



## **RECOMMENDATIONS DEALING WITH SECTION 14(c) and 3 (m) of the Fair Labor Standards Act**

### **PROPOSED AMENDMENTS TO SECTION 14 (c)**

**Amend Section 14(c) of the Fair Labor Standards Act as follows:**

#### **1. Prohibit 14© Certificate Holders from Hiring Youth Exiting School System after 2011.**

- 14© certificate holders may not hire any youth aged 26 or under (consistent with the maximum age considered a “youth in transition” currently by the Rehabilitative Services Administration) exiting the school system below the minimum wage through the use of a 14© certificate after January 1, 2012.
  
- An exception can be made only if the following two criteria are met:
  - Integrated employment was pursued and
  - there is clear and substantial justification that center-based employment at subminimum wage is the best available alternative AND after participating in a comprehensive informed consent process (independent of the 14(C) certificate holder) in which all opportunities are fully vetted, both the individual and family/parent/guardian still express a strong desire to enter a center-based program at subminimum wage.
  
- 14© certificate holder who agrees to employ an individual who have met the following two criteria under subminimum wage must then agree to do as follows:
  - Provide a community-based work assessment and conducts an informed consent process annually;
  - Maintain documentation of all activities related to the community-based work assessment process and consent;
  - Agree that no more than 1% of total employee population will be comprised of youth aged 26 or under who meet this criteria at any time.
  
- Individuals and families will be provided an opportunity to reconsider their decision at any time and must be provided the opportunity to undergo the informed consent process annually at a minimum.

**2. Require 10-year Phase-Out of 14© program**

No later than 2022, the Department of Labor will cease to provide any additional 14(c) certificates for the employment of individuals with significant disabilities.

**3. Establish an Advisory Committee**

Establish a Federal Advisory Committee at DOL's Wage and Hour including the following external stakeholders: at least two self-advocates, one provider of employment services who is not currently using a 14 (c) certificate, one representative of a national advocacy organization representing adults with intellectual disabilities, and one academician/researcher who possesses expertise in employment and wage policy issues as they relate to individuals with intellectual disabilities. Advisory Committee will be responsible for making recommendations on the following:

- Proposed process for phasing out the 14© certificate program within 10 years; and
- Changes to the existing administrative process of 14(c ) certificates.

**4. Increase Enforcement (Funding)**

- Significantly increase funding for the two agencies that enforce the Section 14(c) provisions—the DOL Wage and Hour Division and the Office of the Solicitor—in an effort to increase enforcement staff by 50%.
- Direct the Department of Labor to substantially increase the number of onsite investigations by 50% and enforce current wage and hour laws.

**5. Increase Penalties for Violations**

- Seek back wages for all years where violations occurred up to the FLSA statutory limit of three years.
- Add increased penalties for willful violations – up to \$2500 in civil penalties per violation. Second willful violations subject to possible \$5000 civil fine. Compliance of violators will be re-evaluated after violations found. Repeat violations can result in permanent certificate revocation. Willful violations may be criminally prosecuted and fined up to \$20,000. DOL may bring suit for back pay and an equal amount for liquidated damages and it may obtain an injunction to restrain persons from violating the Act.

**6. Establish upward mobility employment plans focused on pathway toward integrated employment.**

Establish upward mobility employment plan for each individual who is being compensated at a subminimum wage rate under the provision of 14(c) of the Fair Labor Standards Act. UMEPs are plans that outline a pathway toward



attaining integrated employment and a timeline for transitioning the individual into a job that reimburses at or above minimum wage within 5 years. The plan may be included as a component of any existing person-centered individual support plan or education plan.

## **7. Clarify and Strengthen Standards and Recordkeeping Requirements Regarding Productivity**

- Spell out the requirements for determining productivity for persons with disabilities paid on a piece rate and by the hour. Clarify that the correct piece rate must be established for each job task performed and validated time studies must be used.
- For hourly workers whose productivity is less than 30%, evaluation of productivity must be measured at least every three months or more frequently if there is a noticeable change in the worker's productivity or the job task that he or she is performing.
- Employers with a certificate would have to maintain records of productivity for each worker and submit all productivity assessments when applying for a renewal of a Sec. 14(c) certificate.
- Employers must demonstrate progress made toward attaining the performance objectives outlined in the individual's upward mobility employment plan.
- Employers must demonstrate that 10% of existing workforce under 14© is transitioned to minimum wage or higher before the next certificate period in order to be eligible for recertification.

## **8. Expand and Improve Training Requirements**

Require training of providers, administrators and individual workers on the law, regulations and other relevant material prior to each certificate renewal

## **9. Include Public Reporting Requirement**

- Make available to the public records on the use of 14 (c) public on an annual basis
  - The number of people moved into competitive, integrated employment, including supported employment being paid at minimum wage or higher over the certificate period;
  - The number of people still employed at subminimum wage;



- Wages paid and status of productivity level for all employees under special certificates (including subminimum wage and commensurate wage), stratified by years at facility, race and ethnicity, gender and age.

#### **10. Additional Requirements for New Certificates**

- **All new certificates.** After the effective date of the Act, any entity applying for a new initial certificate must demonstrate that in addition to offering services and supports leading to an outcome of center-based employment, it also offers services and supports leading to an outcome of competitive, integrated employment.
- **School Systems.** Prohibit the issuance of any new certificate (after effective date of Act) to any public or private school or day or residential program serving school-aged youth.

#### **11. Strengthen Requirements for Information on Rights Under 14(c)**

The policies regarding informing individuals being paid via 14(c) certificates of their rights, should be strengthened to ensure that individuals with disabilities are fully informed of their rights regarding payment of sub-minimum wage (including their rights to appeal), and that such efforts must go well beyond simply posting of such rights in a public area, particularly given the limited reading skills of many individuals with significant disabilities. Such a policy should include: a) authorization by the individual on an annual basis of payment of sub-minimum wage; b) a requirement for a complete verbal review of the individual's rights in a format and manner which ensures their awareness of their rights (i.e., simply having an individual sign a reauthorization on an annual basis is not acceptable); c) at the individual's discretion, a right to have an advocate of their choosing attend a meeting where their rights and circumstances regarding payment of sub-minimum wage are reviewed.

### **RECOMMENDATIONS REGARDING SECTION 3 (m)**

#### **12. Eliminate use of Section 3(m) for Individuals with Significant Disabilities**

- Eliminate the use of Section 3(m) for individuals with significant disabilities, unless they are involved in an integrated position in the generic workforce making minimum wage or higher with commensurate



benefits and the use of 3(m) is used traditionally with both workers who do not have a disability and those that do.

### **13. Enhance Penalties**

- Authorize liquidated damages and require employers to pay employees on any money withheld from employees that were in violation of the law.

### **14. Support Increased Oversight**

- Support Increase funding for SSA to improve oversight of representative payee system.