# PART A, CHAPTER 3.3.b:SUBMINIMUM WAGE – SECTION 511

|  |  |  |  |
| --- | --- | --- | --- |
| **Policy Number** | **Authority** | **Scope**  | **Effective Date** |
| Part A, Chapter 3.3.b | 34 CFR [Part 397](https://www.ecfr.gov/current/title-34/part-397) | All TWC-VR staff | 9/3/2024 |

## PURPOSE

In accordance with the authority (Federal and State) listed above, this policy is issued by the Texas Workforce Commission Vocational Rehabilitation Division (TWC-VR). Adherence to these rules and regulations issued under the Rehabilitation Act of 1973, as amended by Title IV of the Workforce Innovation and Opportunity Act (WIOA), supports Texans with disabilities in gaining, maintaining, and advancing in competitive integrated employment (CIE).

Specifically, the purpose of this policy and these procedures is to ensure adherence to the laws and regulatory requirements established under Section 511 of the Rehabilitation Act, as amended, to limit the ability for individuals with disabilities to be paid subminimum wages when employed.

## DEFINITIONS

Career Counseling and Information and Referral (CCI&R): A discrete set of activities, different from counseling and guidance, that are mandated by WIOA that must be completed by TWC-VR staff for all individuals earning subminimum wage (SMW) in Texas, regardless of their state of residence or severity of disability.

14(c) Certificate Holder: Any employer that receives a certificate from the Department of Labor (DOL) Employment Standards Administration's Wage and Hour Division to pay workers with disabilities SMW.

Piece Rate: A type of subminimum wage.

Point of Contact: TWC-VR staff assigned to provide CCI&R services to individuals who are working for SMW for a 14(c) certificate holder.

Subminimum Wage (SMW): Less than the minimum wage established by the Fair Labor Standards Act (FLSA) or, where applicable, less than the prevailing wage required by a McNamara-O'Hara Service Contract Act wage determination. SMW must be a commensurate wage, based on the productivity of the worker with a disability (no matter how limited), in proportion to the productivity of experienced workers who do not have disabilities that impact their productivity when performing essentially the same work in the same vicinity.

## POLICY

### General Overview

Section 511 of the Rehabilitation Act, as amended by WIOA, requires that employers holding special wage certificates under Section 14(c) of the FLSA comply with certain requirements before hiring individuals at SMW, or continuing to pay SMW to individuals they currently employ. Regardless of age, individuals with disabilities referred to TWC-VR who are, or are expected to be, employed at SMW must receive CCI&R services designed to promote opportunities for competitive integrated employment (CIE).

## PROCEDURES

### Individuals Earning Subminimum Wage

There are three groups of individuals who earn subminimum wage who require CCI&R services. The specific requirements apply to each of the following groups:

1. Group One: All individuals earning SMW or piece rate hired by a 14(c) certificate holder before July 22, 2016, regardless of age, must have received, no later than July 22, 2017, and annually thereafter, CCI&R services, which include information on and referral to other employment assistance available in the individual's community.
2. Group Two: Any individual older than 24 who is hired by a 14(c) after July 22, 2016, and who earns SMW or piece rate must receive CCI&R services once within the first six months of employment, once within the second six months of employment, and annually thereafter if they continue to earn SMW.
3. Group Three: Group Three is made up of two subgroups—individuals not older than 24 and individuals not older than 21.

The following requirements apply to all individuals in Group Three who want to work at SMW or piece rate, and these individuals cannot earn SMW or piece rate until all requirements are satisfied:

* + All individuals in Group Three must apply for TWC-VR services.
	+ If the individual or legal guardian states that there is no interest in CIE or TWC-VR services after application is completed, TWC-VR staff must do the following:
		- Close the case in ReHabWorks (RHW).
		- Use RHW to auto-generate a letter to the individual saying the case was closed due to no interest in services.
		- Provide the first session of CCI&R.
		- Open a new case and complete the initial contact and 14(c) page in RHW, leaving the case open without assignment.
		- Provide the individual with the closure letter, the completed *Career Counseling and Information and Referral - Subminimum Wage (VR5113)*, and the completed *Section 511 Cover Sheet for Group Three (VR5118)*.

If the individual is under 21 years of age, in addition to the above, TWC-VR must do the following:

* + - Contact the high school the individual attends or attended and request written proof of transition services; or
		- If no transition services were provided, issue written proof of TWC-VR pre-employment transition services (Pre-ETS); or
		- If neither transition services through school or Pre-ETS through TWC-VR were provided, mark the applicable box on *VR5118*, and provide the individual with the closure letter, completed *VR5113* and *VR5118*, and proof of transition services or Pre-ETS, if applicable.

This individual can now be paid SMW. The individual must provide all required documents to the 14(c) certificate holder. Per WIOA, the only individual authorized to receive completed Section 511 documents is this individual.

* + If a Group Three individual is interested in CIE but the VR Counselor is uncertain whether the individual will be able to benefit from TWC-VR services, in terms of an employment outcome, because of the severity of that individual's disability or if the individual is ineligible for TWC-VR services, TWC-VR staff must proceed with the process for making a determination of eligibility or providing TWE.

If the individual is found ineligible for TWC-VR services, after completing TWE, TWC-VR staff must do the following:

* + - Close the case in RHW.
		- Use RHW to auto-generate a letter to the individual saying the case was closed as ineligible due to severity of disability.
		- Provide the first session of CCI&R.
		- Open a new case and complete the initial contact and 14(c) page, leaving the case open without assignment.
		- Provide the individual with the closure letter, completed *VR5113*, and completed *VR5118*.

If the individual is under 21 years of age, TWC-VR staff must do the following:

* + - Close the case in RHW.
		- Use RHW to auto-generate a letter to the individual saying the case was closed as ineligible due to severity of disability.
		- Provide the first session of CCI&R.
		- Open a new case and complete the initial contact and 14(c) page, leaving the case open without assignment.
		- Contact the high school the individual attends or attended and request written proof of transition services; or
		- If no transition services were provided, issue written proof of TWC-VR Pre-ETS; or
		- If neither transition services through school or Pre-ETS through TWC-VR were provided, mark the applicable box on the *VR5118*, and
		- Provide the individual with the closure letter, completed *VR5113* and *VR5118*, and proof of transition services or Pre-ETS, if applicable.

This individual can now be paid SMW. The individual must provide all required documents to the 14(c) certificate holder. Per WIOA, the only individual authorized to receive completed Section 511 documents is this individual.

* + If a Group Three individual is interested in CIE and is eligible for services, TWC-VR staff must do the following:
		- Follow all regular procedures for development of the IPE and provision of active services.
		- If, at any time during the VR process, the individual decides they are no longer interested in CIE, close the case and follow the procedures for Group Two.
		- The only variation from a regular TWC-VR case for Group Three is that to close a case unsuccessfully, individuals in Group Three must have been working toward the IPE employment outcome for a reasonable period (up to 24 months), with appropriate supports, without success.

Group Three individuals who obtain CIE may still want to earn SMW in addition to competitive employment. For these individuals, TWC-VR staff must do the following:

* + - Close the case in RHW.
		- Generate closure letter.
		- Provide the first session of career counseling.
		- Open a new case and complete the initial contact and 14(c) page, leaving the case open without assignment.
		- Provide the individual with the closure letter, the completed *VR5113* and *VR5118*.

If the individual is under 21 years of age, TWC-VR staff must do the following:

* + - Close the case in RHW.
		- Generate closure letter.
		- Provide the first session of career counseling.
		- Open a new case and complete the initial contact and 14(c) page, leaving the case open without assignment.
		- Contact the high school the individual attends or attended and request written proof of transition services; or
		- If no transition services were provided, issue written proof of TWC-VR Pre-ETS; or
		- If neither transition services through school or Pre-ETS through TWC-VR were provided, mark the applicable box on the VR5118, and provide the individual with the closure letter, completed VR5113 and VR5118, and the proof of transition services or Pre-ETS, if applicable.

This individual can now be paid SMW. The individual must provide all required documents to the 14(c) certificate holder. Per WIOA, the only individual authorized to receive the completed Section 511 documents is this individual.

* + If a Group Three individual obtains CIE and does not wish to earn SMW in addition to competitive employment, TWC-VR staff follow normal procedures for case closure. No Section 511 activities (e.g., CCI&R services) are required.
1. During the time that a Group Three individual has an open case with TWC-VR, the individual cannot earn SMW.

### Process for Complying with Section 511

The point of contact (POC) must do the following:

1. Schedule a premeeting at the 14(c) site with the SMW employer and review the process, TWC-VR responsibilities, CCI&R services, and guardian packets.
2. When scheduling the premeeting with the 14(c) certificate holder, record the answers to the following questions:
	* How many individuals earn SMW or piece rate?
	* How many have legal guardians? If the 14(c) is unsure, explain that the 14(c) will need to find this out and provide the number to the POC in advance of the premeeting.
	* How many individuals of any age were hired before July 22, 2016?
	* How many individuals not older than 24 were hired after July 22, 2016? Advise the 14(c) certificate holder that this group must be immediately referred to TWC-VR services.
3. To prepare for a premeeting, TWC-VR staff must determine the approximate number of individuals earning SMW at the facility and do the following:
	* Send the appropriate number of *Authorization for Release of Confidential Customer Records and Information (VR1517-2)* (i.e., the approximate number of individuals earning SMW at the facility).
	* Send the appropriate number of *Permission to Collect Information (VR5060)*.
	* Send the appropriate number of *Career Counseling Datasheets (VR5112)* to be completed by the 14(c) certificate holder before the premeeting for each individual earning SMW.
	* Print the appropriate number of complete guardian packets to take to the premeeting for the 14(c) certificate holder.
	* Print the appropriate number of complete CCI&R services packets to take to the premeeting for the individuals who are their own guardians.
	* Print one CCI&R services packet and one guardian packet for the 14(c) certificate holder to review at the premeeting.
4. During the premeeting, TWC-VR staff must do the following:
	* Review the three groups with the 14(c) certificate holder, including the timelines for completion of TWC-VR activities, and review when individuals not older than 24 can start or continue to earn SMW.
	* Review the CCI&R services process and each document with the 14(c) certificate holder, emphasizing what happens if an individual or guardian signs *Refusal to Participate in TWC-VR WIOA Section 511 Required Activities (VR5110)*.
	* Collect completed *VR5112* for each individual earning SMW.
	* Provide the 14(c) certificate holder with the appropriate number of the following documents:
		+ One copy (per individual) of the *Career Counseling and Information and Referral - Subminimum Wage (VR5113)* (formal documentation of CCI&R services, and documentation regarding whether the individual wants to work in the community);
		+ CCI&R services workbook;
		+ *VR5110*;
		+ Guardian cover letter;
		+ Thank you card;
		+ *VR5112* that the 14(c) certificate holder should have completed before the premeeting, or, if not, have copies available; and
		+ *Resource for Guardians* document for individuals to give to their guardians.

For additional guidance on documents to be sent to all parties involved, see the WIOA Section 511 Chart, Who Receives Documents and When.

TWC-VR staff must do the following:

* + - Provide the 14(c) certificate holder with enough CCI&R packets for all individuals who have guardians.
		- Request that the 14(c) certificate holder send any documents requiring the guardian's signature to the guardian before the CCI&R services.
		- Inform the 14(c) certificate holder that it is their responsibility to get guardian signatures and that TWC-VR cannot provide CCI&R services to individuals with guardians without signed documents.
		- Request that the 14(c) certificate holder invite guardians to the meeting.
		- Inform 14(c) staff members that they must have ample personnel to assist TWC-VR staff.
		- Schedule CCI&R services.
1. For CCI&R Services, the POC must do the following:
	* Start with *VR5113* and follow the general instructions. The CCI&R services workbook is used in conjunction with *VR5113*.
	* Ensure that all forms are completed.
	* Request that the 14(c) certificate holder make a copy of all forms.
	* Provide one copy to each individual.
	* If an individual refuses to sign any form, including page seven of the workbook, then note the refusal on the form and sign the form.
		+ Provide individuals with the thank you card.
		+ If an individual is interested in applying for TWC-VR services, TWC-VR staff must do the following:
		+ Identify the assigned VR Counselor in the unit where the individual will be served by contacting the VR supervisor or the VR manager.
		+ Explain to the assigned VR Counselor that if the individual is not older than 24, the VR Counselor must take an application regardless of the severity of the disability, and determine eligibility for TWC-VR services, including purchasing a Career Planning Assessment and scheduling TWE, if necessary.
		+ If the individual's ability to complete multiple TWEs is in question, contact Section 511 Program Specialists for instructions.
	* Enter initial contact in RHW.
	* Assign it to the appropriate caseload.
	* Provide the assigned VR Counselor a copy of the CCI&R services workbook.
	* Scan and email the following forms to vr.WIOASection511@twc.texas.gov:
		+ *VR5113*
		+ *VR5118* (if applicable)
		+ *VR1517-2*
		+ *VR5060*
2. The Section 511 Program Specialist will hold all copies of completed CCI&R documents. The VR Counselor may destroy the hard copies of these forms after the scanned forms have been sent to State office.

### Refusal to Participate

If a participant or guardian refuses participation, TWC-VR staff must provide documentation to the individual within 10 calendar days of the refusal to participate. TWC-VR staff must use *VR5110*.

Refusal to participate means the individual cannot accept SMW. The individual can attend the workshop or go to the facility, but they cannot earn less than minimum wage.

### Additional Guidance Requests for Information about WIOA

If an individual or guardian wants clarification or more information about Section 511 requirements, they can contact [DOL's Wage and Hour Division](https://www.dol.gov/whd/specialemployment/).

If a 14(c) certificate holder wants more information on WIOA or needs clarification of responsibilities under the Act, the 14(c) can contact DOL's Wage and Hour Division Regional Office in Dallas:

**Southwest Regional Office**

525 S. Griffin Street, Suite 800

Dallas, Texas 75202

Phone: (972) 850-2550

## APPROVALS & CONSULTATIONS

There are no approvals or consultations for this policy and these procedures.

## REVIEW

The Policy Planning and Statewide Initiatives Team, or designee, is responsible for reviewing this policy and these procedures and will update the Document History log if necessary.

|  |  |  |
| --- | --- | --- |
| **Date** | **Type** | **Change Description** |
| 9/3/2024 | New | VRSM Policy and Procedure Rewrite |