# WIOA Part 397: Limitations on subminimum wage for youth with disabilities, through age 24, who are no longer in school

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. These regulations are designed to reach all youth with disabilities through age 24 that are seeking subminimum wage employment, including those that have already left the education system.

# The new requirements

1. Part 397 does not prohibit youth with disabilities from *choosing* to be employed in a subminimum wage job. But it does set forth requirements that must be satisfied before a youth with a disability no older than 24 can accept such employment.
2. The same requirements that apply to students that are still in school *who are known to be seeking subminimum wage employment* also apply to youth through age 24 who have left school and *are known to be seeking* *subminimum wage jobs*. Note that these new requirements do not restrict access to jobs or work training that pay the minimum wage or more**.**
3. VRS is responsible for developing and implementing a process to document completion of the required activities outlined in #4 below and must provide that documentation to the youth upon completion of those required activities. Entities (CRPs or businesses) that hold special wage certificates under FLSA 14(c) must request and retain copies of that documentation.
4. Before they can be paid subminimum wage, youth with disabilities through age 24 who are *known to be seeking* employment in a subminimum wage job must have documentation from VRS that they've completed the following actions:
5. Participated in Pre-employment Transition Services while still in high school and eligible for services under IDEA.
6. Applied for VR and determined ineligible or found eligible but unsuccessful in competitive, integrated employment and their VRS case was closed.
7. Received career counseling, information, and referral to resources that could assist in securing competitive, integrated employment.
8. VRS, or its contracted designee, is authorized (but not required) to review the documentation maintained by entities holding special wage certificates under FLSA 14(c).
9. VRS is NOT given any jurisdiction over the requirements on entities holding special minimum wage certificates under FLSA 14(c).

# VRS Implementation Plan

1. VRS expects to be made aware of youth with disabilities seeking subminimum wage employment through self-identification, referrals from the employing entity, county case managers, or residential facilities. When these individuals become known to VRS, we will work collaboratively with the youth and his/her parent or guardian, county case manager, and other community service providers to explain the new requirements and develop an individualized plan that meets those requirements.
2. The youth or his/her parent or guardian may refuse to apply for vocational rehabilitation services. But refusing to participate in the required activities or opting out of the vocational rehabilitation process entirely will make the youth ineligible for subminimum wage employment. As stated on page 526 of the regulatory guidance:

*If a youth chooses not to participate in the activities required by section 511 of the Act and final part 397, or chooses to opt out of the vocational rehabilitation process* *entirely, such a choice will impact the permissibility of the youth to work at subminimum wage and preclude him or her from obtaining subminimum employment given the limitations imposed by section 511 of the Act and final part 397. Accordingly, [VR agencies] should inform youth with disabilities and/or their guardians of the youth’s ineligibility for subminimum wage employment if he or she refuses to participate in the required activities.*

1. It is important to reiterate that VRS has no enforcement authority over an entity’s compliance with requirements tied to a special wage certificate. Even though VR is directed to notify the youth of his/her ineligibility for subminimum wage employment, VR has no authority to enforce that requirement. 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.*

# Timeline

Part 397 became effective last Friday, July 22, 2016. VRS staff are well versed in  these new requirements and are prepared to respond immediately to inquiries and requests for VR services.  If you have general questions about the new rules, please contact VRS.Customerservice@state.mn.us.

To initiate an application to VRS, you can schedule an appointment with a counselor at one of nearly 50 WorkForce Centers throughout the state. To find a WorkForce Center near you please visit the following website: <http://mn.gov/deed/job-seekers/workforce-centers/workforce-center-locations>