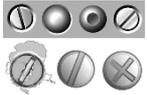


Section 511 – What does it mean?

January 10, 2018



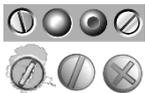
Barb Burghart

Division of Vocational Rehabilitation
Section 511 Program Administrator

Time for a Poll

Participoll website is
<http://nddvr.participoll.com>

You can access this site with
your smart phone.

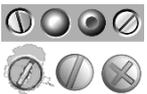


Section 511

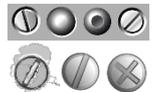


Section 511 builds on Employment First

- Ensuring that individuals with disabilities have **access to information and services that will enable them to achieve competitive integrated employment.**
- Encourages competitive integrated employment as the **first and preferred outcome for working-age youth and adults with disabilities.**
- Expecting competitive integrated employment **for individuals with complex and significant disabilities, for whom job placement in the past has been limited, or traditionally had not occurred.**



Section 511

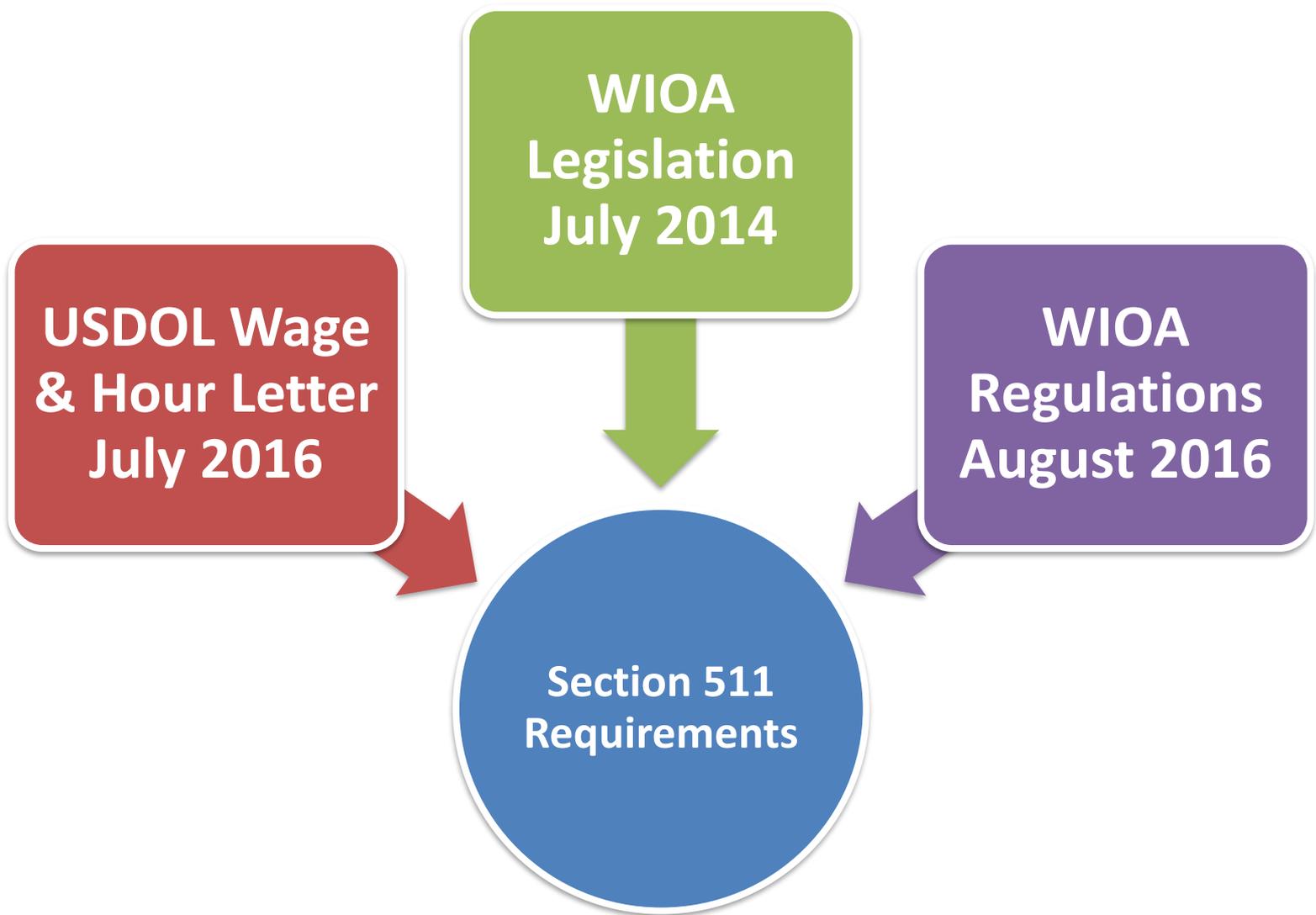


Subminimum Wage Background

FAIR LABOR STANDARDS ACT



- Payment of subminimum wage to individuals with disabilities is permitted under **Section 14C of the Fair Labor Standards Act (FLSA)**
- New restriction 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 an overall national effort under WIOA and other initiatives to **increase Competitive Integrated Employment**
- **Any requirements on employers imposed by Section 511 are under the purview of the Department of Labor, which administers the FLSA**



**WIOA
Legislation
July 2014**

**USDOL Wage
& Hour Letter
July 2016**

**WIOA
Regulations
August 2016**

**Section 511
Requirements**

Question

- Does VR have the authority to enforce Section 511 requirements?

A = TRUE

B = FALSE



Section 511

- “Special wage certificate” means a certificate issued to an employer under section 14 (c) of the FLSA that authorizes payment of subminimum wages.
- The section 511 restrictions apply to employers who hold 14 (c) certificates.
 - Community Rehab Providers
 - Hospitals/residential care centers (Employee Patient Workers)
 - Business establishments that are not CRP or an employer of patient workers
 - School Work Experience Programs (SWEP)

Note: All employers must comply with Section 511, there are no exceptions

Overview of Section 511 - Purpose

- Prohibits employers that hold a section 14(c) certificate from **compensating an individual with a disability at subminimum wage unless certain conditions are met**; and
- Focuses on the **payment of subminimum wage**, not the nature of the work setting.

Overview Section 511 - Provisions

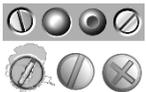
- **Requires youth with disabilities, age 24 or younger**, to satisfy certain activities prior to starting work at subminimum wage;
- **Requires individuals of any age** to participate in certain activities in order to continue work at subminimum wage;
- **Requires VR agencies and local education agencies (LEAs)** to document the individual with disability's completion of the required activities.

Overview Section 511 – Provisions (cont.)

- **Requires Section 14 (c) employers to obtain, review and verify required documentation** received by individuals with disabilities
 - prior to hiring youth with disabilities (under 24)
 - or continuing to employ individuals with disabilities (of any age) at subminimum wage;
- **Requires Section 14 (c) employers to inform subminimum wage employees** of certain training opportunities available to them at required intervals; and
- **Permits VR agencies and/or Department of Labor** to review the documentation required to be maintained by the Section 14 (c) employer.

Parties Affected by WIOA and Section 511

- Vocational Rehabilitation
- Schools
- Developmental Disabilities
- 14 (c) Employers
- Individuals with Disabilities
- Parents and Guardians



“It’s illogical to assume that change
will not happen.”



Mr. Spock



Section 511

Youth (24 and Younger)



24 and Younger

A youth with a disability, who is considering subminimum wage employment, must provide the employer with documentation indicating that they have completed **all three** required activities.



Note: Authorization for employment services through the Development Disabilities Division should not occur unless the employer has obtained, verified and reviewed documentation of the three required activities.

**Youth
(24 and
Younger)**



**Transition and/or Pre-
employment Transition**



**Vocational
Rehabilitation**



Career Counseling

Section 511 – Youth (24 and younger)

Required Activities

Prior to beginning subminimum wage a youth must provide documentation of the following

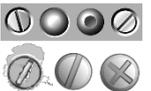
Receipt of:

- Transition services under IDEA; or
- Pre-employment transition services under the VR program;

Application for VR services that results in:

- Ineligibility; or
- Eligibility, and

Receipt of Career Counseling



Transition and/or Pre-Employment Transition Services

Transition Services

Transition Services are a coordinated set of activities **focused on improving the academic and functional assessment of a student with a disability**, in order for the student to reach their post-secondary goal. Examples:

- Instruction
- Related Services
- Community experiences
- Employment and other post school living objectives
- Daily living skills

Pre-Employment Transition Services

Pre-Employment Transition Services are specific services meant to provide students with disabilities with an **early start at job exploration**. Examples:

- Job exploration
- Work-Based Learning experiences
- Counseling on postsecondary educational programs
- Workplace Readiness
- Self-advocacy

Vocational Rehabilitation

If a youth is **determined ineligible** for VR, he or she must have participated in Trial Work.

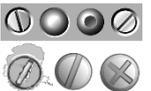
Trial work experiences are provided to explore the individual's abilities, capabilities and capacity to perform in realistic work situations. The counselor must have clear and convincing evidence that the individual cannot benefit due to the severity of the disability in order to determine if someone is ineligible and too severe to benefit from VR services.

Vocational Rehabilitation

If a youth is determined **eligible for VR**, he or she must have:

- An **approved Transition Assessment Plan or Individualized Plan for Employment (IPE)**;
- **Been working toward the employment goal** on the IPE for a “reasonable period of time” and with the appropriate supports without success; and
- A **closed VR case record** too severe

Note: Regions will contact the State Office if they are working with an individual who may consider subminimum wage after high school.



Vocational Rehabilitation

A determination of **“reasonable period of time”**, with respect to the youth’s inability to achieve an employment goal, must be consistent with:

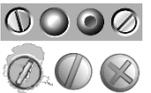
- Disability-related and vocational needs of the youth;
- Anticipated length of time to complete services listed on the IPE; and
- For supported employment goals, up to 24 months or longer if the youth and counselor agree that an extension is needed to meet the goal.

Career Counseling

Regardless of whether a youth with a disability is determined ineligible or eligible for VR services, he or she must receive career counseling, and information and referral services prior to obtaining employment at subminimum wage.

The career counseling will provide the individual with information regarding;

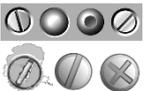
- Federal and State programs and other resources in the individual's geographic area that offer employment-related services; and
- supports designed to enable the individual to explore, discover, experience, and attain competitive integrated employment.



Career Counseling (cont.)

Career Counseling and Information and Referral Services must:

- Be provided by VR in a manner that facilitates independent decision-making and informed choice;
- Not be for subminimum wage employment
- Completed within **30 days** of determination of ineligibility or unsuccessful case closure.



Question

What are the three required activities?

A = Transition/Pre-ETS, VR, and Career Counseling

B = Trial Work, DD, and Career Counseling

C = Transition/Pre-ETS, Trial Work, and Career Counseling

D = None of the Above



Question

- Who is responsible for obtaining, reviewing and verifying Section 511 documentation for individuals under 24?

A = Employer

B = VR

C = Professor Snape

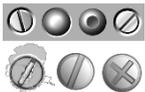
D = Individual with a disability

E = Both A and B



Section 511 – Requirements for Youth (24 and Younger)

- Prior to beginning work at subminimum wage, a youth with a disability must demonstrate, through documentation, the completion of the required activities under Section 511.
- Documentation must contain, at a minimum:
 - Youth's Name;
 - Determination made or activity/service completed;
 - Name of the individual making the determination or providing the service or activity;
 - Applicable signatures and dates; and method by which the documentation was transmitted to the youth and/or guardian



YOUTH SEEKING SUBMINIMUM WAGE EMPLOYMENT
NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES
DIVISION OF VOCATIONAL REHABILITATION
SFN 1093 (11-2017)

Section 511 –

Documentation Process for the required activities:

- The School provides documentation to VR, within reasonable period of time (**30 days**), of all transition services completed by the youth under IDEA.
- VR provides documentation to the youth of all activities completed, regardless of whether they were completed under the VR program or through the school.
- Any documentation provided by the school to VR must comply with confidentiality requirements of the Family Educational Rights and Privacy Act (FERPA).
- VR and the School must retain copies of the documentation in a manner consistent with the requirements of 2 CFR 200.333.

Note: VR will maintain a copy of the documentation in AWARE and a copy will be sent to the State Office.

Question

- An individual can refuse to participate in the required Section 511 activities.

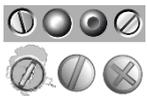
A = TRUE

B = FALSE



Section 511 – Refusal of the youth to participate in the required activities

- If an individual and/or guardian refuse to participate in required activities, the VR Counselor must document this **refusal on SFN 1093 (Youth Seeking Subminimum Wage Employment)**. The documentation of refusal must be provided to the individual and/or guardian within 10 days and a copy placed in the individual's VR file.



Note: If an individual refuses to participate in the required activities, he or she cannot be employed in subminimum wage employment.

VR will maintain a copy of the documentation in AWARE and a copy will be sent to the State Office.

Section 511 – Documentation and timelines for Youth (24 and Younger)

Documentation	Entity Responsible	Deadline
<p>Individuals enrolled in school will require documentation of completion of Transition Services under IDEA</p> <ul style="list-style-type: none"> Documentation will be maintained by the Local Educational Agency and the VR Regional Office, in the VR case file 	<p>Local Educational Agency</p>	<p>Documentation is transmitted to VR within 30 calendar days of completion of Transition Services (60 days under extenuating circumstances)</p>
<p>Documentation of all three of the required Section 511 activities for youth prior to entering subminimum wage employment (Pre-Employment Transition Services, Outcome of VR Services and Career Counseling).</p> <ul style="list-style-type: none"> Documentation will be maintained by the VR Regional Office, in the VR case file 	<p>VR Agency</p>	<p>Documentation provided to the youth within 45 calendar days of completion of all three of the required activities (90 days under extenuating circumstances)</p>
<p>Documentation of the youth refusal to participate in Transition Services under IDEA</p> <ul style="list-style-type: none"> Documentation will be maintained by the Local Educational Agency and the VR Regional Office, in the VR case file 	<p>Local Educational Agency</p>	<p>Transmitted to VR within 5 calendar days of refusal</p>
<p>Documentation of the youth refusal to participate in all three of the required Section 511 activities for youth prior to entering subminimum wage employment (Pre-Employment Transition Services, Outcome of VR Services and Career Counseling).</p> <ul style="list-style-type: none"> Documentation will be maintained by the VR Regional Office, in the VR case file 	<p>VR Agency</p>	<p>Documentation of the refusal is provided to youth within 10 calendar days</p>

**Section 511
Questions
& Scenarios
for
Individuals
24 and
Younger**



Question

- A student's Individual Education Plan can have a transition employment goal of subminimum wage employment.

A = TRUE

B = FALSE



Question

True. The student's IEP can still identify an employment goal that will pay at subminimum wage but certain requirements must be met:

- The student cannot participate in any subminimum wage employment as long as the individual is considered a student under the school district;
- The student must be referred to VR;
- The student must be given the opportunity to receive transition/pre-employment transition services; and
- Documentation of subminimum wage needs to be completed prior to completing school services.

Question

- All students with disabilities should be referred to VR.

A = TRUE

B = FALSE

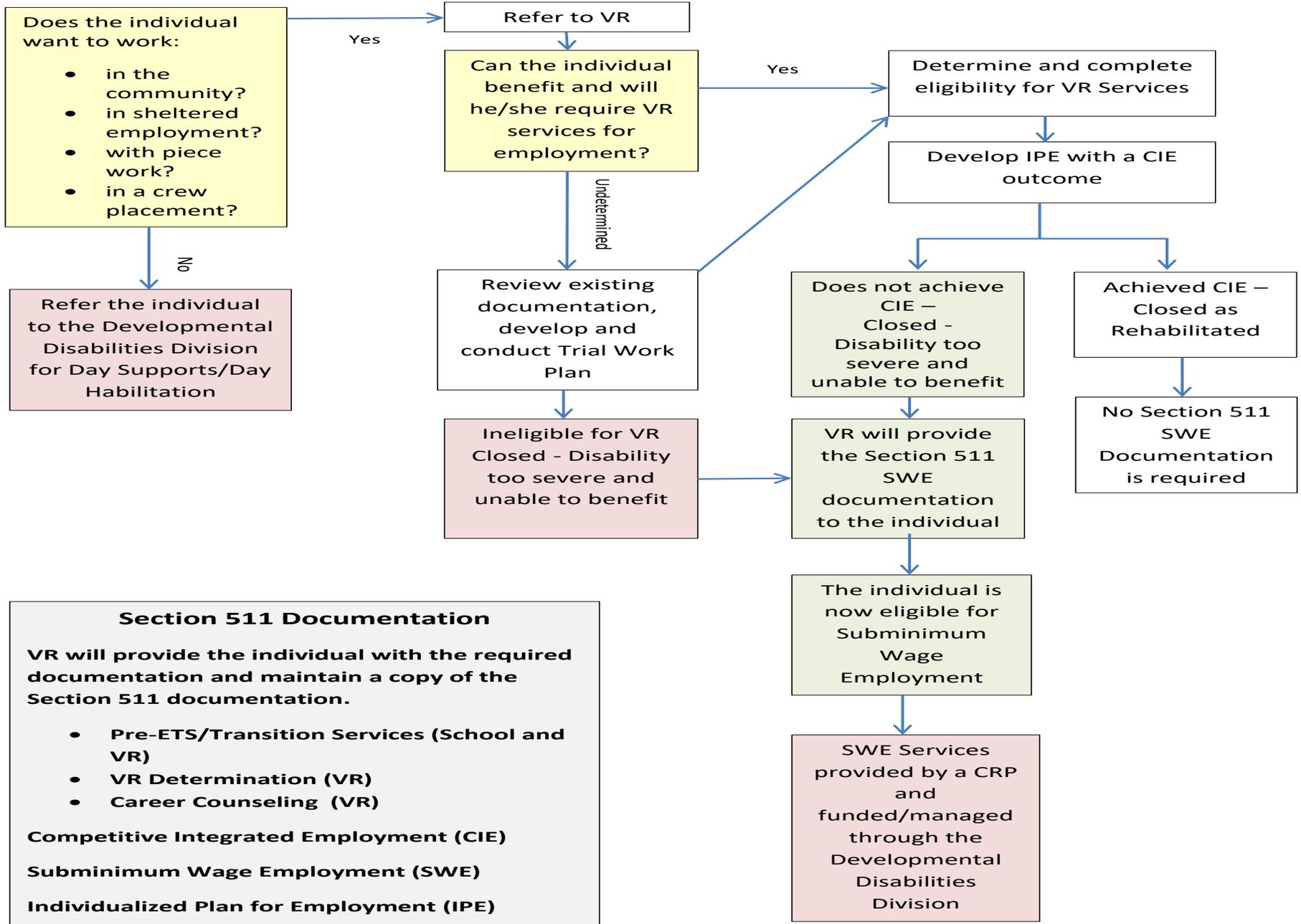


Question

Does Section 511 requirements apply to individuals with disabilities who are not receiving any wages or are being paid at minimum wage?

No. The requirements of Section 511 only apply to individuals paid less than minimum wage.

Section 511 (Subminimum Wage Employment) – Individuals 24 and Younger



Section 511 Documentation

VR will provide the individual with the required documentation and maintain a copy of the Section 511 documentation.

- Pre-ETS/Transition Services (School and VR)
- VR Determination (VR)
- Career Counseling (VR)

Competitive Integrated Employment (CIE)

Subminimum Wage Employment (SWE)

Individualized Plan for Employment (IPE)



Section 511

Individuals
of Any Age



STEPS REQUIRED FOR INDIVIDUALS CURRENTLY EARNING SUBMINIMUM WAGE



- The 14 (c) employer will contact VR to schedule the required career counseling
- VR must provide annual **career counseling** and referral to other programs & resources
- The Individual is to be informed, annually, by the employer of **self-advocacy, self-determination & peer mentoring opportunities** not provided by the employer.

Career Counseling

Annual Career Counseling

- Contact the State Office at (701) 328-8950 to schedule the annual interview.

New Hire Career Counseling

- Contact the Regional VR office in your service area.

Annual Career Counseling

14 (c) Employer

- Contact the VR State Office by **June 1, 2018** to schedule the annual career counseling by VR Regional Staff.
- Complete the “Section 511 Employee file” and send to the VR staff office **30 days** prior to the scheduled career counseling.
- Contact individuals and/or guardians regarding the scheduled career counseling with VR Regional staff and provide a copy of the schedule to the VR State Office **one week** before the interviews.
- Provide information to individuals regarding self-advocacy, self-determination, and peer mentoring.
- The 14 (c) employer will maintain copies of all required documentation.

VR

- Technical assistance and training will be provided by the VR State Office.
- Regional Staff will conduct the annual career counseling.
- Upon completion of the career counseling sessions, VR will send a letter of the results to the individuals and/or guardians **within 45 days**, but no later than 90 days after the interviews have been completed.
- VR will maintain copies of all required documentation.

DVR Regional POC

Region	Contact Name	Contact Number
1 - Williston	Andrea Meyer	(701) 774-4666
2 - Minot	Peter Yung	(701) 857-8644
3 – Devils Lake	Alicia Halle	(701) 665-2217
4 – Grand Forks	David Kvasager	(701) 795-3008
5 - Fargo	Curt Markel	(701) 2984462
6 - Jamestown	Jennifer Moldenhauer	(701) 253-6309
7 - Bismarck	Tom Schiwal	(701) 328-8810
8 - Dickinson	Becki Hoff	(701) 227-7605

Section 511 for individuals of any age

- In order for an individual with a disability to continue working in subminimum wage employment, VR must provide the individual with counseling and guidance that facilitates informed choice and decision-making by the individual. Counseling and guidance can be provided at the worksite, individually, or in a group setting.
- **Documentation of career counseling** will be completed on **SFN 685 (Section 511 Subminimum Wage Review)**.

Section 511 Annual interviews (July 2018 – June 2019)

August 2018

- Hit Inc
- Hav-It

September 2018

- Kalix – Minot

October 2018

- ABLE, Inc
- Open Door

November 2018

- Red River
- Opportunity Foundation



December 2018

- 4th Corporation
- Friendship
- Lake Region
- Kalix (Belcourt)
- LSTC
- Tri-City
- Success Unlimited

January 2019

- VTC
- Connections

March 2019

- Pride

June 2019

- Alpha



Career Counseling

- **Must be understandable to the individual**
- **Information and referral must be for services designed so the individual can explore and obtain competitive integrated employment**
 - **Not for subminimum wage employment**

Must facilitate informed choice with decision making regarding employment options and services.

Informed Choice

**Do you want
to work in the
community?**

- Provide information about the benefits of working in competitive integrated employment
- Have the individual describe their work experience
- Provide information about VR, employment in the community, and community employers
- Identify and address any concerns or objectives raised by the individual and/or guardian about competitive integrated employment



Section 511 Career Counseling – Expressed an Interest in VR

Individual does not have a guardian

- Individuals who are their own guardian and have expressed interest in DVR services will be contacted by the regional VR office.

Individual has a guardian

- Individuals who have a guardian and have expressed interest in VR services will request a VR staff attend their next scheduled team meeting. It is the responsibility of the employer/agency, guardian, or individual to schedule this meeting.

Note: A VR case which is opened as the result of a 511 interview should be documented in AWARE ND with a Referral Source of Community Rehabilitation Program (CRP).

Career Counseling Requirements for New Hires

Individuals newly hired by a Section 14 (c) employer/agency, regardless of age, must receive career counseling every six months the first year of employment, and annually thereafter. VR has 30 days to conduct the initial interview once they are known to VR.



Note: It is the 14 (c) employer's responsibility to coordinate the required career counseling session. Contact the VR Regional Administrator to schedule these meetings. VR has 30 days to conduct the interviews, once they are known to VR.

Refusal of Career Counseling

- If an individual and/or guardian refuse to participate in career counseling, the VR program must document this refusal on **SFN 686 (Refusal of Career Counseling Services)**. Documentation of refusal must be provided to the individual within **10 days** of the refusal.

Note: If an individual refuses career counseling, he or she cannot enter or continue working in subminimum wage employment.



Section 511 for Individuals Currently Earning Subminimum Wage

Documentation	Entity Responsible	Deadline
<p>Documentation of career counseling will be completed on SFN 685 (Section 511 Subminimum Wage Review) and a letter will be sent to the individual and/or guardian summarizing the results of the career counseling.</p>	VR Agency	<p>Documentation of the career counseling must be provided to the individual within 45 calendar days after completion (90 days under extenuating circumstances)</p> <p>Note: The SFN 685 will be copied by the employer. The original will be maintained by the 14 (c) employer and a copy provided to VR.</p>
<p>If an individual and/or guardian refuse to participate in career counseling, the VR program must document this refusal on SFN 686 (Refusal of Career Counseling Services).</p>	VR Agency	<p>Documentation of refusal must be provided to the individual within 10 days of the refusal.</p> <p>Note: If an individual refuses career counseling, he or she cannot enter or continue working in subminimum wage employment.</p>
<p>Individuals newly hired by an employer/agency, regardless of age, must receive career counseling every six months the first year of employment, and annually thereafter.</p> <p>Documentation of career counseling will be completed on SFN 685 (Section 511 Subminimum Wage Review) and a letter will be sent to the individual and/or guardian summarizing the results of the career counseling.</p>	VR Agency	<p>VR has 30 days to conduct the initial interview once they are known to VR.</p> <p>Documentation of the career counseling must be provided to the individual within 45 calendar days after completion (90 days under extenuating circumstances)</p> <p>Note: The SFN 685 will be copied by the employer. The original will be maintained by the 14 (c) employer and a copy provided to VR.</p>
<p>14(c) Employers are required to provide information to their employees regarding self-advocacy, self-determination and peer-mentoring training.</p>	14 (c) Employer	<p>Conducted annually.</p> <p>Note: Employers with less than 15 employees may refer their employees to DVR for self-advocacy, self-determination, and peer mentoring training opportunities available in the individual's geographic area.</p>

U.S. Department of Labor's Wage and Hour Division



- **If VR finds any deficiencies while conducting the career counseling, VR must report any deficiencies to the U.S. Department of Labor.**
- The Secretary of Labor possesses the authority to enforce the terms under which individuals are employed at subminimum wage under FLSA.
- Section 511 requirements **must be met** for each employee.
- **Non compliance with Section 511 requirements**, may result in WHD assessing back pay at full minimum wage for each affected employee in accordance with FLSA.

Scenario

Do Section 511 requirements apply to individuals with disabilities who are working in integrated work environments, but still receive some wages less than minimum wage?

Yes. Section 511 requirements still need to be followed.

Coordination

Some critical points to keep in mind in order for coordination under Section 511 to be effective:

- Coordination should be planned and orderly to avoid unnecessary chaos or strain on resources and individuals receiving required services.



Section 511: School's Role – Transition IEP



Due to the amount of steps and documentation required in this process, it would be beneficial to start conversations with families early so that schools, staff and families have time to complete the required steps before it is too late. Schools need to be aware that students cannot directly enter into subminimum wage employment.

Section 511: VR Role



The Vocational Rehabilitation Agency's role is to provide the reviews, documentation of the reviews, and provide the individual with disabilities employment information and basic career counseling.

Section 511: Employer Role



The 14c **Employer** is responsible to make sure all required reviews occur and documentation is maintained by the **Employer**.

Section 511: Department of Labor's Role



**The U.S. Department of Labor's
Wage and Hour Division is the
enforcing agency on compliance
with the Fair Labor Standards
Act and Section 511.**

Further Guidance

- The Department of Education has issued its Final Rule with preamble and implementing regulations at 34 CFR part 397 (81 FR 55629 (Aug. 19, 2016)).
- The Department of Labor has issued:
 - Field Assistance Bulletin No. 2016-2
 - Fact Sheet #39H regarding implementation of WIOA and
 - Wage and Hour Division enforcement of section 511's WIOA limitations on payment of subminimum wages under section 14(c) of the FLSA.

WHD guidance regarding enforcement of section 511's requirements can be found on their Workers with Disabilities website at: <https://www.dol.gov/whd/workerswithdisabilities/>.

Any Questions?

