

Chapter 31

511 Services For Individuals Seeking Subminimum Wage Employment

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31.1 Authority

34 CFR 397.1, 2 CFR 200.333

Employers who hold special wage certificates under section 14(c) of the Fair Labor Standards Act (29 U.S.C. 2014(c)) are now required to provide evidence that Youth with Disabilities working for subminimum wages are provided Transition Services, Vocational Rehabilitation (VR) services, and Career Counseling Services prior to beginning subminimum wage work. In addition, the 14(c) employer is also required to provide evidence that all subminimum wage employees, regardless of age, receive Career Counseling Services every six months during the first year of employment and annually thereafter.

31.2 Policy

Section 511 of the Rehabilitation Act requires the Utah State Office of Rehabilitation (USOR) to ensure that individuals with disabilities are given the opportunity to “prepare for, obtain, maintain, advance in, or regain competitive integrated employment.” It sets forth specific criteria for meeting this requirement for individuals with disabilities who are or will be employed at subminimum wages with a 14(c) employer. Starting July 22, 2016, a Youth with a Disability, aged 14-24, must receive Transition Services, apply for VR and engage in VR services, and receive Career Counseling Services prior to beginning subminimum wage employment. Adults with disabilities must receive Career Counseling every six months during the first year of subminimum wage employment and annually thereafter. USOR will coordinate with the Board of Education as per 34 CFR 397.10 for the provision of Transition Services. USOR will maintain documentation of 511 related services for a period of three years from the date of completion of the service as per 2 CFR 200.333.

Employers who hold special wage certificates under section 14(c) of the Fair Labor Standards Act (29 U.S.C. 2014(c)) are now required to provide proof that youth with a disability working for subminimum wages are provided Transition Services, application for VR services, and Career Counseling Services prior to beginning subminimum wage work. In addition, the 14(c) employer is also required to provide proof that all subminimum wage employees, regardless of age, receive Career Counseling Services every six months during the first year of employment and annually thereafter. While the Vocational Rehabilitation Program has been designated as the coordinator of documentation and services under 511, the 14(c) employer is ultimately responsible for ensuring that each employee receives the required 511 services. The Department of Labor will conduct reviews of 14(c) employers checking to ensure that

the employer has documentation of 511 services for each employee working for subminimum wage.

31.3 Youth with Disabilities (YWD) and Student with a Disability (SWD)

Transition services are provided to the broader population of both students and youth with disabilities.

USOR defines a Youth with a Disability as: 1) an individual with a disability and 2) age 14 through 24 years.

Youth with Disabilities (YWD) may or may not be participating and are not required to participate in an education program. The activities offered to YWD include career interest, job exploration and mentoring activities. For more individualized transition services application and determination of eligibility for VR is required. Given the age range for the classification of Youth with a Disability (YWD) it is also important to note that a client may meet the criteria for both Youth with a Disability (YWD) and the criteria for Student with a Disability (SWD) see 25.4 for more information on SWD.

31.4 Responsibilities to Youth with Disabilities (YWD) Considering Subminimum Wage Employment

Youth with Disabilities seeking or considering employment at subminimum wage must engage in three specific activities designed to provide information and support for competitive, integrated employment opportunities. These activities are:

- a. Participate in 511 Transition Services (see 31.5)
- b. Attempt Competitive Employment with VR support or be determined Ineligible for VR Services (see CSM 31.5 and 31.6) and
- c. Receive Career Counseling Services (see CSM 31.7)

Activities (a) and (b) may occur simultaneously and do not have a specified order, however, activity (c) must occur within 30 days of the closure outcome or within 30 days from determination of ineligibility from (b). Each of these activities and the requirements for each is described in more detail within this chapter.

USOR is responsible for ensuring YWD have access to the three activities and for maintaining documentation of the completion or refusal of these activities. Employers paying subminimum wages under 14(c) are also required to maintain documentation of the three activities. Employers are responsible for confirming all three activities occur prior to employing YWD at subminimum wages. If a release of information is obtained with permission from the Youth, the employer may be given a copy of the documentation of the Youth's 511 activities by USOR.

Note: If YWD were employed at subminimum wages with a 14(c) employer prior to July 22, 2016, they are not required to participate in the three activities listed above. However, YWD must be provided with information and referrals and Career Counseling Services every six months during the first year of employment (if applicable) and annually thereafter.

31.5 511 Transition Services

Transition Services are a coordinated set of activities that includes instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation for a student or youth with a disability. Appropriate Transition Services are based upon the individual youth's needs, taking into consideration the YWD's preferences and interests. Transition Services are designed to promote movement and guide YWD from school to post-school activities, including postsecondary education, vocational training, competitive integrated employment, supported employment, continuing and adult education, adult services, independent living, and community participation. (See Chapter 25 for more information about Transition Services). A Youth with a Disability seeking subminimum wage employment must participate in 511 Transition Services provided one of two ways:

- a. A Youth may receive Transition Services through the Local Education Agency (LEA) under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), including Transition Services available to the individual under section 614(d) of the Act (20 U.S.C. 1414(d). If documentation of Transition Service completion is available from the Local Education Agency (LEA), the USOR 511 Coordinator will send a record release request to the school. Once the documentation is received, the USOR 511 Coordinator will review the documentation to ensure it contains all required information, make a copy for the Youth's 511 record and send a copy of the documentation to the Youth within 10 days of receipt of the document. When transmitting documentation of refusal or activity completion, the 511 Coordinator will include a coversheet that itemizes each of the documents that have been provided to the Youth. If the school does

not have documentation of Transition Services provided under IDEA the 511 coordinator will refer the Youth to the local VR office.

At a minimum, transition documentation from the LEA must contain the following information in order to meet the 511 requirements:

- i. Youth's name
 - ii. Determination made, including a summary of the reason for the determination, or description of the service or activity completed
 - iii. Name of the individual making the determination or the provider of the required service or activity
 - iv. Date determination made or required service or activity completed
 - v. Signature of designed State unit or educational personnel making the determination or documenting completion of the required services or activity
 - vi. Date of signature
 - vii. Signature of designated State unit personnel transmitting documentation to the Youth with a disability
 - viii. Date and method (e.g. hand-delivered, faxed, mailed, emailed, etc.) by which document was transmitted to the Youth
- b. A Youth may meet the 511 transition service requirement by completing a Pre-Employment Transition Service (Pre-ETS) through VR if the student is a Student Potentially Eligible or a Student with a Disability with an Individual Plan for Employment. Once the Pre-ETS is complete, the VR Counselor will generate the 511 Pre-ETS template letter in AWARE (See Appendix A) and send a copy to the Youth and the 511 Coordinator for inclusion in the Youth's 511 record. This letter must be sent within 45 days of completion of the Pre-ETS unless extenuating circumstances prevent meeting the deadline. In this case, the VR Counselor will document the reason for delay and send the letter no later than 90 days from Pre-ETS completion. In the event that a Youth participates in Pre-ETS as a Student Potentially Eligible, the 511 Coordinator will send the letter verifying Pre-ETS completion.

Documentation of 511 Transition Services and/or Pre-ETS services to meet the requirement must at a minimum include:

- i. Youth's name;
- ii. A description of the service or activity completed;
- iii. The provider of the Transition Service or activity;
- iv. Date the service or activity was completed;
- v. The signature of the USOR or educational personnel documenting completion for the Transition Services or activity;
- vi. Signature date;
- vii. Signature of designated State unit personnel transmitting documentation to the Youth with a disability; and
- viii. Date and method (e.g., hand-delivered, faxed, mailed, emailed, etc.) by which document was transmitted to Youth.

If a Youth or legal guardian refuses participation in one of the above listed 511 Transition Services including Pre-ETS, documentation of the refusal will be provided to the Youth within 10 days of refusal (See Appendix B for example letter).

Note: Refusal to participate in 511 Transition Services will exclude a Youth with a Disability from engaging in subminimum wage employment until the Youth has fulfilled this requirement.

Documentation of refusal will include:

- i. Youth's name;
- ii. Description of the refusal and the reason for such refusal;
- iii. Signature of the Youth or, as applicable, the Youth's parent or guardian;
- iv. Signature of the USOR or educational personnel documenting the Youth's refusal;
- v. Date of signatures; and
- vi. Date and method (e.g., hand-delivered, faxed, mailed, emailed, etc.) by which documentation was transmitted to the Youth.

31.6 Youth Entering Subminimum Wage Employment

Prior to entering subminimum wage employment, YWD must either: 1) be found ineligible for VR Services, or 2) attempt to obtain competitive, integrated employment with the support of VR Services and achieve successful or unsuccessful employment with appropriate supports as identified in the IPE. USOR will provide YWD with the information and support required to apply for VR services as outlined in CSM 3 (Referral and Application). When notified that a Youth applicant or client is seeking subminimum wage employment, the Counselor will document this in AWARE (on the Special Programs Page) and proceed with eligibility determination and VR services as appropriate.

The following VR outcomes meet the requirements

a. Determined as Ineligible for VR Services.

A YWD may apply for VR services. As part of the application process the youth will meet with a counselor for the Initial Interview (see CSM 5.6.a). If at this time the youth makes an informed choice of no longer having interest in pursuing competitive integrated employment, the youth may be determined ineligible for services. However, when determining the youth as ineligible for VR services, counseling and information on all available options and supports to assist in the pursuit of competitive integrated employment must be provided. The information may be provided in the initial interview or subsequent meetings within 30 days from determination of ineligibility. The case record must also document that this information was provided.

NOTE: Supervisor review should occur prior to determining a youth as ineligible.

If a YWD is found ineligible for VR services, the ineligibility letter will serve as documentation of application for VR services for the purpose of 511. A copy of the ineligibility letter will be sent to Youth per CSM 5 with an additional copy sent to the USOR Employment Support Services Specialist who will add it to the Youth's 511 record.

b. Closed Successfully or Unsuccessfully from Service Status. To meet this outcome a Youth must:

- i. Be determined eligible for VR Services
- ii. Have an approved and signed IPE
- iii. Work toward an employment goal with reasonable accommodations and appropriate supports and services, including supported employment

services and customized employment services.

- iv. Engage in VR services for a reasonable period of time. A reasonable timeframe is determined by the disability-related and vocational needs as well as the anticipated length of time required to complete the services identified in the IPE. For youth whose employment goal includes supported employment, a reasonable period of time is up to 24 months unless an extension is agreed upon by the Youth and VR counselor.
- v. Be closed as unsuccessful or successful from Service Status.

The closure letter which details the services provided and the closure outcome, will serve as documentation of the outcome of VR services for the purpose of 511. A copy of the closure letter will be sent to the Youth per CSM 17 with an additional copy sent to the USOR Employment Support Services Specialist who will add it to the Youth's 511 record.

If the YWD is still interested in subminimum wage employment at the time of closure as outlined in 31.5(a) or 31.5(b) the VR counselor will make a referral to the USOR Employment Support Services Specialist for Career Counseling Services.

NOTE: It is permissible to hold both competitive and non-competitive employment simultaneously.

31.7 Youth Career Counseling Services

If YWD still wish to pursue subminimum wage after Transition Services as described in 31.5 and closure as described in 31.6, USOR will provide Career Counseling Services. The USOR 511 coordinator will ensure agency records include documentation that the Youth received/refused Transition Services and applied for VR with an outcome from 31.6(a) or 31.6(b) prior to the provision of Career Counseling Services. If the 511 coordinator is unable to verify documentation of the two prerequisite services, the 511 coordinator will refer the youth to the appropriate source for the required service.

Career Counseling Services will include information and referrals to federal and state programs offering employment-related services designed to help the Youth explore, discover, experience and attain competitive integrated employment. Career Counseling Services, including information and referral, will be provided within 30 days of ineligibility or unsuccessful case closure. Documentation of Career Counseling Services will be

given to the Youth within 45 days of receipt of the Career Counseling Services (See CSM 31.8 for Career Counseling documentation requirements).

Career Counseling Services cannot include referral or information regarding subminimum wage employment.

Note: If a Youth was employed under the 14c contract prior to July 22, 2016, the Youth is not required to have three services listed above; however, the Youth must be provided with information and referrals and counseling every six months during the first year of employment (if applicable) and annually thereafter.

31.8 Semi-Annual and Annual Career Counseling Requirements for All Individuals Employed at Subminimum Wage Under 14(c) of the Fair Labor Standards Act

All individuals with disabilities known to the USOR to be engaged in employment for subminimum wages under 14(c) must receive Career Counseling Services designed to provide the individual with information regarding opportunities and support available to pursue career advancement to competitive, integrated employment. Career Counseling Services must occur every six months for the first year of employment and annually thereafter. The intervals of this requirement will be calculated based upon the date the individual becomes known to the USOR. An individual may become known to USOR for purposes of 511 by various means including, but not limited to, being a VR client, a self-referral, a referral from the Client Assistance Program, a referral by the 14(c) employer, etc.

Counseling on Career Advancement opportunities may include but is not limited to:

- a. A referral to apply for VR services
- b. Information about supported employment to include customized employment
- c. Benefits counseling

Documentation of Career Counseling Services, to include information and referral, will be provided to the individual seeking or engaging in subminimum wages within 45 days of the completion of Career Counseling Services. If extenuating circumstances prevent sending the documentation within 45 days, the 511 Coordinator will document the reason for the delay and ensure the documentation is sent no later than 90 days from Career Counseling completion. See Appendix C for Career Counseling example letter.

Documentation of Career Counseling Services, to include information and referral, will be provided to the individual seeking or engaging in subminimum wages within 45 days

of the completion of Career Counseling Services. If extenuating circumstances prevent sending the documentation within 45 days, the 511 Coordinator will document the reason for delay and ensure that the documentation is sent no later than 90 days from the Career Counseling competition. See Appendix C for Career Counseling example letter.

Documentation of Career Counseling Services must at a minimum include:

- a. Name of the individual;
- b. Description of the refusal and the reason for such refusal;
- c. Signature of the individual or, as applicable, the individual's representative;
- d. Signature of the designated State unit personnel documenting the individual's refusal;
- e. Date of signatures; and
- f. Date and method (e.g., hand-delivered, faxed, mailed, emailed, etc.) by which the document was transmitted to the individual.

Documentation of six month and annual Career Counseling Services, including refusal of Career Counseling Services, will be maintained by USOR for a period of three years from date of completion of the service per 2 CFR 200.333 14(c) employers are required to maintain documentation of Career Counseling Services as well and will be permitted a copy of VR documentation if the client agrees to the record release and signs a release of information form.

31.9 Additional Service When the Employer Has 15 or Less Employees

Employers are required to provide information about self-advocacy, self-determination, and peer mentoring training opportunities available in the community to employees working for subminimum wages. However, if the employer has 15 or fewer employees, the USOR may be the provider of this information. USOR will provide the required information to the employees via the most appropriate means (mail, video, in-person, etc.) within 30 calendar days of the date the referral was received.