# WIOA Part 397: New requirements for persons currently working in subminimum wage jobs

The final regulations that govern the implementation of Title I of the Rehabilitation Act, as amended by the Workforce Innovation and Opportunity Act (WIOA), were published on June 30, 2016. You can find the document here: <http://www2.ed.gov/about/offices/list/osers/rsa/wioa-vr-final-rule.pdf>.

Part 397, which is the portion of the rule that places limitations on the use of subminimum wage, begins on page 954. An earlier section of the rule document, on pages 478-591, provides the Rehabilitation Services Administration responses to public comments on the draft regulations as well as its rationale for the construction of the final regulations.

A key goal of Part 397 is to encourage access to competitive, integrated employment – and to reduce the incidence of individuals with disabilities working in jobs or work training experiences that pay less than the minimum wage. The effective date for Part 397 was Friday, July 22, 2016.

# The new requirements

1. Part 397 does not prohibit any person, regardless of age, from choosing to be employed in a subminimum wage job. But it does set forth new requirements that must be satisfied for any person who currently earns subminimum wage to continue in their position.
2. Persons, regardless of age, who currently work in a subminimum wage job *and are known to VRS* must receive from VRS (or its contracted designee) career counseling and information that facilitates independent decision making and informed choice.
   1. This process must occur every six months of the person's first year of employment in a subminimum wage job and annually thereafter.
   2. The entity providing these services (VRS or its contracted designee) cannot have a financial interest in the person's employment.
3. VRS is responsible for developing and implementing a process to document completion of the required activities. VRS must provide that documentation to the worker upon completion of those required activities. Entities (CRPs, businesses, schools) that hold special wage certificates under FLSA 14(c) must request and retain copies of that documentation.
4. VRS, or its contracted designee, is authorized (but not required) to review the documentation maintained by the entities holding special wage certificates under FLSA 14(c).
5. VRS is NOT given any jurisdiction over the requirements on entities holding special minimum wage certificates under FLSA 14(c).

# VRS Implementation Plan

1. Part 397 requires Vocational Rehabilitation Services to provide career counseling and other information and services to persons currently working in jobs or training experiences that pay less than the minimum wage. These new requirements do not apply to persons working in jobs or in training programs that pay the minimum wage or more.
2. The regulatory guidance acknowledges that, because of the large numbers of people involved, it would not be practical or reasonable to require VRS to take on the role of seeking out all individuals with disabilities who are employed at subminimum wage. Instead the expectation is that VRS will offer services to individuals **who are known to VRS** to be working for less than minimum wage. VRS may be made aware of such individuals through self-identification by the individual with a disability, the vocational rehabilitation process, cooperative or coordinated activities with other agencies, or referral to VRS by employing entities.
3. An individual who works in a job that pays less than minimum wage who is known to VR will be invited to speak with someone from Vocational Rehabilitation Services (or its designee) to learn about services that could assist in getting a job in the community that pays at least minimum wage. Participation in this meeting is not required, and all persons do have the right to refuse the invitation.
4. According to records kept by the Wage and Hour Division of the U.S. Department of Labor, there are currently more than 15,000 persons in Minnesota working in jobs that pay subminimum wage. Of those, VRS currently knows of only about 2,000 enrolled in the Extended Employment Program who are reporting subminimum wage earnings. VRS is contracting with an outside entity to do the outreach to these workers and complete the required documentation. Because a large number of these Extended Employment workers are located in Southeastern Minnesota, outreach will begin in that part of the state and then expand statewide.
5. We fully expect that other entities besides Extended Employment providers will reach out to VRS to inform us about employees in their respective organizations who earn subminimum wage. Those employees would thus become “known to VR,” in which case VRS (or our designee) would be required to conduct the necessary outreach and complete the required documentation.
6. It is important to reiterate that VRS has no enforcement authority over an entity’s compliance with requirements tied to a special wage certificate. That authority rests with DOL’s Wage and Hour Division. This is verified on page 573 of the regulatory guidance:

*With regard to entities holding 14c certificates under the FLSA, all authority to impose requirements (e.g., consequences for failure to comply including suspension or revocation of the special wage certificate) rests with the Department of Labor and are beyond the scope of these final regulations.*

# Implementation Timeline

* Part 397 became effective last Friday, July 22, 2016.
* The outreach to persons known to VRS to be currently working in subminimum wage jobs will begin in Southeastern Minnesota in September and expanded to other parts of the state by January 2017
* For individuals hired at subminimum wage on or after July, 22, 2016, the required services must be carried out once every six months for the first year of employment and annually thereafter. For individuals already employed at subminimum wage prior to July 22, 2016, the required services must be carried out once by July 22, 2017, and annually thereafter. The timeframes for the required outreach will be calculated based upon the date the individual becomes known to VRS.

# Questions?

While this bulletin is intended to provide clarity about the new WIOA requirements and VRS’s implementation plans and timelines, we expect that you may still have questions. Please direct those questions to [VRS.Customerservice@state.mn.us](mailto:VRS.Customerservice@state.mn.us) and we will do our best to respond as quickly as possible.

Thanks for your continued partnership in assisting Minnesotans with disabilities to achieve their goals for competitive, integrated employment.