

A large, thick black L-shaped graphic is positioned on the left and bottom right sides of the slide, framing the central text.

# SUBMINIMUM WAGE

**Section 511**

# TRAINING OBJECTIVES

- Gain Knowledge of Section of 511 of the Rehabilitation Act
- Limitation on the use of Sub-minimum wage for Students/Youth with Disabilities
- Limitation on the use of Sub-minimum wage for Individuals with Disabilities
- WIOA requirements and Agency Responsibilities
- DVR Counseling perspective
- DVR Documentation standards
- DVR Form and Internal Process for Sub-minimum wage tracking

# Sub-minimum wage defined

- The [Fair Labor Standards Act \(FLSA\)](#) provides for the employment of certain individuals at wage rates below the [minimum wage](#). These individuals include student-learners (vocational education students), as well as full-time students employed by retail or service establishments, agriculture, or institutions of higher education. Also included are individuals whose earning or productive capacity is impaired by a physical or mental disability, including those related to age or injury, for the work to be performed.
- Employment at less than the minimum wage is designed to prevent the loss of employment opportunities for these individuals. Certificates issued by the Department of Labor's [Wage & Hour Division](#) are required for this type of employment.

# Section 511: what is it?

WIOA amends title V of the Act by adding:

- Section 511 Limits use of subminimum wage
- Imposes requirements on employers who do hold special wage certificates (14(c) certificates) under the Fair Labor Standards Act (FLSA)
- Section 511 intends that individuals with disabilities must be afforded full opportunity to prepare for, obtain, maintain, advance in or reenter competitive Integrated employment
- Provisions are currently in effect (July 2016)

# Section 511: what is it?

- Section 511 establishes the roles and responsibilities of the Vocational Rehabilitation program along with State and Local Educational agencies in assisting individuals with disabilities, including youth with disabilities who are considering employment, or who are already employed at a subminimum wage, to maximize opportunities to achieve competitive integrated employment through services provided by VR and the local educational

# Section 511: why?

- The purpose of Section 511 is to;
  - *Ensure individuals with disabilities have access to information and services that will enable them to achieve competitive integrated employment.*
  - ***Competitive integrated employment** (CIE) is work performed by a person with an impairment or health-related disability ("health impairment") within an *integrated* setting. Wages are at least minimum wage or higher and at a rate comparable to non-disabled workers performing the same tasks*
  - *Includes requirements for State Vocational Rehabilitation Agencies, subminimum wage employers, and local/state educational agencies, to provide specific requirements for youth prior to their participation in a sub-minimum wage employment setting.*

# Employer Hiring Practices:

## Prior to WIOA

- Employers granted a Certificate 14(c) by the FLSA could legally hire disabled individuals at sub-minimum wage levels.

## Implementation of WIOA

- In order for an employer to continue to employ or hire individuals with disabilities at sub-minimum wage they will need to **satisfy certain criteria**.
  - *1. Impacts individuals with disabilities 24 years of age and younger*
  - *2. Impacts individuals with disabilities at any age while being paid at a subminimum rate*

# STUDENT WITH DISABILITY

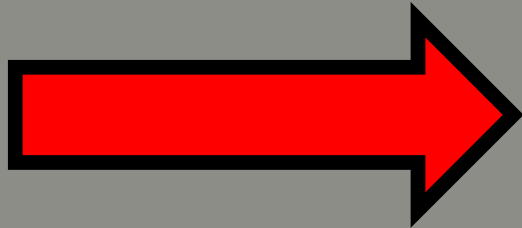
High school students (14-21 with IEP/504 Transition Program) cannot participate in any subminimum wage employment as long as the individual is considered a student under the school district.



# Satisfy certain criteria

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An entity – including contractors and sub-contractors of the entity- may not compensate an individual who is age 24 or younger at subminimum wage rates unless the following criteria is met:



- The individual has completed and produces documentation indicating:
  - *Pre-employment transition services under WIOA, or transition services under IDEA. **OR***
  - *the individual has applied for VR services with the result that –*
    - I. *The individual has been found ineligible for services; **OR***
    - II. The individual has
      1. Determined eligible for VR services
      2. has an IPE
      3. has been working toward employment outcome for reasonable period of time without success; **AND**

4. the individual has been provided career counseling, and information and referrals to Federal and State programs and other resources that offer employment related services to attain competitive integrated employment; **AND**

5. such counseling and information and referrals are not for employment at a subminimum wage provided by an employer.

# What does it mean?

- ✓ The individual has received pre-employment transition services – PRE-ETS
  1. Job exploration and counseling
  2. Work based learning experiences
  3. Counseling for post-secondary education
  4. Workplace readiness
  5. Instruction in self-advocacy

# PRE - ETS

The individual has been provided an option to access pre-employment transition services. The Pre-employment transition services can be provided through a school under IDEA, or through DSU (Designated State Unit). Schools providing PRE-ETS must provide documentation of the services to DVR within 30 days of completion of the service. The documentation cover sheet should itemize the services utilized.

# What does it mean?

- ✓ The individual has applied for VR services.
  - The youth applied for VR services and was found ineligible; or
  - The youth applied for VR services and was found eligible; and
    - Had an individualized plan for employment (IPE); and
    - Worked toward an IPE employment outcome for a reasonable period without success; And
    - VR case was closed.

VR completion must include documentation of application and either completion of services or ineligibility with identified reasons. The individual has either been determined ineligible for VR Services, or has a written IPE. In either situation, the youth was provided a reasonable period of time and efforts to progress toward the employment outcome and the results of the progress have been unsuccessful therefore resulting in case closure.

\*Documentation form has been established for DVR and will be used to meet this criteria.

# What does it mean?

“Reasonable period of time,”  
in respect to the youth’s inability to achieve an employment  
outcome, must be consistent with:

- Disability-related and vocational needs of the youth;
- Anticipated length of time to complete services in the IPE; and
- For supportive employment goals, up to 24 months, or longer if the youth and counselor agree that an extension is needed to meet the goal.

## What does it mean?

### ✓ Career Counseling/Information & Referral–

*The individual has been provided career counseling by a Vocational Rehabilitation Counselor. In addition, the individual is provided information and referrals to other resources in the geographic area. The goal for the individual is to continue toward a competitive employment goal in an integrated setting.*

# Youth with Disability Continued...

*Student with Disability*- 14-21, High School Student, IEP/504, Transition program

*Youth with Disability*- 14-24, not connected with a School District

- DVR will need to track youth who are impacted by new sub-minimum wage requirements.
- This process will occur every 6 months in the 1<sup>st</sup> year and annually thereafter whether or not the individual decides to apply for the Vocational Rehabilitation Program
- School Districts will not be allowed to enter into contract with Sub-minimum wage employers for individuals who are **24** years old or younger. As long as an individual is connected with a school district they absolutely cannot be paid a sub-minimum wage level.



# Youth with Disability Continued...

## Other important facts

- If a youth practices informed choice and does not wish to participate; the decision will impact the permissibility of the youth to work at subminimum wage and preclude him or her from obtaining subminimum wage employment considering the limitation imposed by Section 511
- DVR will need to inform youth of their ineligibility to obtain or maintain subminimum wage employment when they opt-out of utilizing the VR program.

# Adults with Disabilities

- Section 511 does not eliminate sub-minimum wage options for adult individuals with disabilities. Section 511 assures that all individuals with disabilities have the opportunity to receive employment information & Career Counseling related services.
- Requires individual of any age to satisfy certain service-related requirements prior to starting work at subminimum wage
- Requires that VR agencies provide receipts of services to employers.
- Even individuals already employed at sub-minimum wages must still receive career counseling and information & referral services at least once a year.

# Adults with Disabilities

## Other important facts

- Services under Section 511 are for any individual in Sub-Minimum wage employment, not just individuals who have been applicants or recipients of VR services or have been served by served by an other agency
- Enforcement Authority – The Wage & Hour Division (WHD) is responsible for the administration and enforcement of the provisions of section 14(c) of the FLSA

# Identified Employers holding Certificate 14 (c)



## Adelante

- Albuquerque 2 sites*
- Los Lunas*

*CARC - Carlsbad*

*ZEE Empowerment - Gallup*

# School Responsibilities



## GOALS of WIOA:

To create a continuum of services that aligns with IDEA but doesn't supplant the legal responsibilities of the schools

- Schools currently contracting with agencies holding subminimum wage certificates will no longer be able to continue
- WIOA mandates that the Vocational Rehabilitation Agency, State Educational Agencies, and Local Educational Agencies jointly develop a system so students achieve competitive integrated employment

# Vocational Rehabilitation Agency Responsibilities



- DVR must provide, within determined timelines, that career counseling, information & referral services are provided whether or not the individual is or becomes a DVR participant.
- Designed to promote opportunities for competitive integrated employment to individuals with disabilities, regardless of age who are known to be employed at subminimum wage level for the duration of such employment. DVR needs to take action upon notification of a sub-minimum employment situation.
- DVR Counselors will be providing Career Counseling, Information & Referral as well as providing documentation to individuals considering employment at Sub-minimum wage levels or currently employed at Sub-minimum wage.

# Vocational Rehabilitation Agency Responsibilities



- For individuals that are 24 years or younger: provide PRE-ETS services and document the completion of the services for students with disabilities within 45 days of completion of the PRE-ETS (or 90 days additional time if necessary for extenuating circumstances)
- Provide documentation of ineligibility certification as application within 45 days
- Provide documentation of unsuccessful case closure as applicable within 45 days
- Obtain documentation that the individual received transition services under IDEA as applicable

# Sub-minimum wage Employer Responsibilities

- Employers who employ individuals at sub-minimum wage levels should refer employees to the DSU or contact the DSU directly for the mandatory career counseling.
- Employers must verify completion of the pre-employment requirements and review any relevant documents which may be provided by an employee as a condition of paying a subminimum wage to that employee.
- Employer must provide information about self-advocacy, self-determination and peer mentoring training opportunities available in their local area to each employee every 6 months for the 1<sup>st</sup> year annually there after.
- Employers with fewer than 15 employees can refer to the DSU for both counseling criteria and the training opportunity information.
- Ensure that regardless of age employers must maintain documentation that Career Counseling, Information & Referral services are provide every 6 months and annually thereafter. In order to maintain Certificate 14(c) the employer needs the documentation from DVR to provide FLSA.



# DVR DOCUMENTATION & REQUIRED TIMELINES

# VR Counseling component:

- Transition and Employment “services” – not “programs”
- *Presumption* that all students can work
- No more asking “Do you want to work” instead asking “Where do you want to work?”
- Job shadowing, internships, volunteering, community involvement, after school/weekend or summer job employment
- Integrate Students into School-to-work opportunities & vocational courses
- Section 511 assures that students with disabilities have the opportunity to receive PRE-ETS
- Section 511 assures all individuals with disabilities have the opportunity to receive employment information and career counseling-related services.

# VR Services

- Career counseling
- Information/Referral

services must be provided in a manner that is

- *Understandable to the individual with a disability; and*
- *Facilitates independent decision making and informed choice*
- *Benefits Advisement may be included*



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Acting Director of Vocational  
Rehabilitation

### **Receipt of Vocational Rehabilitation Services**

**Name of individual:**

**Description of the Service/Activity Completed:**

Career Counseling

Information and Referral  
(I&R)

Ineligibility

Eligibility

Individualized Plan for  
Employment (IPE)

Closure of DVR Service  
Record

**Narrative:** NM DVR Information & Services were provided regarding competitive employment. \_\_\_\_\_ is employed at Zee Empowerment in Gallup, NM and states she/he is happy with her/his job in \_\_\_\_\_ and wants to remain in this present employment. \_\_\_\_\_ is her own guardian. \_\_\_\_\_ was given information regarding competitive integrated employment. \_\_\_\_\_ were given information regarding community resources.

**Name of Provider of the service required service or activity:**  
NMDVR

**Date of Required Service/Activity Completed:** 10/2/2018



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Rehabilitation

Signature of Individual documenting completion of the required service or activity

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Date of Signature: 10/2/2018

Signature of Guardian documenting completion of required service or activity

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Date of Signature: 10/2/2018

Signature of DVR Personnel transmitting documentation to the individual with a disability (if different from the signature of individual documenting completion of the required service or activity)

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Date Documentation was given to Individual: 10/2/2018

Method Documentation given to Individual: Hand-Delivered

SO WHAT'S THE PLAN?

# DVR Planning & Actions

- Employers will notify DVR of the employees they have employed at sub-minimum wage levels.
- A DVR task-force will be created yearly that will be comprised of several VRC's to address the current influx of individuals that need to be attended to in order to move to compliance with Section 511 requirements
- Outreach activities will be conducted to include, but not limited to; DVR staff visiting work-sites that have sub-minimum wage staff currently. Group orientations and information sessions to be held with additional time provided with individuals to address career guidance and counseling, career exploration and other related concerns.
- Individuals will determine if they wish to move forward with VR program, maintain their sub-minimum wage employment situation, or consider new employment options. (*This may take several visits*)
- Regardless of the individuals interest in VR services DVR staff will still need to provide the Career Counseling, Information & Referral as appropriate, provide documentation and adhere to the scheduled time frames.

# Resources

- <https://www.federalregister.gov/documents/2015/04/16/2015-05538/state-vocational-rehabilitation-services-program-state-supported-employment-services-program>
- <http://www.wintac.org/topic-areas/implementation-of-requirements/laws-regs-and-policy>
- National Disability Rights Network; The Impact of Section 511 on VR and CAP services