Employment First Taskforce Joint Guidance

Limitations on Use of Subminimum Wage

Section 511 of the Workforce Innovation and Opportunity Act (WIOA)

Introduction

Section 511 of the federal Workforce Innovation and Opportunity Act of 2014 (WIOA), which took effect July 22, 2016, is intended to place limits on the payment of subminimum wage to individuals with disabilities, using special wage certificates under Section 14(c) of the Fair Labor Standards Act (FLSA). Entities who hold these special wage certificates will be referred to as "certificate holders" throughout this guidance. The Employment First Taskforce agencies, including the Ohio Departments of Developmental Disabilities and Education and Opportunities for Ohioans with Disabilities, understand their systems play a role in providing supports and services that empower youth and adults with disabilities to choose and succeed in competitive, integrated employment[1].

This guidance, intended for Vocational Rehabilitation (VR) staff, County Board of Developmental Disabilities Service and Support Administrators (SSAs), Educators and 14(c) Certificate Holders, will reflect Ohio's priorities, including:

- The expectation that youth and adults with disabilities should have opportunities to pursue competitive, integrated employment, and employment must be considered in every person-centered plan;
- Person-centered planning [2]is key to effective services and supports and should ensure a balance of what is important to and for a person, and
- Services should take place in the most integrated setting appropriate to the needs of qualified individuals with disabilities, and be appropriate to the individual's identified goals and outcomes.

Payment of Subminimum Wage to Youth

Within Section 511 there is a particular focus on youth 24 and younger, and a required series of steps that must be completed prior to a certificate holder paying the youth subminimum wage. These steps are outlined below:

1. ***Pre-employment Transition Services or Transition Services have been provided.*** The individual has received pre-employment transition services as defined by WIOA which authorizes the VR program, <u>or</u> transition services as defined by the Individuals with Disabilities Education Act (IDEA) which authorizes special education programming:

   Pre-employment Transition Services include:
   - Job exploration counseling
   - Work-based learning experiences
   - Counseling on postsecondary educational programs at institutions of higher education
   - Workplace readiness training to develop social skills and independent living
   - Instruction in self-advocacy, which may include peer mentoring

[1] Definition of Competitive Integrated Employment can be found on page 6.

[2] The Employment First Taskforce has adopted a common definition for person-centered planning, found on page 6.

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Transition Services: are a coordinated set of activities focused on improving the academic and functional achievement of a student with a disability, in order to facilitate the student's movement from school to post-school activities. Transition services are based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and include:

- Instruction
- Related services
- Community experiences
- The development of employment and other post-school living objectives
- Acquisition of daily living skills and provision of functional vocational evaluation.

2. ***The individual has applied for VR services and has been found ineligible or had their case closed without an employment outcome***. Closure without an employment outcome means that the individual has been determined eligible for VR services, has received services per the Individualized Plan for Employment, has been working toward an employment outcome (with supports and services) for a reasonable period of time[3] without success, and the individual's VR case is closed.

3. ***The individual has been provided career counseling, and information and referrals to public programs and other locally available resources*** **that offer employment-related services and supports designed to attain competitive integrated employment.** These services may not include work compensated at subminimum wage, or result in employment at subminimum wage. The individual must receive career counseling every six months for the first year of employment and annually thereafter.

Payment of Subminimum Wage to Adults

For individuals who were employed at subminimum wage before July 22, 2016, regardless of age, the certificate holder must maintain documentation that the individual has received career counseling and information and referral services from OOD at least once a year. All individuals employed at subminimum wage must have received the requisite first annual career counseling and information and referral services no later than July 22, 2017, and annually thereafter. Individuals who entered subminimum wage employment on or after July 22, 2016 must receive career counseling every six months during the first year of employment and annually thereafter.

Certificate holders must provide information about local self-advocacy, self-determination, and peer mentoring training opportunities every six months during the first year of employment and annually thereafter. These training opportunities may not be provided by the certificate holder.

OOD will be dedicating career counseling staff to ensure individuals who are paid subminimum wage have access to this career counseling, designed to promote opportunities for competitive integrated employment.

[3] Reasonable period of time must take into account the disability-related and vocational needs of the individual, as well as the anticipated length of time required to complete the services identified in the individualized plan for employment to achieve an employment outcome.

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Home and Community-Based Services (HCBS) and Settings

In Ohio, subminimum wage is typically paid to individuals who are performing work in facility-based work settings while receiving HCBS waiver-funded Vocational Habilitation (prevocational) services or in enclave settings while receiving HCBS waiver-funded Group Employment Supports. The purpose of these services is to help an individual to develop general skills that lead to competitive integrated employment and there is an expectation that provision of these services will eventually lead to competitive integrated employment with or without supports.

It is important to note that Section 511 does not pertain to services or settings, rather to wages paid. Individuals who are on a Level One, Individual Options (IO), or a SELF Waiver have access to these employment services. If subminimum wage is not being paid to the individual, the series of steps that must be completed prior to payment of subminimum wage to youth do not apply. A referral can be made to OOD to provide the requisite services prior to payment of subminimum wage to a youth age 24 or younger.

If an individual desires competitive integrated employment and requires employment services in order to achieve that outcome, they can begin the application process for OOD services at any time. Since the purpose of prevocational or group supported employment services is to prepare a person for competitive integrated employment, if an individual has made a decision not to pursue competitive integrated employment and does not have a goal of competitive integrated employment in their ISP, other adult day services may be a more appropriate option. Please refer to the DODD-OOD Joint Guidance on Referrals for Vocational Rehabilitation Services for more information.

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What this means to you:

Prior to payment of subminimum wage to a youth age 24 and younger:			
Educators	**County Board SSA**	**VR Staff**	**Certificate Holders**
When requested by OOD or a youth, local education agencies are required to provide documentation that transition services under IDEA were provided (usually the most recent IEP containing a Transition Plan). Generally, the requested information must be provided within 30 calendar days after completion of the transition services. Schools are prohibited from contracting with certificate holders for the purpose of paying subminimum wage to students with disabilities.	If the person-centered planning process identifies the need for Vocational Habilitation services to support an outcome of community employment, and subminimum wage will be paid for work performed while receiving this service, an individual can be referred to OOD to complete the required series of steps and receive documentation. Individuals may be referred to OOD as young as age 14 or as early as possible in the transition planning process. Please refer to the DODD-OOD Joint Guidance on Referrals for Vocational Rehabilitation Services, for more information.	Documentation must be provided to the youth seeking subminimum wage within 45 days of completion of the required series of steps outlined above, using the "Documentation for Youth Seeking Subminimum Wage" Form. If, through informed choice, the youth refuses to participate in the required activities, he or she will be ineligible for subminimum wage employment. VR staff must provide documentation of refusal to participate to the youth within 10 days.	Certificate holders must review, verify and maintain copies of documentation indicating that the youth has completed the required series of steps before the youth may begin work at subminimum wage. The Wage & Hour Division of the US Department of Labor is responsible for the administration and enforcement of the provisions that limit the ability of certificate holders to pay a subminimum wage to workers with disabilities. For more information, please refer to Field Assistance Bulletin 2016-2

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Continued payment of subminimum wage for individuals who were employed before July 22, 2016:			
Educators	County Board SSA	VR Staff	Certificate Holders
No requirements at this point.	Individuals must receive annual career counseling and information and referral services from OOD at least once a year. These services will generally take place in their place of subminimum wage employment and will be coordinated between OOD and the certificate holder. As a result of this service, individuals who are interested in seeking competitive integrated employment should be referred to OOD. Please refer to the DODD-OOD Joint Guidance on Referrals for Vocational Rehabilitation, referenced above.	Through a coordinated outreach effort, dedicated OOD career counseling staff will provide career counseling and information and referral services at least annually for individuals currently in subminimum wage employment. Documentation will be provided to the individual upon completion of the service.	Certificate holders are required to verify completion of career counseling and information and referral services by OOD for all individuals, regardless of age who are paid subminimum wage. Certificate holders must provide information about local self-advocacy, self-determination, and peer mentoring training opportunities, every six months during the first year of employment, and annually thereafter. These training opportunities may not be provided by the certificate holder. For more information, please refer to Field Assistance Bulletin 2016-2

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Competitive Integrated Employment Definition

Means work that is performed on a full-time or part-time basis (including self-employment) for which an individual:

- Is compensated at a rate that is at or above the higher of the federal or state minimum wage for the place of employment but not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities, and who are similarly situated in similar occupations by the same employer and who have similar training, experience and skills;
- In the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities, and who are self-employed in similar occupations or on similar tasks and who have similar training, experiences and skills;
- Is eligible for the level of benefits provided to other employees;

Is at a location:

- That is typically found in the community and
- Where the employee interacts for the purpose of performing work duties of the position with other employees within the particular work unit and the entire work site, and, as appropriate to the work performed, other persons (e.g. customers and vendors) who are not individuals with disabilities (not including supervisory personnel or service providers) to the same extent that employees who do not have disabilities and who are in comparable positions interact with these persons, and;
- That presents, as appropriate, opportunities for advancement that are similar to those for other employees who are not individuals with disabilities who have similar positions.

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Person-Centered Planning Common Definition

The Employment First Taskforce has adopted a common definition for person-centered planning based on four common elements: self-direction, empowerment, dynamic process and team approach.

Self-Direction	Person-centered planning is a self-directed ongoing process to identify an individual's unique strengths, interests, abilities, preferences, available resources and desired outcomes as they relate to the individual's educational, training and employment needs. Individuals should receive the support necessary to be able to effectively guide the process.
Empowerment	Person-centered planning empowers the individual, as the primary stakeholder, to take personal responsibility for decisions regarding which services and supports are necessary to achieve desired outcomes. Individuals should be provided with information and supported in experiences to facilitate informed, effective decision making.
Dynamic Process	Person-centered planning is an ongoing outcome-oriented process that can be modified as frequently as necessary according to the individual's continually evolving interests and needs.
Team Approach	Person-centered planning involves a team approach, including participation and coordination from multiple systems and natural supports, who can support the individual to make informed decisions about their future life direction and the supports they need to achieve their goals. Individuals should include additional team members of their choosing.

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