



## ORANGE COUNTY EMPLOYMENT/WORK TRAINING TERMS & LEGISLATION



### **Employment First Policy**

On October 9, 2013, Governor Brown signed AB 1041 (Chesbro), which establishes in statute an Employment First Policy. California became the 12th state to enact an employment first policy in law.

#### **Employment First Policy from WIC Sect. 4869(a)(1)**

It is the policy of the state that opportunities for integrated, competitive employment shall be given the highest priority for working age individuals with developmental disabilities, regardless of the severity of their disabilities.

### **The Statute Explains Why**

The Employment First Policy was established “in furtherance of the purposes of this division (the Lanterman Act) to make services and supports available to enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age, to support the integration of persons with developmental disabilities into the mainstream life of the community, and to bring about more independent, productive, and normal lives...” Section 4869(a)(1)

Employment First Policy, SCDD, CECY, 1-13-14

### **Definitions:**

**Integrated Employment** occurs “in work in a setting typically found in the community in which individuals interact with individuals without disabilities other than those who are providing services to those individuals, to the same extent that individuals without disabilities in comparable positions interact with other persons.”

**Competitive Employment** means “work in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting and for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.”

**Competitive Integrated Employment**, means work that is performed on a full-time or part-time basis (including self-employment) –

- A.** For which an individual: Is compensated at a rate that shall be 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 specified in the applicable state or local minimum wage law; and is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities, and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills. In the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities, and who are self-employed in similar

occupations or on similar tasks and who have similar training, experience, and skills. Is eligible for the level of benefits provided to other employees.

**B.** That is at a location where the employee interacts with other persons who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons.

**C.** That, as appropriate, presents opportunities for advancement that are similar to those for other employees who are not individual with disabilities and who have similar positions.

**Supported Employment**, according to 29 USCS § 705(35)A [Title 29. Labor; Chapter 16. Vocational Rehabilitation and Other Rehabilitation Services; General Provisions] the term "supported employment" means competitive work in integrated work settings, or employment in integrated work settings in which individuals are working toward competitive work, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals, for individuals with the most significant disabilities

**(i) (I)** for whom competitive employment has not traditionally occurred; or

**(II)** for whom competitive employment has been interrupted or intermittent as a result of a significant disability; and

**(ii)** who, because of the nature and severity of their disability, need intensive supported employment services for the period, and any extension, described in paragraph (36)(C) and extended services after the transition described in paragraph (13)(C) in order to perform such work. Title IV Amendments to the Rehabilitation Act (2014), extends supported employment availability from 18 months to 24 months.

**Adult Day Services**, include Activity Centers, Adult Day Health Care Programs, Adult Day Programs, and Behavior Management Programs, as defined by CCR Title 17 § 54302. The curriculum for these programs can include training in the areas of self-advocacy, self-care, community integration, and vocational training. Vocational training may include volunteering and/or employment opportunities. Staffing ratios vary depending on the program design for each program and the individual needs of the consumer.

**Transition Partnership Program**, builds partnerships between local education agencies and the Department of Rehabilitation (DOR) for the purposes of successfully transitioning high school students with disabilities into meaningful employment and/or post-secondary education.

**CA WorkAbility Program**, provides comprehensive pre-employment skills training, employment placement and follow-up for students in special education who are making the transition from school to work, independent living and post-secondary education (PSE) or training

**Workforce Innovation & Opportunities Act (WIOA)2014**, (PL 113-128), replaces the Workforce Investment Act of 1998 and amends the Rehabilitation Act of 1973, and is designed to help job seekers access employment, education, and support services to succeed in the modern labor market. The law will also encourage workforce development programs to help match employers with skilled workers needed to compete in the global economy.

**Career Counseling & Information and Referral Services (CC&IR)**, Under the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act (WIOA), the Department of

Rehabilitation (DOR) gained the responsibility to provide career counseling and information and referral (CC&IR) services to all individuals employed at subminimum wage who are known to DOR, effective July 22, 2016. Individuals may become known to DOR through the vocational rehabilitation process, self-referral, or referral from other entities.

### **Services During Subminimum Wage Employment**

Employers are restricted from continuing to employ any individual in a subminimum wage setting, regardless of age, unless the individual is:

1. Provided CC&IR by DOR to facilitate independent decision making and informed choice.
2. Informed by the employer of self-advocacy, self-determination, and peer mentoring training opportunities available in the individual's geographic area. The training opportunities cannot be provided by an entity that holds a special wage certificate described in section 14(c) of the Fair Labor Standards Act.

Employers are required to provide resource information only to their employees regarding where the employee can participate in self-advocacy, self-determination and peer-mentoring training. Employers should not provide the training.

Employers with less than 15 employees may refer their employees working in subminimum wage settings to DOR for self-advocacy, self-determination, and peer mentoring training opportunities available in the individual's geographic area.

Any individual hired into subminimum wage employment after July 22, 2016, must receive CC&IR services once every six months the first year of employment and annually thereafter. All individuals employed at subminimum wage prior to July 22, 2016, require CC&IR services once by July 22, 2017, and annually thereafter. Employers should review any documents provided by the employee indicating that such counseling has been provided. The employer is required to verify the employee's completion of these services, and review and obtain any relevant documentation from the employee.

### **Subminimum Wage Limitations for Youth**

Under the WIOA amendments, employers are prohibited from compensating any individual with a disability who is 24 years of age or younger at subminimum wage, unless the individual has received documentation from DOR upon completion of the following activities:

1. Pre-employment transition services or transition services under the Individuals with Disabilities Education Act.
2. Applied for vocational rehabilitation services, and the individual was determined:
  - a. Ineligible for vocational rehabilitation services.
  - b. Eligible for vocational rehabilitation services, has an approved Individualized Plan for Employment, and the individual was unable to achieve an employment outcome in competitive integrated employment.
3. Career counseling and information and referral services to federal and state programs to help the individual discover, experience, and attain competitive integrated employment, and the counseling and information was not for employment at subminimum wage.

The employer must receive all documentation before the individual, 24 years of age or younger, may begin employment at subminimum wage. Individuals 24 years of age or younger employed at subminimum wage after July 22, 2016, are required to provide such documentation.