

## **SECTION 458 OF WIOA (AMENDMENT TO SECTION 511 OF WIA)**

### **I. Background**

Section 458 of the Workforce Innovation and Opportunity Act (WIOA) adds an additional section onto Title V of the Workforce Investment Act (WIA). The new section, *Limitations on Use of Subminimum Wage*, places several requirements on both the employer and State in order to employ a disabled youth at subminimum wage.

### **II. Applicability**

Entities, including a contractor or subcontractor of an entity, which holds a special certificate as described by section 14(c) of the Fair Labor Standards Act of 1938 (see attached).

A local educational agency, as defined by section 9101 of the Elementary and Secondary Education Act of 1965 (see attached).

A State educational agency, as defined by section 9101 of the Elementary and Secondary Education Act of 1965 (see attached).

The "designated State unit" for the counseling, information, and referrals described in section 511(1)(A) and (1)(B); for purposes of the applicability to the State of Wisconsin, this "unit" is the Department of Vocational Rehabilitation.

### **III. Effective Date**

The requirements of this section take effect 2 years after the date of enactment of WIOA; July 22, 2016.

### **IV. Requirements**

In general – No entity, including a contractor or subcontractor of the entity, which holds a special wage certificate may compensate an individual with a disability who is age 24 or younger at a wage that is less than the Federal minimum wage **UNLESS** *1 of the following conditions is met:*

#### **a. Before Employment**

1. The individual has completed and produces documentation indicating completion of, *each of the following actions:*

a. pre-employment transition services that are available to the individual under WIOA section 113 (see attached), or transition services under the Individuals with Disabilities Education Act.

**OR**

b. the individual has applied for vocational rehabilitation services under Title I, with the result that –

- i. the individual has been found ineligible for such services pursuant to that title and has documentation consistent with WIOA section 102(a)(5)(C) regarding the determination of ineligibility; **OR**
    - ii. the individual has
      1. been determined to be eligible for vocational rehabilitation services;
      2. has an individualized plan for employment under section 102;
      3. has been working toward an employment outcome specified in such individualized plan for employment, with appropriate supports and services, including supported employment services, of a 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 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; **AND**
      5. such counseling and information and referrals are not for employment compensated at a subminimum wage provided by an entity described in this section, and such employment-related services are not compensated at a subminimum wage and do not directly result in employment compensated at a subminimum wage provided by an entity described in this section.
  2. Before an individual begins work, the employment entity described above shall review such documentation received by the individual, and provided by the individual to the entity, that indicates that the individual has completed the actions described above and the entity shall maintain copies of such documentation.
  3. Documentation Requirements: The designated State unit, in consultation with the State educational agency, shall develop a new process or utilize and existing process, consistent with guidelines developed by the Secretary, to document the completion of the actions described above.
- a. Such process shall require that, in the case of a student with a disability, for documentation of actions related to pre-employment transition services:
- i. if such student with a disability receives and completes each category of required activities in section 113(b), such completion of services shall be documented by the designated State unit in a manner consistent with this section;
  - ii. if such student with a disability receives and completes any transition services available for students with disabilities under the Individuals with Disabilities Education Act, including those provided under section 614(d)(1)(A)(i)(VII), such completion of services shall be documented by the appropriate school official

responsible for the provision of such services, in a manner consistent with this section; and

- iii. the designated State unit shall provide the final documentation, in a form and manner consistent with this section, of the completion of pre-employment transition services or transition services under the Individuals with Disabilities Act, to the student with a disability within a reasonable period of time following the completion; and

- b. when an individual has completed the actions described above under eligible/ineligible for vocational rehabilitation services, the designated State unit shall provide the individual a document indicating such completion, in a manner consistent with this section, within a reasonable time period following the completion of the action described in this subparagraph.

**b. During Employment**

1. An entity may not continue to employ an individual, regardless of age, at a subminimum wage, unless, after the individual begins work at that wage, at the intervals described in (2), the individual (with, in an appropriate case, the individual's parent or guardian) –
  - a. is provided by the designated State unit career counseling, and information and referrals described above, delivered in a manner that facilitates independent decision making and informed choice, as the individual makes decisions regarding employment and career advancement; **and**
  - b. is informed by the employer of self-advocacy, self-determination, and peer mentoring training opportunities available in the individual's geographic area, provided by an entity that does not have any financial interest in the individual's employment outcome, under applicable Federal and State programs or other sources.
2. Actions required above shall be carried out once every 6 months for the first year of the individual's employment at subminimum wage, and annually thereafter for the duration of such employment.
3. In the event that an individual is working for a business with fewer than 15 employees, such entity can satisfy the requirements by referring the individual, at the intervals described above, to the designated State unit for the counseling, information, and referrals described in (1)(a) and the information described in (1)(b).
4. The entity employing an individual at subminimum employment shall verify completion of the requirements above, including reviewing any relevant documents provided by the individual, and shall maintain copies of the documentation.

5. The entity shall be subject to review of individual documentation by a representative working directly for the designated State unit or the Department of Labor at such time and in such manner as may be necessary to fulfill the intent of this section, consistent with regulations established by the designated State unit or the Secretary of Labor.

**c. What if an Individual is Already Employed at Subminimum Wage at the Effective Date of this Section?**

1. WIOA section 511(a)(1) states that no entity with a special wage certificate may compensate an individual with a disability who is age 24 or younger at a wage that is less than the Federal minimum wage, unless "[t]he individual is currently employed by an entity that holds a valid certificate pursuant to section 14(c) of the Fair Labor Standards Act of 1938.
2. The entity will, however, have to meet the requirements under this section for continuing to employ a disabled individual, described in 511(c).

**V. Contracts**

- a. A local education agency or a State educational agency may not enter into a contract or other arrangement with an entity described in section (a) of 511 for the purpose of operating a program for an individual who is age 24 or younger under which work is compensated at subminimum wage. (See 20 U.S.C. 7801, attached)