



*Strong Families Make a Strong Kansas*

## **Workforce Innovation and Opportunity Act Section 511 — limitations on the use of subminimum wage**

### **Brief background information**

The Workforce Innovation and Opportunity Action (WIOA) amends the Rehabilitation Act which governs vocational rehabilitation by adding Section 511 — limitations on the use of subminimum wages.

After much public comment, the final regulations were published August 19, 2016. The regulations became effective 30 days after publication.

The addition of Section 511 to the Rehabilitation Act demonstrates the intent that individuals with disabilities, especially youth with disabilities, must be given the full opportunity to prepare for, obtain, maintain, advance in or re-enter competitive integrated employment.

Section 511 supports the extensive emphasis on competitive integrated employment in the Rehabilitation Act. Individuals may still make the informed choice to pursue other types of employment outcomes, but not through VR funding.

Section 511 does not:

- Change the purpose of the Rehabilitation Act.
- Promote subminimum wage employment.
- Eliminate sheltered workshops.
- Eliminate subminimum wage employment under Section 14(c) of the Fair Labor Standards Act.

Section 511 does prohibit an entity that holds a special wage certification under Section 14(c) from compensating an individual with a disability at subminimum wage unless certain conditions are met.

### ***Conditions pertaining to workers with disabilities aged 24 or younger who are hired after July 22, 2016***

WIOA requires youth with disabilities who are age 24 or younger to complete various service related activities and produce documentation showing completion to the 14(c) entity (employer).

#### **How many Kansans are currently paid subminimum wage?**

According to information from the U.S. Department of Labor\* the estimated number is 2,922.

There are 40 entities with 14(c) certificates in Kansas. The number of subminimum wage employees per entity ranges from 12 to 181.

\*USDOL information is based on the number of employees as of the dates that 14(c) certifications were issued. Actual numbers may vary at this time depending on new hires and separations.

The requirements for completion of specific activities are designed to improve their access to competitive integrated employment, including transition services, vocational rehabilitation and career counseling services, *before they are employed at a subminimum wage*. Therefore, as a result, beginning July 22, 2016, 14(c) entities may not hire and pay a subminimum wage to any individual with a disability who is 24 years of age or younger, unless the employer has reviewed, verified, and maintained copies of documentation that the youth has completed the following three requirements.

1. Received transition services under the Individuals with Disabilities Act (IDEA) and/or pre-employment transition services under the vocational rehabilitation (VR) program ;
  2. Participated in VR, as follows:
    - 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 individualized plan for employment (IPE) AND
      - ii. worked toward an IPE employment outcome for a reasonable period of time (with appropriate supports) without success AND
      - iii. the VR case was closed;
- AND
3. Received career counseling and information/referral (CCIR) services.

As the state's VR agency, Kansas Rehabilitation Services (KRS) will be required to provide final documentation of completion of each of these services to the youth. The youth is responsible to provide the information to the employer before beginning work at a subminimum wage.

If the youth does not or cannot provide documentation that the requirements have been completed, the employer must pay full federal minimum wages until the youth provides the documentation or choose not to employ the individual.

*These new pre-hire requirements do not apply to youth who are already working at a subminimum wage as of July 22, 2016.* However, these individuals must receive the annual CCIR services that are mandated for current employees. Please refer to the next section (conditions pertaining to workers with disabilities of any age).

### ***Conditions pertaining to workers with disabilities of any age***

WIOA also requires that all workers with disabilities who are paid a subminimum wage, regardless of their age, receive regular CCIR services from KRS. The CCIR services are intended to empower the individual to make informed choices, and to explore, discover, experience and attain competitive integrated employment. CCIR services must be provided by KRS or its conflict-free contractor.

The individual must also receive information about local self-advocacy, self-determination, and peer mentoring training opportunities from the 14(c) entity (employer). To avoid a conflict of interest, these services must not be provided by an entity that has any financial interest in the individual's employment outcome, including any entity that holds a 14(c) certificate.



The 14(c) entity (employer) must maintain documentation that verifies completion of these requirements and review any relevant documents which may be provided by an employee as a condition of paying a subminimum wage to that employee.

*All current 14(c) employees are entitled to career counseling and information about training opportunities no later than July 22, 2017, and annually thereafter.*

14(c) entities (employers) are responsible for compliance with all labor laws. The U.S. Department of Labor/Wage and Hour division has enforcement authority.

### **Referral information**

Based on our review of Section 511, here is a preliminary list or draft of informational requirements that would be necessary to send a referral to KRS:

- A signed release of information from the individual employee, or his or her parent/guardian if appropriate
- Individual employee's full name
- Individual employee's contact information (address, phone number, email, etc.)
- Individual employee's social security number
- Individual employee's date of birth
- Individual employee's known disabilities along with any documentation available describing those disabilities (please include tier level)
- Individual employee's start date of employment under Section 14(c) certificate
- Individual employee's average number of hours worked under Section 14(c) certificate
- Individual employee's productivity rating establishing rate of pay per requirements of your Section 14(c) certificate
- Type of work activities / job functions individual employee is doing at this time
- Any documentation or description of the individual employee's experience or attempts at working in competitive integrated employment in the community
- Any recent (2 years or less) assessments completed related to employment readiness or identifying barriers to employment in a competitive integrated job
- If applicable, the name and contact number of the individual employee's guardian
- Name and contact information for individual employee's case manager
- The name of the individual employee's KanCare managed care organization and if available, the name and contact information for their assigned care coordinator

(KRS anticipates providing a referral form to 14(c) employers.)



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### **Open dialogue about Section 511 implementation in Kansas**

We are exploring options on how we can most effectively implement the Section 511 requirements for vocational rehabilitation, and we are seeking input on how we can best collaborate with sub-minimum wage certificate holders in doing so. We would appreciate your participation in an open dialogue regarding the following questions. Your written input is also welcome. Please send to [Barbara.Mah@ks.gov](mailto:Barbara.Mah@ks.gov) with a subject line of Section 511.

Several factors impact referrals and provision of CCIR services to individuals currently employed at subminimum wage.

- There are more than 2,900 such individuals.
- For individuals employed in subminimum wage positions prior to July 22, 2016, we have until July 22, 2017 to provide the required services for these individuals. Therefore, this timeframe provides an opportunity to phase-in implementation so we can be as efficient and effective as possible.
- We are looking at options to outsource the provision of CCIR services as our current cadre of 65 counselors does not have the capacity to carry out these services in addition to their current responsibilities.
- We are awaiting final clarification from our federal partners on whether these requirements pertain to all individuals currently employed at subminimum wages, or only those individuals who began their subminimum wage employment as of the date of enactment of WIOA, June 22, 2014.
- If at any time we do not have sufficient staff or fiscal resources to serve all eligible individuals who apply, a waiting list must be established.

Questions: Thinking about these factors as well as your own perspectives on priorities and implementation strategies —

- Do you have an estimate of the persons aged 24 and under who you might typically expect to hire over the next nine months? Are case managers you employ typically included in Individual Education Plan meetings where subminimum wage employment options are discussed?
- Do you have an estimate of the number of adults you may bring on as new hires over the next nine months?
- Do you have input on outsourcing options we might undertake related to the CCIR services? What are your thoughts on how these services can be most effectively provided? What are the core components that you believe should be included consistently statewide in CCIR? What CCIR services do you think would be appropriate for group settings? Individual settings?
- What suggestions do you have for phasing in a referral process once we have CCIR services in place?
- How can benefits counseling be incorporated efficiently into these processes?
- What is your preferred method of communication as various phases of implementation move forward?
- Additional comments, questions or suggestions?