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Topic: Workforce Innovation and Opportunity Act (WIOA) Section 511
Limitation on Use of Subminimum Wage

Subject: 2017 Year End Report: Vocational Rehabilitation Subminimum
Wage Project

Applies to (*check all that apply*):

<input checked="" type="checkbox"/>	Vocational Rehabilitation – All Staff
<input type="checkbox"/>	Vocational Rehabilitation – Executive Team
<input type="checkbox"/>	Vocational Rehabilitation - Administration
<input type="checkbox"/>	Vocational Rehabilitation – Branch Managers
<input checked="" type="checkbox"/>	Other All Stakeholders

Message:

The Workforce Innovation and Opportunities Act (WIOA) added new responsibilities for Vocational Rehabilitation in Part 511: Limitation on Use of Subminimum Wage. Section 511 requirements mandate VR to provide specified services to two groups of individuals:

1. For an individual of any age known by VR to be employed at subminimum wage: career counseling and information and referral. 14(c) entities are required to provide information about training opportunities in areas of: self-advocacy, self-determination, and peer support; those with fewer than 15 employees may request this service from VR.

2. For youth with a disability who are known by VR to be seeking subminimum wage employment: a series of School and VR provided services that include application for VR services.

Oregon’s VR Subminimum Wage Project worked exclusively within category #1. Project staff provided career counseling and information and referral to 1,239 individuals already working in subminimum wage employment. Youth who are known to be seeking subminimum wage employment will be collaboratively served by schools and VR working to provide pre-employment, transition and VR services.

2017 Year End Report: Vocational Rehabilitation Subminimum Wage Project, accompanies this transmittal. This report describes Oregon VR’s first year of participation in this required new service.

Policy and Resources:

- Workforce Innovation and Opportunities Act (WIOA) enacted 7/22/14
WIOA Temporary Rules issued 4/16/2015
- 34 CFR Section 397 (final code of federal regulations posted on the Federal Register 6/19/16)
- Oregon Vocational Rehabilitation website
<http://www.oregon.gov/dhs/employment/VR/Pages/index.aspx>

If you have any questions about this information, contact:

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Vocational Rehabilitation Subminimum Wage Project 2017 Report

Executive Summary

The Workforce Innovation and Opportunity Act (7/22/14) added a new area of responsibility for Vocational Rehabilitation (VR) as described in Section 511: Limitation on Use of Subminimum Wage.

Section 511 of the Act imposes service related requirements on employers who hold special wage certificates under the Fair Labor Standards Act (FLSA). These requirements must be satisfied before the employers may continue to employ individuals with disabilities of any age at subminimum wage. Code of Federal Regulations, Section 397, inform VR about their roles and responsibilities under these new regulations.

There are two categories of service provision in CFR 397:

1. For an individual of any age known by VR to be employed at subminimum wage: career counseling and information and referral. 14(c) entities are required to provide information about training opportunities in areas of: self-advocacy, self-determination, and peer support; those with fewer than 15 employees may request this service from VR.
2. For youth with a disability who are known by VR to be seeking subminimum wage employment: a series of School and VR provided services that include application for VR services.

Oregon's VR Subminimum Wage Project worked exclusively within category #1. Project staff provided career counseling and information and referral to 1,239 individuals already working in subminimum wage employment. Youth who are known to be seeking subminimum wage employment will be collaboratively served by schools and VR working to provide pre-employment, transition and VR services.

Oregon has experienced success in reducing the number of individuals with Intellectual and developmental disabilities working for less than federal minimum wage. When Oregon Project staff went to the Department of Labor, Wage and Hour Division website July, 2016, 14(c) entities employed around 4,700 Oregonians. Collaboration has grown strong as VR, Office of Developmental Disabilities (ODDS) and Oregon Department of Education (ODE) work together to fulfill a settlement agreement (Lane et al. v. Brown et al., Civil Action No. 3:12-cv-00138-ST) and to fulfill the promise of Employment First for Oregonians with disabilities.

Project Timeline

July 22, 2014 – The Workforce Innovation and Opportunity Act (WIOA) was signed into law.

July 22, 2016 – The provisions in WIOA section 511 Limitation on Use of Subminimum Wage, became effective. Services are to be provided to those known to be working at subminimum wage, by July 22, 2017.

August 15-18, 2016 – Oregon VR invited stakeholders to a 2 1/2-day WIOA implementation meeting, where assigned staff reported on major changes and the group gathered information and developed a plan for implementation.

August 19, 2016 – WIOA final Code of Federal Regulations (CFR) is posted in the Federal Register.

August 23, 2016 – The VR Executive Team established a workgroup of 3 administrative staff, to establish procedures for Oregon's response to CFR Part 397: Limitation on Subminimum Wage requirements. 2 members of that original group continued to manage this project and will establish procedures for 2018.

September 27, 2017 – VR Executive Team members attended the regional Rehabilitation Services Administration meeting about implementation of WIOA. The announcement was made that Part 397 applies only to the federal minimum wage and was verified by Oregon staff.

September 1, 2016 through March 10, 2017 -- The workgroup developed a plan for service delivery, including the following activities:

- Developed a proposed Oregon model for service delivery.
- Researched the list of Oregon 14(c) entities posted on the US Department of Labor, Wage and Hour Division webpage and developed a database of addresses. On December 2, 2017, mailed an informational letter from VR Director Trina L. Lee to each entity, asking them to contact VR.
- Utilized short term secretarial staff to prepare an excel spreadsheet where services can be recorded and to phone all entities listed in the DOL Wage and Hour website who had not responded to our December 2 letter (in an attempt to identify every 14(c) entity).
- Developed (and regularly updated) a database of numbers of individuals and work location supplied by entities. VR did not ask for names but expected the entities to assist our contractors and to facilitate making their employees earning less than federal minimum wage, known to VR.
- January 19, 2017 - Transmittal sent to all VR staff informing them of the project and providing procedures to those who earn less than federal minimum wage but are also VR participants.
- VR counselors began serving those individuals who already have an open VR case file. VR Counselors also provided services to 3 entities (Southern Oregon Aspire; Greenleaf; and Marie Mills). VR staff served a total of 144 individuals either before the contractors began work, during the project, or as make-up services for individuals who had been absent from work during the project period.
- Made multiple presentations about the project at several VR Leadership meetings, staff meetings, and cross agency meetings with ODE and ODDS. Informed ODDS that services will begin and requested that they notify community staff about this project. The

VR Subminimum Wage Project was the topic for an Employment First regular weekly email.

May 5-10, 2017 – VR contracted with 4 agencies and one individual to provide required services beginning May 10, 2017.

March 1 -July 22, 2017 – Required services were provided to 1,210 known individuals. An additional 20 were made known to the contractor after July 22 and have received services.

The Oregon VR Model for Delivery of Project Services

At the beginning of the project:

Oregon VR believed that each entity would both desire and host a large informational session that could include: individuals who work for less than minimum wage, their parents or guardians, case managers from Mental health or Developmental Disabilities services, and advocates. The original plan was to follow the large group meeting with a series of one-on-one meetings with individual subminimum wage employees.

As the consultants and VR staff began their work, it became clear that there were many reasons why one model would not be useful everywhere in Oregon and that the “Oregon Model” must remain flexible:

- Some entities did have a common site where their employees and stakeholders could gather; other entities have services in multiple sites, some many miles from each other.
- Employers do not all work every day; many come to work part time, in varied configurations that make it difficult for groups to gather.
- Some entities and contractors found it more convenient to have a small group meeting each day with the individuals who would receive services on that day.
- Some entities and contractors chose to not hold group meetings when the numbers of individuals to receive services was very small.

Materials Created for the VR Subminimum Wage Project

- An agenda for large group “Introductory Meetings”
- An informational document that could be used by an entity to inform stakeholders about the VR Subminimum Wage Project
- A prototype for a poster (Choosing Community-Based Employment; The Benefits of Work) that would have been reproduced and used as a discussion tool in large group meetings
- Pictures of Oregonians working; men and women doing a variety of jobs. These are real Oregonians who got their jobs through Employment First (Located on the web at: <https://www.flickr.com/photos/dhsoregon/albums/with/72157678128539653>)
- Department of Labor Fact Sheets about the Limitation on Use of Subminimum Wage requirements for 14(c) entities
- Information and Referral document that contains basic information for every county
- Vocational Rehabilitation brochures that provide general information about VR services
- Client Assistance Program (CAP) brochures that provide information about the CAP program
- A form called “Career Counseling, Information and Referral” that is used during the one-on-one sessions to capture comments by the participant and to document that the required services have been provided
- An agenda for the one-on-one meetings where the services will be provided
- A document titled “Career Counseling, Information and Referral” that is used during one-on-one meetings to capture comments of the person receiving services and is used as documentation that the services have been provided

- A document titled “Documentation for extra services” that could be used by entities to provide information about self-direction, self-advocacy, and peer mentoring training (a Department of Labor requirement for entities with more than 15 employees). It also has been used by VR to provide this information to individuals where there are fewer than 15 employees

Materials specific to VR were Developed for Staff

- Transmittal: VR AR 17-02 Vocational Rehabilitation requirements when a VR client wants to remain in subminimum wage employment
- Career counseling; information and referral documentation
- How to fill in the career counseling; information and referral document

Deciding to Hire Contractors to Provide Services:

Oregon Vocational Rehabilitation made the decision to hire contractors based on two facts:

1. The large numbers needing services in Clackamas, Deschutes, Douglas, Lane, Linn, Marion, Multnomah, Washington, and Yamhill counties, compared with staffing shortages in nearby branches was compelling.
2. A hiring freeze had been imposed on Department of Human Services, leaving our branch staffing 15% under capacity.

For a count of individuals working at less than the federal minimum wage, see Chart 1, on the next page.

Chart 1: Running count of services completed –by county

COUNTY	TOTAL	
1. Benton	32	Cornerstone Associates –32
2. Clackamas	72	Exceed Enterprises – 60 Pam’s Clean Machine –12
3. Coos	1	Confederated Tribes of Coos – 1
4. Deschutes	119	Opportunity Foundation of C. Oregon ---119
5. Douglas	66	Sunrise Enterprises --66
6. Josephine	53	Greenleaf industries –16 Southern Oregon Aspire – 37
7. Lane	192	Goodwill Industries –76 (12 in Coos County) Pearl Buck – 116
8. Linn	46	Willamette Valley Rehabilitation Center – 46
9. Marion	322	Garten Services – 86 Integrated Supports for Living (IS Living) – 14 Oregon State hospital -- 62 Rockwest Training – 82 Shangri-La Corp.– 78
10. Multnomah	57	Eastco Diversified Services – 36 Mentor Oregon (Barre Machine Parts) –1 Portland Habilitation Center – 20
11. Tillamook	54	Marie Mills Center -- 54
12. Washington	159	Edwards Center – 102 Tualatin Valley workshop – 57
13. Yamhill	44	Mid Valley advancements (multiple sites) --44
	22	Done by VR – no longer 14(c)
TOTAL	1239	

Contracts Were Finalized:

Oregon Vocational Rehabilitation contracted with four agencies and one independent contractor to provide services in specific regions.

VR budgeted \$40,000 for this project. Contract Funding Amounts totaled \$38,719, including mileage. The number of trips to each site was greater than expected, causing amendments to 4 of the contracts. Actual project costs will be finalized when all invoices are received.

VR staff provided the Services in 2 Counties:

1. One VR Counselor, Kathie VanLoh, provided services to all individuals working at Marie Mills in Tillamook. When an individual asked for a referral to VR, they were accommodated “on the spot”.
2. A group of VR Counselors under the leadership of Kari Kingsolver (Medford Branch) with Teddy Walston (Grants Pass Branch) and a team totaling 5 counselors, provided services at both Greenleaf and Southern Oregon Aspire. They conducted several group meetings at Southern Oregon Aspire then returned the next day to assist individuals who requested referral to call their case manager for a first team meeting.

For a tally of numbers served by contractors and VR Counselors, see Chart 2, on the next page.

Chart 2: Number Served

Career Counseling and Information and Referral Services were provided by Oregon Vocational Rehabilitation to this many individuals:

37	Southern Oregon Aspire – Josephine County
1	Confederated Tribes of Coos – Coos County
32	Cornerstone – Benton County
36	Eastco Diversified Services – Multnomah County
102	Edwards Center – Washington County
60	Exceed Enterprises – Clackamas County
86	Garten Services – Marion County
76	Goodwill Industries – Lane and Coos Counties
16	Greenleaf Industries – Josephine County
14	IS Living – Marion County
54	Marie Mills – Tillamook County
1	Mentor Oregon (Barre Machine Parts) – Multnomah County
44	Mid-Valley Advancements – Yamhill County
119	Opportunity Foundation – Deschutes County (Various locations)
12	Pam’s Clean Machine – Clackamas and Multnomah Counties
116	Pearl Buck – Lane County
20	Portland Habilitation – Multnomah County
82	Rockwest Training – Marion County
78	Shangri La – Marion County
62	Oregon State Hospital – Marion County
66	Sunrise
57	Tualatin Valley
46	Willamette Valley
22	Miscellaneous (Done by VR counselors before May 10, 2016 + employer no longer pays subminimum wage + no contact)
1239	Total

Chart 3: Answers to two questions asked during one-on-one meetings

During the one-on-one meeting with the 1, 229 individuals, VR staff and VR contractors recorded their responses, including answers to two questions:

1. Would you like to work at a job in the community (Competitive Integrated Employment)?
2. Are you already working with VR?

	yes I want CIE	%	yes I am at VR now (or I was & am working)	%
Southern Oregon Aspire	31	84%	7	19%
Cornerstone Associates	1	3%	3	9%
Eastco Diversified Services	23	66%	8	22%
Edwards Center	22	22%	8	8%
Exceed Enterprises	48	80%	13	22%
Garten Services	65	76%	6	7%
Goodwill Industries – Lane	72	95	28	37%
Greenleaf Industries	2	13%	0	0
IS Living	9	64%	3	21%
Marie Mills	29	54%	8	15%
Mid-Valley Advancements	33	75%	5	11%
Opportunity Foundation	90	76%	9	8%
Pam’s Clean Machine	9	75%	1	8%
Pearl Buck	82	71%	16	14%
Portland Habilitation	10	50%	1	5%
Rockwest Training	67	82%	3	4%
Shangri la	0	0	15	19%
Oregon State Hospital	55	89%	N/A – inpatient	
Sunrise Enterprises	52	79%	5	8%
Tualatin Valley Workshop	48	84%	23	40%
Willamette Valley Rehabilitation	24	52%	6	13%
TOTAL	772	64%	166	14%

Additional Information

Southern Oregon Aspire – 7 asked to have referral facilitated

Cornerstone – 1 Cornerstone is looking into referral

Eastco Diversified – 3 very interested in working in community

Edwards – 13 asked about a referral to VR & 1 to Oregon Commission for the Blind

Exceed – 16 are in Discovery

Garten – 19 want to talk to someone about a referral to VR

Goodwill – 13 asked for referral to VR (at least 2 have already talked about it in ISP meeting)

Greenleaf – all met with VR counselor and many referrals may follow

IS Living – 3 have participated in career exploration or Discovery services

Marie Mills – 11 referrals made during the meeting and 2 will talk to family re working

Mid Valley Advancements – 7 asked for referrals or to talk to someone about referral

Opportunity Foundation – 23 Talked about a VR referral

Pearl Buck – 61 would like to talk more about a possible referral to VR

Portland Habilitation – 4 are talking about retiring

Shangri-la – 6 talked about a VR referral and all of them also wanted to stay here too

The State Hospital will have new employees each year and have youth but in-patient settings are exempt from youth requirements

Sunrise – 5 asked for a referral to VR; 13 are in Career Exploration

Tualatin Valley Workshop – all but a few indicate an interest in exploring work

Willamette Valley Rehabilitation Center – 5 are interested in a referral to VR or

During 2018, staff of the Subminimum Wage Project will follow up on these additional items to determine if referrals were made.

Issues Faced, Lessons Learned and Recommendations

1. The provision of services started late in the year which provided a strong push and energy to finish; however:
 - a. It did not allow us time to evaluate the project from the beginning, spend time with contractors as they provided services all at the same time; and did not give us time to meet with the entities or judge the satisfaction of the individuals who received services.
 - b. It was difficult to keep up with the incoming data and to clean the database as we went along; making it impossible to tell, as services were given, if there were happenings of interest that could change our practices; whether the materials were effective; if the communication tools were found to be useful; and, if additional questions should be asked.
 - c. We did not have time to explore additional and creative ways to provide services to individuals in the more isolated settings or those who missed several proposed meetings.
2. When an entity operated out of multiple sites and their employees worked part time or variable hours, it became difficult to provide project services whenever absences occurred. Multiple trips back to the site were futile and frustrating if the individuals needing services did not come into work during the relatively short project period.
3. Most managers were reported to be very helpful, but not everyone had heard that we were coming or why it was important that individuals participate in the meetings.

4. Some guardians and some foster parents did not allow the individual(s) in their care to participate in the services. It was not always clear why that refusal occurred.

Recommendations

1. Contact the entities in September to:
 - a. Have them evaluate the project and project materials;
 - b. Establish the schedule for their services;
 - c. Determine the number of their employees who will continue to earn federal subminimum wage and also collect the number of workers earning less than the state minimum wage; and,
 - d. Inquire about their transition plan and what their business will do when ODDS no longer funds support for individuals earning subminimum wage.
2. Contact the 2017 contractors to:
 - a. Have them evaluate the project and project materials; and
 - b. Solicit their suggestions regarding contracting for next year's services.
3. Solicit comments and suggestions from individuals working with intellectual and/or developmental and mental health disabilities.
4. Solicit comments about the documents and the materials that are provided to guardians, parents and other stakeholders. Use their input to make documents easier to read and more helpful.
5. Begin the contracting process in September so services can begin as early as December.
6. Revise or rewrite all project materials in September-November, based on how they are assessed – research what was done in other states and utilize

good ideas that could improve the project. Spend time to develop better project marketing tools; develop a partnership with the entities, perhaps starting with Cooperative Agreements.

7. Develop evaluation strategies and then invite stakeholder input to help operationalize the strategies.
8. Research different ways to provide services to individuals and perhaps to groups. Include an assessment of web based tools like Skype and Face Time.
9. This project was complicated and intense in its timelines and the sheer amount of work. Take the time now to create a broader workgroup that will bring new ideas, skills and energy to the project.
10. Find ways to share the project with stakeholders; helping them see the impact and value of the project without breaking confidentiality of client information.
11. Inform VR Branches about numbers of individuals that they are likely to see as referrals within the next year. Solicit cross-agency ideas about how to facilitate the referral process.
12. Maintain a culture of transparency so no stakeholder feels excluded and invite review from existing stakeholder groups on at least a quarterly basis throughout the 2018 project year.