

Topic: Competitive Integrated Employment

This document provides tools to use when determining whether a specific job is Competitive Integrated Employment. If you know a specific job is both competitive and integrated, you don't need this toolkit! But do use this toolkit any time you are not sure about a specific job (and, document the use of the toolkit in a case note).

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4. RSA: Integrated Location Criteria of the Definition of “Competitive Integrated Employment” FAQs (selected questions as an overview; to see all 7 questions and responses, go to the WINTAC website at www.wintac.org)
5. Definition of Competitive Integrated Employment. Source: 34 CFR 361.5(c)(9)

CHECKLIST

RSA demands that, for successful employment, the job must be competitive and integrated. VR staff are directed to use the follow 3 criteria when determining whether a specific job meets the definition of competitive and integrated employment. All 3 should be checked!

- 1. Competitive Earnings** (Should be able to check all of these)
 - 1.a. Wages comparable to other employees without disabilities who have comparable. training, experience, and skills and who perform in similar occupations for the same employer
 - 1.b. Wages not less than the state or local minimum wage rate (whichever is higher).
 - 1.c. Eligible for the level of benefits provided to other employees.

- 2. Integrated Location** (Should be able to check all of these)
 - 2.a. The person interacts with others without disabilities at the worksite to the same extent that a person who doesn't have a disability interacts with other persons.
 - 2.b. The integrated interactions are with coworkers for the purpose of performing work. Interaction with supervisory personnel or customers/vendors do not count. Casual contact (e.g. during lunch or break) is insufficient.
 - 2.c. The business is typically found in the labor market.
 - 2.d. The work is not at the site of a Community Rehabilitation Facility (CRP (i.e. employment service provider)).
 - 2.e. It is not work to perform a service contract requiring a mandated ratio of workers who have disabilities (e.g. a federal AbilityOne contract; or an Oregon QRF contract).

- 3. Opportunities for Advancement** (Don't forget this one!)
 - Be presented opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

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How to determine if a job is Competitive Integrated Employment (CIE)

WIOA Final Rules 361.5 Applicable definitions; (9) Competitive integrated employment; (32) Integrated setting	
WIOA regulation provides 3 measures to help in deciding:	Clarification from WIOA – how to decide
<p>Compensation the person receives for their work:</p> <p>1. Pay and benefits – are they paid:</p> <ul style="list-style-type: none"> • Not less than minimum wage? • Not less than customary rate? • Do they qualify for benefits at same level as other employees? <p>2. Do they have similar opportunity for advancement as other employees?</p>	<p>Compare the VR participant with participants who do not have disabilities and who are similarly situated in similar occupations by the same (or similar) employer and who have similar training, experience, and skills.</p> <ul style="list-style-type: none"> • If the VR participant is planning to work part time, look to part time workers without disabilities to find the comparison. • Use the minimum wage for place of employment, not where they live, if different. • Don't stop at minimum wage; compare to others doing similar work for similar hours at employer and/or local labor market to determine whether they receive comparable pay per hour; benefits; and advancement. • Look to the local labor market for comparisons. <p>If you choose, you can involve the job developer in this activity. As they look for jobs, they can be asking for much of this information. You can ask them to do this in the Referral Form and then make sure it is included in the Job Placement Strategies.</p>
<p>The location/ setting:</p> <p>3. Is the business integrated?</p> <ul style="list-style-type: none"> • Is it a typical business for the community? • Does the participant interact with individuals without disabilities (co-workers and customers) at the worksite? <p>NOTE: all 3 must be examined</p>	<p>To determine if business is integrated, compare to typical businesses in local labor market.</p> <ul style="list-style-type: none"> • Business must be typically found in competitive labor market. • A business, group or enclave formed for purpose of employing participants with disabilities will not satisfy the definition. <p>For all interactions compare workers with a disability to other workers of same or similar business who do not have a disability.</p> <ul style="list-style-type: none"> • Of primary importance: purpose of interactions is performing the duties of the position. • Do they interact with other persons without a disability (e.g., customers and vendors). • Interactions with supervisory personnel or those providing services do not count. • Must not be congregated or isolated from non-disabled workers or in settings where compliance with a mandated direct labor-hour ratio of persons with disabilities is required. <p>Casual contact (e.g., lunchroom or break room) is never the determining factor.</p>

Competitive Integrated Employment Fact Sheet

Workforce Innovation and Opportunity Act (WIOA)

The Workforce Innovation and Opportunity Act (WIOA), 2014, places a great deal of emphasis on the achievement of competitive integrated employment for individuals with disabilities. Per WIOA regulations, every job must be looked at individually to determine whether it is competitive integrated employment. Competitive Integrated Employment outcomes under VR must meet three criteria. To be considered competitive integrated employment, a participant's job must satisfy all three components.

Compared to others who do not have a disability, look at all 3 criteria:

- (1) The wage must be at least minimum wage and the competitive earnings and benefits must be similar to what others doing comparable work receive;
- (2) The job must be in an integrated setting in the community;
- (3) Opportunities for advancement, if any, must be similar to what others doing comparable work receive.

Part time employment

You can find a discussion about part time (seasonal, temporary, intermittent) in the Supported Employment Procedures Manual found on the DHS Forms server. Search for document 1724.

What if a VR Participant chooses to work at a job that does not meet the criteria of Competitive Integrated Employment?

Under 34 CFR 361.37(b), VR must refer any individual wishing to pursue an outcome other than employment in a competitive integrated setting to other organizations that might best meet the needs of that individual. This means that this individual is either not eligible for VR services or no longer eligible for VR services. The only exception is when the job is integrated but not competitive on a short-term basis in supported employment only.

For more information about Competitive Integrated Employment,

Go to the WIOA technical assistance website: www.wintac.org and type Competitive Integrated Employment into the search box at the top of the page.

RSA: Integrated Location Criteria of the Definition of “Competitive Integrated Employment” FAQs

January 18, 2017

For purposes of this Toolkit, only the most defining questions are reproduced here. To read all 7 of the FAQs, go to www.wintac.org and type the name of this document in the search box.

1. What are the criteria that an employment setting must satisfy to be considered an integrated location?

Answer: With respect to an employment outcome for purposes of the VR program, under 34 CFR §§361.5(c)(9)(ii) and 361.5(c)(32)(ii), an employment setting must meet two criteria to be considered an integrated location and satisfy the definition of “competitive integrated employment.” The employment setting must be:

- Typically found in the community; and
 - Where the employee with a disability interacts, for the purpose of performing the duties of the position, with other employees within the particular work unit and the entire work site, and, as appropriate to the work performed, other persons (*e.g.*, customers and vendors) who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these persons
4. Who is responsible for determining whether an employment setting is in an integrated location and satisfies the definition of “competitive integrated employment?”

Answer: VR agencies must determine on a case-by-case basis in light of the facts presented whether an employment setting meets both criteria for an integrated location. VR agencies have the ability to visit employment sites and gather the facts necessary for these determinations. Therefore, the VR agency is responsible for determining whether the jobs performed by individuals with disabilities employed by community rehabilitation programs satisfy the definition of “competitive integrated employment” when individuals seek the VR agency’s assistance in obtaining these positions. If the VR agency, after applying the criteria to the facts related to the particular job, determines that a

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position is in non-integrated employment, under 34 CFR §361.37(b), it must refer the individual interested in the position to other programs, including community rehabilitation programs, for assistance in obtaining his or her chosen employment goal. In considering whether a position is in non-integrated employment, VR agencies should consider the guidance provided in the preamble to the 2016 final regulations (81 FR at 55641-55645) as summarized in pertinent part in these FAQs.

5. What is meant by “typically found in the community,” as used in the definition of “competitive integrated employment”?

Answer: Employment settings that are “typically found in the community” are those in the competitive labor market (81 FR at 55642). Settings established by community rehabilitation programs specifically for the purpose of employing individuals with disabilities (e.g., sheltered workshops) do not constitute integrated settings because these settings are not typically found in the competitive labor market--the first of two criteria that must be satisfied if a VR agency is to determine that a work setting is an integrated location under 34 CFR §361.5(c)(9).

The Department has long considered several factors that generally would result in a business being considered “not typically found in the community,” which include: (1) the funding of positions through Javits-Wagner-O’Day (JWOD) Act contracts or State purchase programs; (2) allowances under the Fair Labor Standards Act for compensatory subminimum wages; and (3) compliance with a mandated direct labor-hour ratio of persons with disabilities. It is the responsibility of the VR agency to take these factors into account when determining if a position in a particular work location is an integrated setting.

6. What does RSA mean by “work unit,” as used in the definition of “competitive integrated employment”?

Answer: The use of the phrase “work unit” in the definition of “competitive integrated employment,” is consistent with the Department’s long-standing policy on integrated settings. The term “work unit” properly focuses the consideration of the interaction of the individual with the disability with employees without disabilities on the particular job and the environment in which the work is performed. As used in the definition, “work unit” may refer to all employees in a particular job category or to a group of employees working together to accomplish tasks, depending on the employer’s organizational structure (81 FR at 55643). The level of integration experienced

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by all individuals with disabilities employed by a community rehabilitation program is not the same and is dependent on the circumstances of the particular job within each work unit of the organization. Therefore, some employment opportunities offered by community rehabilitation programs may be considered to be in “integrated locations,” and thus satisfy the definition of “competitive integrated employment,” while others may not.

For example, a community rehabilitation program may consist of two divisions or “work units.” In one division, individuals with disabilities are congregated together to perform work in a call center under JWOD contracts. Such a work unit would not likely satisfy the integrated location criteria of the definition of “competitive integrated employment” because it is operated for the express purpose of employing individuals with disabilities under JWOD contracts and, thus, is not typically found in the community. In addition, the high percentage of individuals with disabilities employed with these entities most likely would result in little to no opportunities for interaction between individuals with disabilities and non-disabled individuals. Conversely, the other division in the community rehabilitation program employs individuals with disabilities to provide vocational and independent living services, but the sole purpose of the division is not to employ individuals with disabilities. Such work unit would likely satisfy the integrated location criteria of the definition of “competitive integrated employment” because it is not operated for the primary purpose of employing persons with disabilities, but rather to provide services to individuals with disabilities.

Competitive integrated employment means work that:

- A. Is performed on a full-time or part-time basis (including self-employment) and for which participant is compensated at a rate that:
 - i. Is not less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the rate required under in the applicable State or local minimum wage law;
 - ii. Is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not participants with disabilities and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; and
 - iii. In the case of participant who is self-employed, yields an income that is comparable to the income received by other participants who are not participants with disabilities and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills; and
 - iv. Is eligible for the level of benefits provided to other employees; and
- B. Is at a location:
 - i. Typically found in the community; and
 - ii. Where the employee with a disability interacts for the purpose of performing the duties of the position with other employees within the particular work unit and the entire work site, and, as appropriate to the work performed, other persons (e.g., customers and vendors), who are not participants with disabilities (not including supervisory personnel or participants who are providing services to such employee) to the same extent that employees who are not participants with disabilities and who are in comparable positions interact with these persons; and
 - iii. Presents, as appropriate, opportunities for advancement that are similar to those for other employees who are not participants with disabilities and who have similar positions.