



July 27, 2016

Dear Certificate Holder:

The Workforce Innovation and Opportunity Act (WIOA) was enacted on July 22, 2014. Section 458 of WIOA amends Title V of the Rehabilitation Act of 1973 (Rehab Act) by adding a new section 511 that limits the ability of employers to pay a subminimum wage to workers with disabilities. The section 511 limitations are effective on July 22, 2016.

The U.S. Department of Labor's Wage and Hour Division (WHD) has authority to administer and enforce these new requirements and will include the WIOA requirements in its enforcement of section 14(c) commencing on the effective date. These new requirements are in addition to, and do not replace, the existing requirements of section 14(c) of the Fair Labor Standards Act (FLSA). As an employer who holds a section 14(c) certificate, you must comply with both.

WIOA Limitations on Subminimum Wages

WIOA prohibits employers from paying a subminimum wage to persons with disabilities under section 14(c) unless each worker has been regularly provided with career counseling and information about self-advocacy, self-determination, and peer mentoring training opportunities in the local area. WIOA also prevents employers from hiring individuals with disabilities age 24 and younger (youth) after July 22, 2016 at a subminimum wage, unless the employer obtains, verifies and maintains copies of documentation proving that these individuals have received and completed various services designed to improve their access to competitive integrated employment, including transition services, vocational rehabilitation and career counseling services. NOTE: The new requirements do not apply to youth who are already working at a subminimum wage as of July 22, 2016.

On July 27, 2016, Dr. David Weil, the Administrator for WHD, issued the enclosed [Field Assistance Bulletin No. 2016-2](#) that explains these new limitations on the payment of subminimum wages, as mandated by WIOA. The Bulletin provides critical information about your responsibilities as an employer who holds a section 14(c) certificate. Here is a brief summary of those requirements:

1. Youth must have completed certain requirements before they can be hired and paid a subminimum wage.

WIOA prohibits certificate-holders from paying a subminimum wage to any individual with a disability who is age 24 or younger and hired after July 22, 2016, unless the certificate-holder obtains, reviews, verifies and maintains copies of documentation showing that the youth has completed three different requirements as documented by the Designated State Unit (DSU). The

DSU is typically the Vocational Rehabilitation (VR) agency in your state. A list of these agencies in each state is enclosed and can also be found at <http://soar.askjan.org/IssueConcern/214>. The requirements that must be completed are as follows:

- 1) *Transition services* under the Individuals with Disabilities Act (IDEA) and/or *pre-employment transition services* under WIOA;
- 2) *Vocational rehabilitation (VR)*, as noted:
 - a. the youth applied for VR services and was found ineligible OR
 - b. the youth applied for VR services and was found eligible AND
 - i. had an individual plan for employment (IPE) AND
 - ii. worked toward an IPE employment outcome for a reasonable period without success; AND
 - iii. the VR case was closed;
- 3) *Career counseling* including information and referrals to federal and state programs and other resources in the individual's geographic area.

The DSU in your state is required to provide final documentation of completion of these three requirements to the youth, generally within 45 days after completion of the services, and must also provide the youth a final cover sheet that itemizes each of the documents provided. The youth must provide this documentation to you before he or she begins work at a subminimum wage. It is your responsibility to obtain, review and verify this documentation. If an individual does not have the documentation, you may choose to contact the DSU or Vocational Rehabilitation agency in your state, or you may ask the individual to do so.

As noted above, you may not pay a youth hired after July 22, 2016 a subminimum wage unless you have reviewed and verified this final documentation. WIOA also requires you to maintain copies of the documentation you have reviewed.

2. All employees with disabilities must be provided with career counseling by the DSU and with information about training opportunities by the employer, every six months for the first year of employment and annually thereafter, in order to continue to be paid a subminimum wage.

WIOA also prohibits section 14(c) certificate-holders from paying a subminimum wage to any individual with a disability, regardless of age, unless the DSU provides him or her with career counseling, information and referrals, and the employer provides information about local self-advocacy, self-determination, and peer mentoring training opportunities, every six months during the first year of employment, and annually thereafter.

As the employer, you may refer your employees to the DSU in your state for this mandatory counseling, or you may choose to contact the DSU and inform that agency of the need for counseling as soon as possible, in order to ensure that the DSU receives the proper notification. You must also identify, locate or compile information about self-advocacy, self-determination, and peer mentoring training opportunities available in your local area. The training opportunities

may be provided under applicable federal or state programs or other sources, but must not be provided by an entity that has any financial interest in the individual's employment outcome including any entity that holds a section 14(c) certificate. You must provide that information to each of your employees, every six months during the first year of employment, and annually thereafter.

Prior to paying an employee a subminimum wage, you must verify the timely completion of both these requirements (*i.e.*, every six months during the first year of employment, and annually thereafter) and review any relevant documents that may be provided to you by your employees. These requirements took effect on July 22, 2016.

If you are a small business (*i.e.*, a business with fewer than 15 employees), you may instead refer each of your employees to the appropriate DSU for both the career counseling and training information, every six months for the first year of employment and annually thereafter.

The Department of Education has published a final rule implementing the provisions of WIOA relating to the roles and obligations of DSUs, schools, and state and local educational agencies in providing counseling and other services for workers employed at subminimum wages and youth considering such employment. Employers, workers, and other interested members of the public are encouraged to review the final rule at https://doleta.gov/wioa/Final_Rules_Resources.cfm and to contact their state VR agency regarding services which may be available to workers and youth with disabilities.

Compliance Assistance is Available

WHD is responsible for the administration and enforcement of the provisions of section 14(c), and will also begin investigating and reviewing compliance with these provisions of WIOA as part of its regular enforcement activities. As you know, section 14(c) of the FLSA permits the payment of subminimum wage rates, after receipt of a certificate by the Department of Labor, to individuals whose earning or productive capacity is impaired by a disability for the work to be performed. It requires that an individual's rate of pay be commensurate with the rates paid workers without a disability performing the same type of work in the same vicinity. In addition to satisfying these section 14(c) requirements, beginning July 22, 2016, employers will also have to comply with WIOA.

Employers remain responsible for compliance with all applicable labor laws, not only the FLSA, WIOA and Rehabilitation Act as mentioned above, but also other Federal laws, including the Americans with Disabilities Act, and any applicable state or local requirements. The WHD is here to assist you in meeting your compliance obligations with the Federal section 14(c) program and to ensure that workers employed under 14(c) certificates receive the full protections of the FLSA and section 511 of the Rehabilitation Act. Compliance matters and we want to ensure that you have the tools and resources you need to meet your obligations under the law.

We are committed to providing you and other stakeholders with ongoing information about compliance with the FLSA, WIOA, and other section 14(c) program requirements. We encourage you to stay well-informed of new information and notices from WHD by regularly

visiting our website for subminimum wage employment for workers with disabilities at: <http://www.dol.gov/whd/workerswithdisabilities>. You can also sign up to receive free e-mail updates about the section 14(c) program and other important information by clicking the “[Subscribe to 14\(c\) News](#)” button on our website and providing your email address.

Additionally, the WHD has developed [Fact Sheet 39H](#) on the new WIOA requirements which is enclosed, along with the Field Assistance Bulletin and list of Vocational Rehabilitation agencies, and is currently developing additional training and guidance materials which we expect to post on our website soon.

I hope this information is helpful to you. If you have questions, we encourage you to contact your local Wage and Hour District Office. A list of those offices can be found at <https://www.dol.gov/whd/america2.htm>.

Sincerely,

A handwritten signature in blue ink that reads "Helen M. Applewhaite". The signature is written in a cursive style with a large initial 'H'.

Helen M. Applewhaite, Branch Chief
Family and Medical Leave Act and Other Labor Standards
Wage and Hour Division
United States Department of Labor

Enclosures:

Field Assistance Bulletin No. 2016-2
Fact Sheet 39H
List of Vocational Rehabilitation Agencies