



Complying with Section 511: Approaches that Promote Competitive Integrated Employment for Youth and Adults

Introduction

The Workforce Innovation and Opportunity Act (WIOA), signed into law in 2014, added Section 511, “Limitations on the Use of Subminimum Wage,” to Title V of the Rehabilitation Act of 1973. Section 511 requires a state’s vocational rehabilitation services agency to perform specific actions before the State can authorize an employer to pay a person with a disability below the minimum wage.¹ Section 511 and its regulations were enacted to “ensure that individuals with disabilities, especially youth with disabilities, have a meaningful opportunity to prepare for, obtain, maintain, advance in, or regain competitive integrated employment, including supported or customized employment.”²

These requirements, in part, serve to keep young people from being tracked into subminimum wage employment, and to help people already in subminimum wage jobs to move into competitive integrated employment. The regulations also require vocational rehabilitation providers to offer annual career counseling and other services to existing workers with disabilities paid below the minimum wage. This brief will explore approaches one State has taken to comply with Section 511 and will provide recommendations for States, providers, and advocates.

Provisions of Section 511 Related to Transition Services for Youth with Disabilities

Pre-Employment Transition Services and IDEA Transition Services

If a youth with a disability is considering subminimum wage employment, their State’s vocational rehabilitation agency/designated state unit (DSU) must demonstrate and document that the youth with a disability³ was provided Pre-Employment Transition Services (Pre-ETS) through the Vocational Rehabilitation (VR) program⁴ or transition services by the youth’s Local Educational Agency (LEA) under the Individuals with Disabilities Education Act (IDEA).⁵

¹ Limitations on the Use of Subminimum Wage, 34 C.F.R. § 397 (2017) (regulations implementing Section 511); Limitations on the use of subminimum wage, 29 U.S.C.S. § 794g (LEXIS through Pub. L. No. 115-140) (codified Section 511); Workforce Innovation and Opportunity Act, 113 Pub. L. No. 128, § 511, 128 Stat. 1425, 1676-79 (2014).

² 34 C.F.R § 397.1 (2017).

³ “Youth with a disability” refers to a person with a disability between the ages of 14 and 24.

⁴ 34 C.F.R. §§ 397.20(a)(1), (a)(2), (a)(3) (2017).

⁵ 34 C.F.R. §§ 397.20(a)(1)(i), (a)(1)(ii), (a)(1)(iii) (2017).

Pre-ETS services include job exploration counseling; work-based learning experiences, which may include in-school or after-school opportunities; experiences outside of the traditional school setting and/or internships; counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs; workplace readiness training to develop social skills and independent living; and instruction in self-advocacy.⁶ Services provided under IDEA must be designed to assist the student in transitioning to postsecondary education or into competitive integrated employment.⁷ Additionally, it must be demonstrated that the student:

- a. applied for vocational rehabilitation services and was determined to be either eligible or ineligible; or
- b. received career counseling and information and referral services, which must refer the student 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.

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Additionally, before a youth seeking a subminimum wage job can be authorized to start subminimum wage employment, they must meet the following requirements. They must be determined eligible for the VR program and must: (1) have an approved individualized plan for employment (IPE); and (2) have been working toward the employment outcome in the IPE for a reasonable period of time with appropriate supports accommodations, but without success; and (3) have a closed VR service record.

511 Requirements for People of Any Age

Section 511 requires that people of any age satisfy certain service-related requirements in order to start to work or continue to work at subminimum wage with an entity holding a section 14(c) certificate. VR agencies and local education agencies, when appropriate, must document the person's completion of the required services. These services, which must be provided once every six months in the first year of employment and annually thereafter, include career counseling and information and referral services. The services may be provided directly by VR or through a contract with a community provider that does not hold a 14(c) certificate.

Career Counseling Required During Subminimum Wage Employment

Federal regulations require the DSU to provide career counseling services and job referral services on at least an annual basis⁹ to every employee making less than the minimum wage.¹⁰ These services must "facilitate independent decision-making and informed choice" about the individual's job and career.¹¹ The services can include benefits counseling.¹² If an employer with fewer than 15 employees refers someone making subminimum wage to the agency, it also must

⁶ 34 C.F.R. § 361.48(a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(2)(iv) (2017).

⁷ 34 C.F.R. §300.29(a)(1) (2017).

⁸ 34 C.F.R. § 397.20(a)(3) (2017).

⁹ During the first year of the employee's subminimum wage job, VR must provide these services once every six months. After the first year (or if the employee was hired before Section 511 came into effect), these services must be provided annually.

¹⁰ 34 C.F.R. § 397.40(a)(1) (2017).

¹¹ 34 C.F.R. § 397.40(a)(3)(ii) (2017).

¹² 34 C.F.R. § 397.40(a)(3)(iii)(2017).

inform the employee about “self-advocacy, self-determination, and peer mentoring training opportunities available in the community.”¹³

A Review of Promising Practices in Maryland’s WIOA State Plan

Maryland’s Implementation of Section 511¹⁴

Maryland conducted an assessment of the number of people earning subminimum wage under a 14(c) certificate, which identified 2,671 people as of January 2016. In their WIOA State Plan, they noted the requirements of Section 511. Specifically, they note that:

Section 511 of WIOA states that the DSU must provide youth with disabilities documentation that the youth have completed certain activities, such as receipt of transition services and Pre-Employment Transition services under the VR program prior to the youth engaging in subminimum wage employment.¹⁵

The State Plan also highlights Maryland’s Individuals with Disabilities: Minimum Wage and Community Integration Act, also known as the Ken Capone Equal Employment Act, which was passed during the 2016 Maryland Legislative Session.¹⁶ Under Maryland’s minimum wage law, employers who wish to pay sub-minimum wage must hold an authorization from Maryland’s Commissioner of Labor and Industry, in addition to a 14(c) certificate from the U.S. Department of Labor. The Ken Capone Equal Employment Act phases out the Commissioner of Labor and Industry’s authority to provide such authorizations to work activities centers or other sheltered workshops. It also restricts the ability of the Developmental Disabilities Administration to fund providers who pay people with disabilities less than the minimum wage.¹⁷ Beginning October 1, 2020, the Maryland Developmental Disabilities Administration may not fund providers that pay individuals less than the minimum wage under a 14(c) certificate.¹⁸ For these reasons, they anticipated an increased need for supported employment services.

The Ken Capone Equal Employment Act also requires that the Resource Coordinator of every person being paid less than the minimum wage work with that person and their team to develop a supplemental plan to address how community integration and employment will be accomplished.¹⁹ The plan must be part of the person’s annual individual service plan. The Resource Coordinator is an independent professional staff person who coordinates individual

¹³ 34 C.F.R. § 397.40(b)(1)(2017).

¹⁴ Unless cited otherwise, all of the following information is drawn from Maryland’s WIOA State Plan. Cited here as: Maryland Department of Labor, Licensing, and Regulation, *Maryland Workforce Innovation and Opportunity Act State Plan* (2017), <https://www.dlir.state.md.us/wdplan/wdstateplan.pdf> [hereinafter “Maryland WIOA State Plan.”]

¹⁵ Maryland WIOA State Plan at 175.

¹⁶ Md. Code. Ann. Health – Gen. §§ 7-207, 7-1012, 7-1013, 7-1014 (LEXIS, current through Chapter 5 of the 2018 Regular Session of the General Assembly).

¹⁷ § 7-207 (LEXIS).

¹⁸ Maryland WIOA State Plan at 176, Md. Code. Ann. Health – Gen § 7-207 (LEXIS, current through Chapter 5 of the 2018 Regular Session of the General Assembly).

¹⁹ Md. Code Ann. Health. Gen. §§ 7-1006, 7-1013 (LEXIS, current through Chapter 5 of the 2018 Regular Session of the General Assembly) (supplemental plan).

service planning for people receiving DDA services. At least annually, the individual, their Resource Coordinator, and their team must discuss the most integrated employment setting appropriate for that person. The individual's service plan must document that discussion and include any barriers to integration, and any services and supports the person needs to achieve employment in the community at minimum wage or above.²⁰

Maryland's WIOA State Plan also describes in detail the State's variety of Transition Services for youth with disabilities. Specifically, the plan discusses:

- The Governor's Transitioning Youth Initiative (TYI), which helps students with developmental disabilities move from pre-employment youth transition services. These services are provided to students with disabilities ages 14-21 before they graduate from high school and transition to adult supported employment services. It does so by earmarking funds in the Developmental Disabilities Administration and Division of Rehabilitation Services (DORS) budgets for students transitioning from high school, which reduces the likelihood that transitioning students will be added to the state's waiting list for DDA services.²¹ Maryland began the TYI in 1989 to create a seamless transition for youth from school to work, with support from DORS and DDA.
- Maryland's Interagency Transition Council for Youth with Disabilities: This Council's 26 Council members, who are heads of Maryland agencies and other stakeholders, including people with disabilities, promote interagency collaboration and high-quality transition services for youth with disabilities.
- The Business Services Branch within Maryland's DORS, which supports competitive integrated employment by: (1) networking with businesses and business organizations, such as the Chamber of Commerce and Business Leadership Network, to promote the employment of people with disabilities; (2) creating recruitment drives for businesses who want to hire DORS beneficiaries; and (3) collaborating with other agencies in the workforce development system (e.g., American Job Centers [AJCs]) and the disability services system to share business contacts and employment strategies.
- Maryland's strong investment in creating new apprenticeship opportunities in the State, especially for young people with disabilities. There are 230 registered professions to which a job seeker can be apprenticed in Maryland.

Results and Recommendations from Maryland's Needs Assessment for the Department of Rehabilitation Services²²

In its State Plan, Maryland discusses its plan to have DORS and the Maryland State Rehabilitation Council assess the needs of individuals with disabilities for transition-related career services and pre-employment services through the 2016 Comprehensive Statewide Needs Assessment. One goal is to coordinate DORS pre-employment transition services with school-based transition services required through IDEA. Another is to develop an Intra-Agency Cooperative Agreement to clarify roles and responsibilities and to promote coordination between VR and education for

²⁰ § 7-1013 (LEXIS).

²¹ Maryland Department of Health, Developmental Disabilities Administration, *Transitioning Youth*, <https://dda.health.maryland.gov/Pages/TY.aspx> (last visited Sep. 15, 2017).

²² All information on the Needs Assessment is drawn from Maryland Department of Rehabilitation Services, Maryland State Rehabilitation Council, *2016 Comprehensive Statewide Assessment of the Rehabilitation Needs of Individuals with Disabilities in Maryland*, http://www.dors.maryland.gov/resources/Documents/2016_Needs_Assessment.pdf (2016).

students with disabilities. Maryland's 2016 Statewide Needs Assessment recommends that DORS create a procedure for determining which of its beneficiaries are entitled to receive services under Section 511. It also recommends that DORS: (a) provide training on competitive integrated employment to DORS employees and vocational rehabilitation staff, and (b) create specific policies and procedures for the required annual counseling all people with disabilities must receive if they choose to remain in subminimum wage positions.

Summary of Actions Taken by Maryland to Implement Section 511

- Maryland built initiatives targeted at Section 511 Compliance into their WIOA State Plan, all designed to bring together key partners such as DORS and DD Councils.
- Maryland's coalitions and initiatives, such as the Governor's Transitioning Youth Initiative and its Interagency Transition Council for Youth with Disabilities, promote coordination of pre-employment transition services.
- Maryland has a strong focus on networking with State and local businesses to improve employment outcomes, which can be seen through its robust apprenticeship programs and the integration of the work of DORS' Business Services Branch into the WIOA State Plan.
- Passage and implementation of the Ken Capone Equal Employment Act is moving the state forward in closing sheltered workshops, eliminating the payment of subminimum wages, and coordinating services across systems.
- Maryland DORS is developing new policies and procedures that will help the state deliver career counseling required by Section 511.

Resources related to Section 511

- [RSA Presentation on Section 511 at the 2016 CSAVR Conference](#)
- [Wage and Hour Division List of Community Rehabilitation Programs \(CRPs\) with Section 14 \(c\) certificates](#), including the number of workers paid subminimum wages
- [Letter from the U.S. Department of Labor to Section 14\(c\) certificate holders explaining their obligations and requirements under WIOA](#)
- [Guidance for subminimum wage employers on WorkforceGPS](#)
- [Wage and Hour Division's Materials for Employers with Section 14\(c\) Certificates](#)
- [Wage and Hour Division's Materials for Workers with Disabilities Paid Subminimum Wages under Section 14\(c\), Their Families, and Guardians](#)
- [Workforce Innovation Technical Assistance Center's \(WINTAC's\) Topic Area on the Implementation of Section 511 Requirements](#)

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