been met can a youth with a disability even be considered for a job that pays subminimum wage. The mission here, obviously is to attempt to ensure that individuals with disabilities, including those with significant disabilities, are given as many opportunities and as much support as possible to allow them to pursue employment within the community. Visits to existing sheltered workshop facilities have often revealed that many of those participants are unaware of the VR program and the services that can be potentially offered to them. So, this approach is seemingly a major step in the right direction because it guarantees that youth with disabilities have contact with VR before the subminimum wage option is even considered.

#### What About Individuals Who Are Employed At Subminimum Wage Jobs?

During the first year of employment at subminimum wage, the individual with a disability must receive career counseling and information and referrals that facilitate independent decision-making and possible pursuit of other employment choices every six months. Additionally, the individual must also be informed of self-advocacy and peer mentoring training opportunities.

After the first year, such counseling and information and referral services must be provided at least annually.

#### Verification of Employment At Subminimum Wage Jobs

Prior to employing an individual who will begin working at subminimum wage rates or during the employment of an individual who will simply continue to make subminimum wages, the entity holding the 14(c) certificate must review the required documentation described above.