

Section 511 of the Workforce Innovation and Opportunity Act (WIOA) added new requirements for employers who hold special wage certificates, commonly known as 14(c) certificates, under the FLSA (29 U.S.C. 214(c)). These new requirements must be satisfied before an employer hires a youth with disabilities at subminimum wage or continues to employ individuals with disabilities of any age at the subminimum wage level.

1. Where can I find a copy of Section 511?

Section 511 can be found on the U.S. Department of Education or the U.S. Department of Labor's web pages. The regulations are currently in draft but when final, the Code of Federal Regulations Title 34, Part 397, can be found at <http://www.ecfr.gov/cgi-bin/ECFR>.

2. When do the new requirements of Section 511 go into effect?

Section 511 goes into effect July 22, 2016, which is two years after the signing of the WIOA. However, everyone needs to be aware of these changes as soon as possible, especially the school districts. It is important to reflect changes in students' Individual Education Plans prior to July 22, 2016.

3. Does Section 511 eliminate subminimum wage?

Employers who have special wage certificates, commonly known as 14(c) certificates, will still be able to pay less than minimum wage for individuals with disabilities who are not students from a secondary school.

4. Who are the employers with a 14(c) certificate who employ individuals with disabilities less than minimum wage?

These employers are traditionally the Community Support Providers and the North Dakota Life Skills & Transition Center. The list of employers can be found at this website: <http://www.dol.gov/whd/specialemloyment/>. All employers with the 14(c) certificate will have to comply with Section 511.

5. What are the responsibilities of employers with a 14(c) certificate who employ individuals with disabilities less than minimum wage?

The employers that have a 14(c) certificate who employ individuals with disabilities less than minimum wage have the following responsibilities:

- (i) Comply with all US Department of Labor 14(c) requirements;
- (ii) Do not hire and pay subminimum wage to students with disabilities who are enrolled with a school district;
- (iii) Make arrangements with the Division of Vocational Rehabilitation for the required reviews;
- (iv) Provide the Division of Vocational Rehabilitation with the list of individuals needing reviews;
- (v) Inform the individual of the reviews and provide a meeting place for the reviews; and
- (vi) Maintain documentation from the reviews.

6. Who should the employer with a 14(c) certificate contact for the reviews?

It is estimated there are approximately 900 North Dakotans with disabilities being paid less than minimum wage. To assure that the reviews are done timely, the Division of Vocational Rehabilitation Services has designated staff to conduct the reviews. All other questions can be directed to Cheryl Hess-Anderson from the Division of Vocational Rehabilitation at chess@nd.gov or calling 701-328-8955.

7. How and when should the employer with a 14(c) certificate arrange for the reviews?

When an individual begins subminimum wage employment, they are required to have a review every six months during the first year and then annually thereafter. The employer is responsible to inform the Division of Vocational Rehabilitation when a new employee begins their subminimum wage employment.

It is the employer's responsibility to assure the reviews are completed and documentation is maintained.

8. Is a signed release needed by the individual with a disability or their parent/guardian if applicable?

No. Section 511 Regulation addresses that the Vocational Rehabilitation agency or its contractor is authorized to engage in the review of individual documentation required to meet Section 511 requirements.

9. What should be communicated to the employees being paid less than minimum wage about Section 511 and the reviews?

Section 511 was implemented to assure individuals with disabilities have opportunities for competitive integrated employment and the opportunity to be paid at or above minimum wage. It is important that this message be provided to the individuals. A basic message should be provided to the individual and guardian about Section 511 and these reviews. The information can be modified depending on the level of communication.

Below is a sample of this message:

A new law started in July 2016, where individuals who are paid less than minimum wage must meet with a person from the ND Vocational Rehabilitation to discuss your employment and provide you with information on employment options. You are welcome to have others attend this meeting such as your family members, friends or staff from your employer.

10. Who can attend the reviews?

The individual with a disability needs to attend the review. The individual can have anyone else they choose attend the meeting; such as, a parent, guardian, staff, employer, etc. The employer can attend the meeting if the individual agrees. The individual with a disability must receive career counseling and information/referral services that is provided in a manner that (1) is understandable to the individual with a disability and (2) facilitates independent decision-making and informed choice as the individual makes decisions regarding opportunities for competitive integrated employment and career advancement, particularly with respect to supported employment, including customized employment.

11. What records will the employer need to provide to Vocational Rehabilitation before the review?

A data collection form will be sent to the employer. The form needs to be completed and submitted to the State office of the Division of Vocational Rehabilitation at least 30 days prior to the review. This document will provide basic demographic information and wage information. Medical, employment, or other types of records will not be needed for the review.

12. What documentation will the individual with a disability and the employer receive after the review?

When the review is complete, the individual and employer will receive a copy of the review document for their records. This document should be maintained in the individual's file if the individual is to continue with subminimum wage employment.

13. What if an individual with a disability wants to pursue other employment options that would involve community employment at or above minimum wage?

Any individual with a disability who wants to pursue other employment options that would involve community employment at or above minimum wage will be given information about the Vocational Rehabilitation Program. In addition, the contact information will be provided to the local Vocational Rehabilitation office to schedule a follow-up meeting with the individual (and guardian if appropriate) to apply for Vocational Rehabilitation services.

14. Do 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 being paid less than minimum wage.

If individuals are not participating in paid employment or if they are being paid at/above minimum wage, then Section 511 requirements do not apply to them and they do not need the reviews. However if an individual with a disability may benefit from Vocational Rehabilitation services, it is recommended they be referred to the local VR office.

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

Yes. Section 511 requirements do not change for segregated or integrated work settings.

16. Who should be contacted if an employer is paying individuals with disabilities less than minimum wage and not complying with Section 511 requirements?

The U.S. Department of Labor/Wage and Hour Division is the enforcing agency on compliance with the Fair Labor Standards Act and Section 511. Their website is:

<http://www.dol.gov/whd/workerswithdisabilities/workers.htm> The Vocational Rehabilitation Agency's role is to provide the reviews, documentation of reviews, provide individuals with disabilities employment information, and basic career counseling.

17. Does Section 511 affect High School Students?

Section 511 (b)(2) clarifies that a school district may not enter into a contract or make other arrangements with a subminimum wage employer for an individual with disability, where the work is compensated at a subminimum wage. As long as the individual is a student of a school district, the student cannot be involved in any subminimum wage employment. Section 511 assures that students with disabilities have the opportunity to receive Pre-Employment Transition Services, employment information and career counseling-related services.

18. If the student cannot participate in subminimum wage employment, what activities should the school district focus on?

WIOA has defined five service categories for Pre-Employment Transition Services (ETS). It is recommended that school districts focus on providing the five Pre-ETS instead of subminimum wage employment.

19. Can a student's Individual Education Plan have the transition employment goal that will involve subminimum wage employment?

Yes, the student's Individual Education Plan (IEP) can still identify an employment goal that will pay at subminimum wage but certain requirements must be met: These requirements consist of:

- (i) The student cannot participate in any subminimum wage employment as long as the individual is considered a student under the school district;
- (ii) The student must be referred to the Vocational Rehabilitation Program;
- (iii) The student must be given the opportunity to receive all five Pre-Employment Services;
- (iv) The school district must have documentation in the student's file that the above items occurred, and the outcome of the activities. VR has a form available that would contain the necessary requirements for Section 511 documentation.

20. What are Pre-Employment Transition Services?

Pre-Employment Transition Services

Section 113 (b) of WIOA defines Pre-Employment Transition Services (PETS) as:

- (i) job exploration counseling;
- (ii) work-based learning experiences, which may include in-school or after school opportunities or experience outside the traditional school setting (including internships) that is provided in an integrated environment to the maximum extent possible;
- (iii) counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education;
- (iv) workplace readiness training to develop social skills and independent living; and
- (v) instruction in self-advocacy, which may include peer mentoring.

21. Can a student be paid subminimum wage once they leave high school?

Once the individual is no longer a student of the school district, the individual can participate in subminimum wage employment even if they are under 24 years of age. In order for the person to be paid subminimum wage, the Employer would need documentation that the following occurred:

- The individual received pre-employment transition services;
- The individual had been served or been determined ineligible by VR; and
- The individual has been provided career counseling and information/referrals to other public programs that allow the experience of competitive, integrated employment.

22. When do students need to be referred to Vocational Rehabilitation?

If a student is interested in competitive, integrated employment or subminimum wage, they should be referred to Vocational Rehabilitation. Individuals who are not interested in employment and will be participating in day supports **should not** be referred to Vocational Rehabilitation.

This resource document is a product of the North Dakota Department of Human Services' Division of Vocational Rehabilitation. Questions pertaining to the information in this document can be directed to Robyn Throlson or Cheryl Hess-Anderson by calling 701-328-8950.