

WIOA at the 2-Year Mark: Key Points

- The [Workforce Innovation and Opportunity Act \(WIOA\)](#) of 2014 reauthorizes the [Rehabilitation Act of 1973](#) and replaces the Workforce Investment Act (WIA) of 1998.
- The public Vocational Rehabilitation (VR) system is a core program under WIOA and should work collaboratively with the other core programs to help increase employment opportunities for all.
- VR must focus on providing [competitive, integrated employment](#) opportunities for persons with disabilities.
- VR must develop Individual Plans for Employment (IPEs) with clients in the first 90 days after a client is determined eligible for VR services.
- VR must collaborate with schools to identify students to receive [Pre-Employment Transition Services \(PreETS\)](#) regardless of whether or not the student applies for VR services.
- VR must provide career counseling at least annually to all individuals who are known to VR to be in [subminimum wage employment](#). VR must provide information to individuals in subminimum wage employment to assist them with making an informed choice about seeking competitive, integrated employment.
- At least annually, subminimum wage providers must inform employees about self-advocacy, self-determination, and peer mentoring opportunities that are not provided by employer.
- VR can work with Developmental Disabilities agencies to improve the information and dissemination process for enforcement of new restrictions on subminimum wage.

The Public VR System is now a “core program” under WIOA. WIOA Core Programs include:

1. The public VR system
2. State Employment Service
3. Adult Education and Literacy
4. Adult, Dislocated Worker, and Youth Programs

Core Programs under WIOA:

- Submitted a 4-year state plan by April 1, 2016;
- Are members of their state and local workforce boards;
- Must adopt common measures which include:
 - Entering and maintaining employment
 - Median earnings
 - Obtaining an education credential
 - Effectiveness in serving employers

These measures are new for VR, but not the other core programs, except for “*effectiveness in serving employers*”, which is a new measurement for all programs.

Competitive, Integrated Employment

Under WIOA, there is a new definition of *Competitive, Integrated Employment*: full or part time work, at minimum wage or higher, with similar benefits for employees with disabilities as those without disabilities, where individuals are fully integrated in employment.

Integration: in the workplace, persons with disabilities must interact with co-workers, customers, and vendors at the same rate as people without disabilities in comparable positions.

What is generally not considered *Competitive, Integrated Employment*?

- Sheltered workshop settings
- Group employment: “enclaves” of employees with disabilities, operated by businesses that are created specifically to employ people with disabilities
- [AbilityOne](#) (AKA: Javits-Wagner-O’Day) positions, where service providers are under federal contracts that require at least 75% of people working under these contracts must have a disability
- Being paid subminimum wages
- Mandated direct labor-hour ratios of employees with disabilities
- Any special, segregated workplace

There are other systems that may support the placement of persons with disabilities in these settings, but when the position is funded by VR, a person with a disability must be placed in a competitive, integrated employment setting to be considered a successful case closure.

Assessment for VR Service Eligibility: VR client assessments should rely on information obtained from integrated employment settings or other integrated community settings to the maximum extent possible, not segregated settings.

Changes in Individual Plan for Employment (IPE)

- In the past, one of the main complaints about the VR system was about how long it took for people to get an IPE. Now, once someone is determined eligible, VR has 90 days to develop an IPE.

Pre-Employment Transition Services

Under WIOA, VR is mandated to have a stronger presence in schools. Each VR office must coordinate *Transition Services* and *Pre-Employment Transition Services (PreETS)* with schools, and work with schools at an area office level. VR will be working with schools to help identify students who need PreETS.

PreETS are new under WIOA. PreETS and VR Transition Services (which previously existed) are part of a continuum of services to youth with disabilities.

- PreETS must be available statewide to **all students with disabilities in need of such services**, without regard to the type of disability.
- 15% or more of state Title I VR funds must be used for PreETS.

The Continuum of Services to Youth and Students with Disabilities

<p>VR Transition Services are a broad set of services and available to <i>Youth with Disabilities</i>:</p> <ul style="list-style-type: none"> • Ages 14-24 • Must apply and be accepted for VR services • Must have an IPE 	<p>VR Pre-Employment Transition Services (PreETS) are a narrow set of services and available to <i>Students with Disabilities</i>:</p> <ul style="list-style-type: none"> • Ages 16-21 (age limit can be lower at state discretion) • Must be enrolled in school (high school or post-secondary) with an Individual Education Plan, or have a Section 504 plan • Available to any student with a disability who can benefit • Do not need to apply to VR services • Do not need an IPE
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There are 5 Required PreETS:

1. [Job exploration counseling](#)
2. [Work-based learning experiences](#) which can include in-school or after school opportunities, or experience outside the traditional school setting (including internships), that is provided in an integrated environment in the community to the maximum extent possible.
3. [Counseling on post-secondary opportunities](#)
4. [Workplace readiness training](#)
5. [Instruction in self-advocacy, which may include peer mentoring](#)

How does WIOA define “in need of” when talking about PreETS?

WIOA does not define who is to be targeted for PreETS, but the following are criteria for consideration:

- Who needs PreETS?
- How are PreETS targeted?
- How does VR recruit students to meet the 15% funds for PreETS?
- How do students access PreETS (through VR or the schools)?

Section 511: Subminimum Wage

Via Section 511, WIOA aims to limit the use of subminimum wage employment. Section 511 applies to individuals earning subminimum wage under a 14(c) special wage certificate from the US Department of Labor. About 250,000 people across the country are earning subminimum wages. They typically work in sheltered workshops and group employment enclaves.

Steps for Youth Considering Subminimum Wage Employment

1. Before an individual with a disability under age 24 is placed in sub-minimum wage employment, they must either complete PreETS or Transition Services under the Individuals with Disabilities Education Act (IDEA) provided by the school.
 2. Then, the individual must go to VR and either be determined ineligible for VR services, or have an unsuccessful closure from VR after a “reasonable period of time”.
 3. If the youth is deemed ineligible for VR services, or has an unsuccessful closure after a reasonable period of time, the individual must be provided career counseling and referral to other programs and resources designed to assist the individual to achieve competitive integrated employment, in a way that facilitates independent decision-making and informed choice. This career counseling and referral can be provided directly by VR or an agency contracted by VR to provide this service (however the agency cannot hold a 14(c) subminimum wage certificate).
- If VR and schools are effectively communicating, an individual should not be able to easily bypass VR and go directly to subminimum wage employment. An individual can refuse VR services, but they must be making an ***informed choice*** to do so. If a youth refuses to go through the three-step 511 process, they cannot be placed in subminimum wage employment.

Steps for Individuals Currently Earning Subminimum Wage

After six months of employment at subminimum wage, and annually thereafter, the following steps are required for all individuals employed at subminimum wage, regardless of age.

1. As with step 3 for youth, VR must provide career counseling and referrals to other programs and resources designed to assist the individual to achieve competitive, integrated employment, in a way that facilitates independent decision-making and informed choice.
2. Subminimum wage employers must annually inform employees who are making subminimum wages about self-advocacy, self-determination, and peer mentoring opportunities that are **not provided by employer**.

Informed Choice:

Individuals with disabilities considering subminimum wage employment, individuals with disabilities who are currently in subminimum wage work settings, and their families might be hesitant at first to work with VR and seek competitive, integrated employment. It can be familiar and comfortable to stay in a segregated setting. Per the [Olmstead guidance from the U.S. Department of Justice](#) VR must go beyond just asking the individual if they want a job in a competitive, integrated setting, and take these steps:

1. Provide information about the **benefits of integrated employment settings**.
2. Facilitate **visits or other experiences** in such settings (e.g., job shadowing, informational interviews, etc.)
3. Offer opportunities to **meet with other individuals** with disabilities working in integrated settings, with their families, and with community providers.
4. Identify and **address any concerns or objections** raised by individual or another relevant decision-maker.

Section 511: Obligation of VR to Individuals “Who are Known” to be earning Subminimum Wage

- If a youth considering subminimum wage employment or an individual currently earning subminimum wage is “known” to VR, VR is responsible for undertaking the Section 511 process. VR is under no obligation to proactively seek out individuals who are earning subminimum wage, or considering subminimum wage employment.
- Individuals can become “**known to VR**” through a variety of ways: *individuals who have participated in any VR process, including anyone who ever received PreETS; self-referral (someone who voluntarily indicates to VR they are earning subminimum wage); referral by another public agency or service provider; the state client assistant program, and more.*
- Both VR and the U.S. Department of Labor Wage and Hour division have the right to review and monitor all required documentation to ensure Section 511 has been complied with.
- The annual review process required under Section 511 can be time-consuming, but this is an opportunity to move people from segregated work settings to competitive, integrated employment, and these reviews should be conducted in the spirit of the intent of Section 511: **to limit the use of subminimum wage employment.**

Schools and Subminimum Wage Contracts

- Prior to WIOA, schools could contract with organizations to pay individuals subminimum wage. These types of arrangements were typically utilized for individuals with intellectual and development disabilities ages 18-21, while still enrolled in school. WIOA now prohibits schools from having a contractual or other type of arrangement with holders of 14(c) special wage certificates, in order to pay a youth subminimum wage. As of July 22, 2016, these types of arrangements are illegal and must come to an end.
- If a service provider holds a 14(c) subminimum wage certificate, the school can still refer an individual to that service provider for other services, as long as it is not for subminimum wage employment.

How can VR leverage linkages with other systems to help individuals with disabilities enter competitive, integrated employment?

- The state Intellectual/Developmental Disabilities (IDD) systems are not mentioned in Section 511, even though most people earning subminimum wage are served by IDD and most subminimum wage providers have contracts with IDD.
 - DD can work with VR to inform clients and families about Section 511, and to help to make self-advocacy programs more available to clients.
 - DD develops Individual Service Plans (ISPs) with clients, which is a process that must occur annually. VR can consider linking the ISP and the annual Section 511 reviews.
- The state Department of Education (DoE) is required under Section 511 to have agreements with VR to ensure compliance with Section 511 for youth. DoE can help establish a clear referral process from schools to VR to ensure that the students under 24 are compliant with Section 511 and that schools are fully aware that they can no longer contract with subminimum wage employers.