



Section 511 Questions and Answers

Section 511 of the Workforce Innovation and Opportunity Act (WIOA) added new requirements for employers who hold special wage certificates, commonly known as 14(c) certificates, under the FLSA (29 U.S.C. 214(c)). These new requirements must be satisfied before an employer hires a youth with disabilities at subminimum wage or continues to employ individuals with disabilities of any age at the subminimum wage level.

Since the implementation of WIOA on July 22, 2014 the South Dakota Vocational Rehabilitation Programs (Division of Rehabilitation Services and the Division of Service to the Blind and Visually Impaired) have been distributing information on the new Section 511 requirements to school districts, Vocational Rehabilitation personnel, service providers, consumer organizations, individuals with disabilities, their family members and to employers who hold 14(c) subminimum wage certificates. This Question and Answer document is another resource on Section 511 and its implementation in South Dakota.

Question 1: Where can I find a copy of the Section 511 Act and Regulations?

Section 511 is a small piece of the WIOA legislation which can be found on the US Department of Education or the US Department of Labor's web pages. The regulations are currently in draft but when final the Code of Federal Regulations Title 34, Part 397 can be found at <http://www.ecfr.gov/cgi-bin/ECFR>. However the South Dakota Division of Rehabilitation Services has an electronic copy of the Section 511 Act, regulations and other resource documents found in the Provider Resources at <http://dhs.sd.gov/rehabservices/providerresources.aspx>.

Question 2: When do the new requirements of Section 511 Act go into effect?

Section 511 goes into effect July 22, 2016 which is two years after the signing of the WIOA. However, everyone needs to be aware of these changes as soon as possible, especially the school districts. This is important to reflect changes in student's Individual Education Plans prior to July 22, 2016.

Question 3: Does Section 511 eliminate subminimum wage?

Section 511 only eliminates subminimum wage options for students with disabilities. Section 511 does not eliminate the subminimum wage option for all other individuals with disabilities. Employers who have a special wage certificates, commonly known as 14(c) certificate will still be able to pay less than minimum wage for individuals with disabilities who are not students from a secondary school. Section 511 assures that students with disabilities have the opportunity to receive Pre-Employment Transition Services as defined in Question 22 and all other individuals with disabilities have the opportunity to receive employment information and career counseling-related services.

Question 4: Can the school district fund or arrange for a student to work at less than minimum wage?

Section 511 (b)(2) clarifies that a school district may not enter into a contract or make other arrangements with a subminimum wage employer for an individual who is age 24 or younger which the work is compensated at a subminimum wage. The South Dakota Vocational Rehabilitation Programs interpret this language that as long as the individual is a student of a school district, the student cannot be involved in any subminimum wage employment. However, once the individual is no longer a student of the school district, the individual can participate in subminimum wage employment even if they are under 25 years of age.

Question 5: If the student cannot participate in subminimum wage employment, then what activities should the school district focus on?

WIOA has defined five service categories for Pre-Employment Transition Services (PETS). It is recommended that school districts focus on providing the five PETS instead of subminimum wage employment. These 5 services are defined in Question 22.

Question 6: Can a student's Individual Education Plan have the transition employment goal that will involve subminimum wage employment?

Yes, the student's Individual Education Plan (IEP) Section 511 can still identify an employment goal that will pay at subminimum wage, but certain requirements must be met: These requirements consist of:

- (i) The student cannot participate in any subminimum wage employment as long as individual is considered a student under the school district;*
- (ii) The student must be referred to the Vocational Rehabilitation Program;*
- (iii) The student must be given the opportunity to receive all five Pre-Employment Services listed in Question 22; and*
- (iv) Form "DHS-VR-359 Documentation of Subminimum Wage" needs to be completed prior to completing school services and a copy should be placed in the student's education file. A copy also should be provided to the subminimum wage employer, student and the Vocational Rehabilitation Counselor. This form can be found at the Provider Resources tab at <http://dhs.sd.gov/rehabservices/providerresources.aspx> website.*

Question 7: Do all students with disabilities have to be referred to the Vocational Rehabilitation Program?

Yes, if the student's employment goal on the Individual Education Plan involves employment at subminimum wage. It is also recommended that all students with disabilities including students with disabilities who are not on an IEP be referred to Vocational Rehabilitation Services.

Question 8: How does Section 511 impact a youth with a disability who is no longer involved with a school district?

A youth with a disability is a when an individual is between the ages of 14 and 25. Effective 7/22/2016 If the youth has completed secondary school but still younger than 25 years old, he/she cannot start working for less than minimum wage until they have applied for Vocational Rehabilitation Services and had the opportunity to receive pre-employment transition services before having their case closed with VR. If the youth is already working at subminimum wage on 7/22/2016, it is recommended they are referred to Vocational Rehabilitation Services to have the opportunity for pre-employment transition services.

Question 9: Who are the employers with a 14(c) certificate and employs individuals with disabilities less than minimum wage?

These employers are traditionally the Community Support Providers and the South Dakota Developmental Center. However, there are community businesses in South Dakota who also have an approved 14(c) certificate. The full listing of employers can be found at this website: <http://www.dol.gov/whd/specialemloyment/>. All the employers with the 14(c) certificate will have to comply with Section 511.

Question 10: What are the responsibilities of the employers with a 14(c) certificate and employs individuals with disabilities less than minimum wage?

The employers that have a 14(c) certificate and employ individuals with disabilities less than minimum wage have the following responsibilities:

- (i) Comply with all US Department of Labor 14(c) requirements;*
- (ii) Do not employ at less than minimum wage any students with disabilities who are enrolled with a school district;*
- (iii) If attending a student's Individual Education Plan meeting, provide the school district information on Section 511 requirements and form "DHS-VR-359 Documentation of Subminimum Wage" if the employment goal is employment that pays subminimum wage. The employer should maintain a completed copy of this form with their records for subminimum wage documentation. This form can be found at the Provider Resources tab at <http://dhs.sd.gov/rehabservices/providerresources.aspx> website;*
- (iv) Arrange with the Division of Rehabilitation or it's contractor the six month and annual reviews to be completed for individuals being paid less then minimum wage;*
- (v) Provide the Division of Rehabilitation Services the list of individuals needing reviews and data elements in the Excel document "511 Data Form from Agencies". This form can be found at the Provider Resources tab at the <http://dhs.sd.gov/rehabservices/providerresources.aspx> website;*
- (vi) Inform the individual of the reviews and provide meeting place for the reviews;*
- (vii) Provide information about self-advocacy, self-determination, and peer mentoring training opportunities available in their community; and*
- (viii) Maintain documentation from the reviews.*

Question 11: What should be communicated to the employees being paid less than minimum wage about Section 511 and the reviews?

Section 511 was implemented to assure individuals with disabilities have opportunities for community employment and the opportunity for employment at or above minimum wage. It is important that the message provided to the individuals is relayed this way and personal opinions are not part of the discussion. A basic message should be provided to the individual and guardian about Section 511 and these reviews. The information can be modified depending on the level of communication. Below is a sample of this message:

A new law starts in July 2016 where individuals who are paid less than minimum wage must meet with a person from the South Dakota Vocational Services to discuss your employment and provide you with information on employment options. You are welcome to have others attend this meeting such as your family members, friends or staff from your employer.

Question 12: How and when should the employer with a 14(c) certificate and employs individuals with disabilities less than minimum wage arrange for the reviews?

When an individual begins subminimum wage employment, they are required to have a review every six months during the first year and then annually thereafter. Individuals who are already employed at subminimum wage prior to July 22, 2016 will only need annual reviews with the 1st review to be completed by July 22, 2017. With the implementation of Section 511, staff from the Division of Rehabilitation Services or contract staff will be available to start the reviews July 1, 2016. The employer is responsible to inform the Division of Rehabilitation Services with adequate notice to complete the reviews in the six-month timelines when a new employee begins their subminimum wage employment. An Excel document will be provided to the employer to obtain necessary information prior to the review. It is the employer's responsibility to assure the reviews are completed and documentation is maintained if less than minimum wage is being paid to an individual with a disability.

Question 13: Who should the employer with a 14(c) certificate and employs individuals with disabilities less than minimum wage contact for the reviews?

It is estimated there are approximately 1,300 South Dakotans with disabilities being paid less than minimum wage. To assure that the reviews are done timely, the Division of Rehabilitation Services has contracted with individuals to conduct the reviews. These reviewers are identified in on the Provider Resources tab at the <http://dhs.sd.gov/rehabservices/providerresources.aspx> website. All other questions can be directed to the Bernie Grimme, Assistant Director for the Division of Rehabilitation Services at Bernie.Grimme@state.sd.us or calling 605-773-6284.

Question 14: Who can attend the Reviews?

The individual with a disability (and/or their guardian/guardian if applicable) needs to attend the review and he/she can have anyone else they choose to attend the meeting. The employer can also attend the meeting if the individual agrees. However, the employer needs to understand that communication needs to occur with the individual with a disability. The individual with a disability must receive career counseling and information/referral services that is provided in a manner that—

- (i) Is understandable to the individual with a disability; and*
- (ii) Facilitates independent decision-making and informed choice as the individual makes decisions regarding opportunities for competitive integrated employment and career advancement, particularly with respect to supported employment, including customized employment.*

Question 15: What records will the employer need to provide before and at the time of review?

An Excel document or data download should be completed by the employer and submitted to the State office of the Division of Rehabilitation Services at least 30 days prior the review. This document will provide basic demographic information and wage information. Medical, employment or other types of records will not be needed for the review.

Question 16: What documentation will the individual with a disability and the employer receive resulting from the review?

When the review is complete, the individual and employer will receive a copy of the review document for their records. This document should be maintained in individual's file if the individual is to continue with subminimum wage employment.

Question 17: What if the individual with a disability wants to pursue other employment options that would involve community employment at or above minimum wage?

Any individual with a disability who wants to pursue other employment options that would involve community employment at/or above minimum wage will be given information about the Vocational Rehabilitation Program. In addition, the contact information will be provided to the local Vocational Rehabilitation office to schedule a follow-up meeting with the individual (and guardian if appropriate) to apply for Vocational Rehabilitation services.

Question 18: Do Section 511 requirements apply to individuals with disabilities who are not receiving any wages or are being paid at minimum wage?

No. The requirements of Section 511 only applies to individuals being paid less than minimum wage. If individuals are participating in any paid employment or if they are being paid at/above minimum wage, then Section 511 requirements do not apply to them and they do not need the reviews. However, if an individual with a disability may benefit from Vocational Rehabilitation services, it is recommended they be referred to the local VR office.

Question 19: Do Section 511 requirements apply to individuals with disabilities who are working in an integrated work environment but still receive some wages less than minimum wage?

Yes. Section 511 requirements do not change for segregated or integrated work settings.

Question 20: Is a signed release needed by the individual with a disability or their parent/guardian if applicable?

No. The Section 511 Act and Regulation §397.50 addresses that the Vocational Rehabilitation agency or its contractor is authorized to engage in the review of individual documentation required to meet Section 511 requirements.

Question 21: Who should be contacted if an employer is paying individuals with disabilities less than minimum wage and not complying with Section 511 requirements?

The US Department of Labor/Wage and Hour Division is the enforcing agency on compliance with the Fair Labor Standards Act and Section 511. Their website is:

<http://www.dol.gov/whd/workerswithdisabilities/workers.htm> The Vocational Rehabilitation Agencies role is to provide the reviews, documentation of reviews, provide individuals with disabilities employment information and basic career counseling.

Question 22: What definitions apply for Section 511?

Definitions that apply to Section 511 as a result of WIOA are defined below:

Pre-Employment Transition Services

Section 113 (b) of WIOA defines Pre-Employment Transition Services (PETS) as:

- (i) job exploration counseling;*
- (ii) work-based learning experiences, which may include in-school or after school opportunities or experience outside the traditional school setting (including internships) that is provided in an integrated environment to the maximum extent possible;*
- (iii) counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education;*
- (iv) workplace readiness training to develop social skills and independent living; and*
- (v) instruction in self-advocacy, which may include peer mentoring.*

Student with a Disability

Section 7 (37) of WIOA defines Student with a Disability, however this definition can be confusing. A student with a disability in South Dakota is best defined as any student with a disability who is enrolled in a secondary school or post secondary training program and under the age of 21 by July 1st of that year.

Youth with a Disability

Section 7 (42) of WIOA defines a Youth with a Disability as an individual with a disability who:

- (i) is not younger than 14 years of age; and*
- (ii) is not older than 25 years of age.*

This resource document is a product of the South Dakota Department of Human Services/Division of Rehabilitation Services. Questions pertaining to the information in this document can be directed to Bernie Grimme at 605-773-3195 or Bernie.Grimme@State.SD.US .

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