

Fact Sheet #39H: The Workforce Innovation and Opportunity Act and Limitations on Payment of Subminimum Wages under Section 14(c) of the Fair Labor Standards Act

This fact sheet provides general information concerning the impact of the Workforce Innovation and Opportunity Act (WIOA) limitations on the payment of subminimum wages to workers with disabilities under section 14(c) of the [Fair Labor Standards Act \(FLSA\)](#).

WIOA is a comprehensive federal law, enacted on July 22, 2014, which is intended to streamline, consolidate, and improve workforce development and training services for various groups, including youth and workers with disabilities. Among other things, WIOA requires that workers with disabilities who are age 24 or younger (youth) complete various requirements 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. WIOA also requires that all workers with disabilities, regardless of their age, who are paid a subminimum wage, receive regular career counseling and information about self-advocacy, self-determination, and peer mentoring training opportunities in their local area, every six months during the first year of employment and annually thereafter. These requirements, effective on July 22, 2016, are in addition to, and do not replace, requirements of section 14(c) of the FLSA.

Enforcement Authority

The Wage and Hour Division (WHD) is responsible for the administration and enforcement of the provisions of section 14(c) of the FLSA as well as the WIOA provisions that limit the ability of section 14(c) certificate holders to pay a subminimum wage to workers with disabilities. Section 14(c) of the FLSA authorizes employers, after receiving a certificate from the Wage and Hour Division to pay subminimum wages – wages less than the Federal minimum wage – to workers who have disabilities for the work being performed. The certificate also allows the payment of wages that are less than the prevailing wage to workers who have disabilities for the work being performed on contracts subject to the [McNamara-O'Hara Service Contract Act \(SCA\)](#) and the [Walsh-Healey Public Contracts Act \(PCA\)](#).

Workers Age 24 or Younger hired after July 22, 2016

Beginning July 22, 2016, WIOA prohibits employers who are FLSA section 14(c) certificate-holders from hiring and paying 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 three requirements. The Designated State Unit (DSU), which is typically the Vocational Rehabilitation (VR) agency in the employee's State, is required to provide individuals with documentation of services provided. An employer who is an FLSA section 14(c) certificate-holder may not pay a subminimum wage to a youth hired after July 22, 2016, unless the employee has completed:

- 1) Transition services under the Individuals with Disabilities Act (IDEA) and/or pre-employment transition services under WIOA,
- 2) Vocational rehabilitation (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 without success AND;
 - iii) the VR case was closed, and
- 3) Career counseling, including information and referrals to Federal and State programs and other resources in the employer's geographic area.

All Workers, regardless of age, who are employed at a subminimum wage

WIOA also prohibits employers who are section 14(c) certificate-holders from continuing to pay 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 every six months during the first year of employment, and annually thereafter. An employer may refer employees to the DSU in their state for this mandatory counseling, or may choose to contact the DSU and inform that agency of the need for counseling. The employer must verify completion of this requirement and review any relevant documents which may be provided by an employee as a condition of paying a subminimum wage to that employee.

In addition, the employer must provide information about self-advocacy, self-determination, and peer mentoring training opportunities available in its local area to each employee every six months during the first year of employment, and annually thereafter. 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.

A business with fewer than 15 employees may refer employees to their DSU for both career counseling and training opportunity 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 the DSU in their state regarding services which may be available to workers and youth with disabilities.

Employers remain responsible for compliance with all applicable labor laws, not only the FLSA and WIOA as mentioned above, but also other federal laws, including the Americans with Disabilities Act, and any applicable state or local requirements.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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