

## **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 (SMWs) 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. Section 458 of WIOA amends Title V of the Rehabilitation Act of 1973 (Rehab Act) by adding section 511, which limits the ability of employers to pay SMWs to workers with disabilities, even when the employer holds a certificate under section 14(c) that would otherwise permit the payment of such wages.

Section 511 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 SMWs. Section 511 also requires that all workers with disabilities who are paid SMWs, regardless of their age, 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 supplement, and do not replace, requirements of section 14(c).

Section 511's limitations apply to commensurate wages that are less than the Federal minimum wage of \$7.25 per hour, but do not apply to commensurate wages paid under the McNamara-O'Hara Service Contract Act (SCA) and Executive Order 13658 when those wages are above the FLSA Federal minimum wage. For more information about section 511's definition of subminimum wages, see [Field Assistance Bulletin 2019-1](#).

### **Enforcement Authority**

The Wage and Hour Division (WHD) is responsible for the administration and enforcement of both section 14(c) and section 511. Section 14(c) authorizes employers, after receiving a certificate from WHD to pay SMWs—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 they perform 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, section 511 prohibits section 14(c) certificate-holders from hiring and paying SMWs to any individual with a disability who is 24 years of age or younger, unless the employer has reviewed, verified, and maintained documentation that the youth has completed three requirements:

- 1) Transition services under the Individuals with Disabilities Act (IDEA) and/or pre-employment transition services under section 113 of the Rehab Act;
- 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.

The Designated State Unit (DSU), which is typically the Vocational Rehabilitation (VR) agency in the State, is required to provide individuals with documentation of services provided.

### **All Workers, Regardless of Age, Who Are Employed at a Subminimum Wage**

Section 511 also prohibits section 14(c) certificate-holders from continuing to pay SMWs to any individual with a disability, regardless of age, unless the DSU provides him or her with career counseling, information, and referrals ("career counseling") every six months during the first year of employment, and annually thereafter. An employer may refer employees to the DSU for this mandatory counseling, or the employer 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 that an employee may provide as a condition of paying SMWs to that employee.

In addition, the employer must provide information about self-advocacy, self-determination, and peer mentoring training opportunities ("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 simply refer employees to the DSU for both career counseling and training opportunity information every six months for the first year of employment, and annually thereafter.

#### Timing of Compliance with Section 511 Requirements

Section 511 requires that all employees employed at SMWs *prior to* July 22, 2016 should have received both career counseling and training opportunities within one year of the effective date, *i.e.*, by July 22, 2017, and annually thereafter for the duration of SMW employment. The deadline for these employees to receive the required services remains July 22 of each year regardless of the actual date the career counseling and information about training opportunities are provided.

Employees receiving SMWs who were hired *on or after* July 22, 2016 must receive both career counseling and information about training opportunities once every six months for the first year of subminimum wage

employment, and annually thereafter, for the duration of SMW employment. The deadline for these employees to receive services is based on the anniversary of the date of their employment at an SMW. For example:

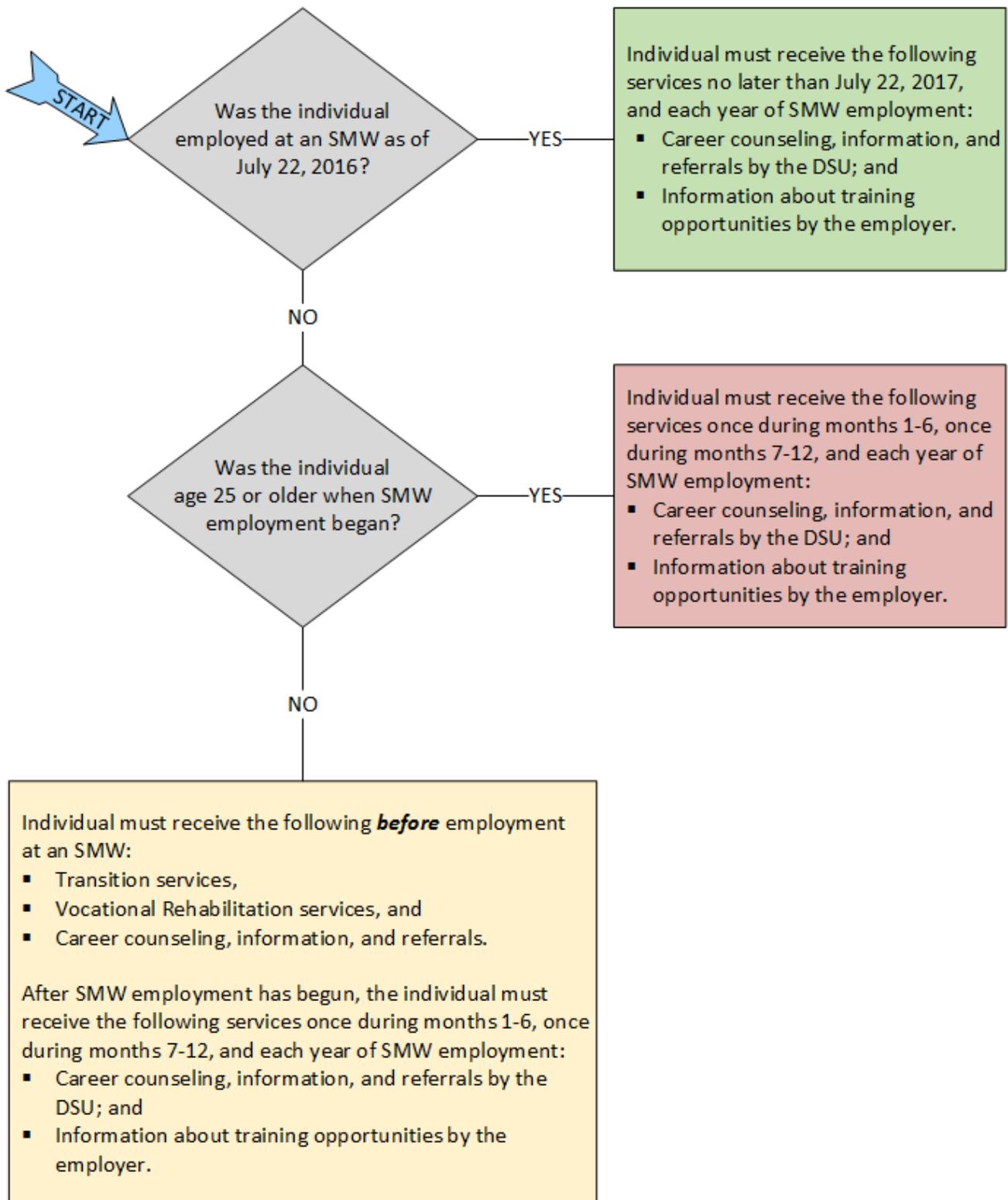
If a worker (age 27) begins subminimum wage employment on October 10, 2016, she must receive all required services no later than April 10, 2017, and again no later than October 10, 2017, and again by October 10 of each year she continues in SMW employment.

The employer is prohibited from paying SMWs unless these required career counseling and training opportunities (as described above) are provided to the employee in a timely manner. An employer may select one or more dates on which it has arranged with the DSU to provide the services. This practice would be acceptable so long as the services are received prior to the anniversary date of each individual's employment at an SMW. For example, continuing employment dates of the worker above:

The worker could receive all required services on March 31, 2017, meeting the first six-month requirement, and then again on July 21, 2017, meeting the second six-month requirement. If she subsequently received services each year on July 21, based on the employer's arrangement with the DSU, the timing requirements would be satisfied.

The two charts below provide visual summaries for determining when and to whom the specific section 511 requirements apply.

## What Services Are Required for a Worker with a Disability Being Paid SMWs under Section 511?



## Which Section 511 Service Requirements Apply to Whom and When Do They Apply?

Requirements		All employees employed at a SMW <i>before</i> July 22, 2016.	All employees employed at a SMW <i>on</i> July 22, 2016.	Employees employed at a SMW <i>after</i> July 22, 2016, and age...		
				... 25 or older.	... 24 or younger.	
Pre-Subminimum Wage Employment	Transition services				✓	Provided by DSU
	Vocational Rehabilitation services				✓	
	Career counseling, information, and referrals				✓	
During Subminimum Wage Employment	Career counseling, information, and referrals	✓	✓	✓	✓	Provided by Employer
	Information about training opportunities	✓	✓	✓	✓	
<b>Timing of Requirements</b>						
During Subminimum Wage Employment	Once during first six months		✓	✓	✓	
	Once during months 7-12		✓	✓	✓	
	Once per year	✓	✓	✓	✓	

## Regulations by the U.S. Department of Education

The Department of Education has published regulations implementing section 511 relating to the roles and obligations of DSUs, schools, and state and local educational agencies. Employers, workers, and other interested members of the public are encouraged to review the regulations at <https://doleta.gov/wioa/Final Rules Resources.cfm> and to contact their DSU regarding services that may be available to workers and youth with disabilities.

## **Other Federal Laws May Apply**

Employers remain responsible for compliance with all other applicable labor laws, including the Americans with Disabilities Act and any applicable state or local requirements.

For additional guidance about section 511, see [FAB 2016-2: WHD Enforcement of WIOA Limitations on Payment of Subminimum Wages under FLSA Section 14\(c\)](#).

## **Where to Obtain Additional Information**

For additional information, visit our Wage and Hour Division Website: <http://www.dol.gov/whd> 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 an official statement of position contained in a regulation.

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