
Employment Outcomes for WI DVR (Updated January of 2011) (Reviewed May 2014)

EMPLOYMENT OUTCOME =

Integrated Setting + Competitive Wages

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Purpose:

To provide WI DVR's definition of successful employment outcomes (coded as a status "26") and to describe our policies, the Federal Regulations, and the Intent of Title I of the Rehabilitation Act that support the definition of a successful employment outcome.

Rationale:

There may be employment settings where a more thorough review will be necessary to ensure that the setting and wages meet the requirements of an employment outcome.

Guidance:

The **Wisconsin Vocational Rehabilitation Program Policy Manual** states as one of its requirements that a consumer has achieved an employment outcome when the employment is in the **most integrated setting** possible that is consistent with the consumer's informed choice. The consumer must also be compensated at or above the minimum wage i.e., competitive employment, and receive at least the customary wage and benefit level paid to other individuals performing similar work for the same employer.

What Federal Regulations & Rehab Act Regulations Support This Definition?

The following federal regulations, regulatory definitions, and RSA policy discussion and guidance regarding employment outcomes, competitive employment, and integrated settings, support WI DVR's definition of a successful employment outcome.

The Rehabilitation Act requires three primary characteristics of employment:

1. Competitive
2. Integrated setting
3. Consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice

Other parameters and characteristics of an employment outcome include:

- Full-time or, if appropriate, part-time employment
- Supported employment
- Integrated labor market
- Self-employment
- Telecommuting
- Business ownership

These required and allowable characteristics are included in the federal definition of an Employment Outcome as follows:

34 CFR 361.5(b)(16) *Employment outcome* means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment, as defined in Section. 361.5(b)(11), in the integrated labor market, supported employment, or any other type of employment *in an integrated setting*, including self-employment, telecommuting, or business ownership, that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

Rehabilitation Act Section 7(11) *Employment outcome*

The term "employment outcome" means, with respect to an individual--

- (A) entering or retaining full-time or, if appropriate, part-time competitive employment in the *integrated labor market*;
- (B) satisfying the vocational outcome of supported employment; or
- (C) satisfying any other vocational outcome the Secretary may determine to be appropriate (including satisfying the vocational outcome of self-employment, telecommuting, or business ownership), in a manner consistent with this Act.

Regulatory definitions of “Competitive Employment” and “Integrated Setting”

34 CFR 361.5(b)(11) *Competitive employment* means work--

- (i) In the competitive labor market that is performed on a full-time or part-time basis in *an integrated setting*; and
- (ii) 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.

34 CFR 361.5(b)(33) *Integrated setting*,--

- (i) With respect to the provision of services, means a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals other than non-disabled individuals who are providing services to those applicants or eligible individuals;
- (ii) **With respect to an employment outcome**, means a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals, other than non-disabled individuals who are providing services to those applicants or eligible individuals, to the same extent that non-disabled individuals in comparable positions interact with other persons.

Further clarification and guidance on the parameters for competitive employment are found in the Federal Regulations Appendix public comment and RSA discussion section:

Comments: One commenter questioned the basis for the requirement that "competitive employment" be limited to employment outcomes *in integrated settings*. A second commenter asked that we broaden the definition of "competitive employment" in the proposed regulations to include employment under the Javits-Wagner-O'Day (JWOD) program if that employment is chosen by the eligible individual.

RSA Discussion: The proposed definition of "competitive employment" was the same as that found in the previous regulations. Although the term is not defined in the Act, section 7(11), the statutory definition of "employment outcome" does refer to competitive employment in the integrated labor market. *On that basis, and in light of the great emphasis that the Act places on maximizing the integration into society of persons with disabilities, it has been our longstanding policy to define "competitive employment" to mean employment in an integrated setting (at or above minimum wage).*

Whether an employment outcome meets the regulatory definition of "competitive employment" is to be determined on a case-by-case basis. If a particular job, including a job secured under the JWOD program, is integrated (i.e., the individual with a disability interacts with non-disabled persons to the same extent that non-disabled individuals in comparable positions interact with other persons; Section. 361.5(b)(33)(ii) of the final regulations) and the individual is compensated at or above the minimum wage (and not less than the customary wage and benefit level paid by the employer for the same or similar work performed by individuals who are not disabled; Sec. 361.5(b)(11)(ii) of the final regulations), then that position would be considered competitive employment. In fact, we expect that many jobs secured under JWOD service contracts would meet these criteria. On the other hand, employment in a non-integrated setting such as a sheltered workshop would not qualify as competitive employment regardless of whether the position is obtained under a JWOD contract or another program or arrangement.

Rehabilitation Services Administration (RSA) Technical Assistance Circular (RSA-TAC-06-01) dated November 21, 2005 provides additional guidance on determining if a particular job placement at a CRP meets the integration standard. RSA lists the factors that VR agencies should consider when analyzing whether a particular work-unit (in which an individual with a disability is seeking a job) within a CRP satisfies the definition of an "integrated setting". The determination as to whether the position is considered integrated hinges on the level of opportunity for interaction between the individual with a disability holding that position and non-disabled individuals.

RSA recommends that VR agencies conduct a case-by-case review of each position and consider the following factors when making its determination as to whether a particular employment position at a CRP is in an *integrated setting*:

1. Level of interaction of the individual with non-disabled persons within that individual's entire work-site.
2. Level of interaction with non-disabled persons within the individual's work-unit.
3. Level of interaction of the individual with other non-disabled persons such as customers and vendors.

DVR Notes:

1. As previously noted in the regulatory definition of an integrated setting, interaction with non-disabled persons excludes non-disabled individuals who are providing services to the individual.
2. DVR will conduct case-by-case reviews to determine if CRP contracted employment including community-based, JWOD and State Use contracted employment meet the regulatory definitions and parameters of both “competitive employment” and “integrated setting”. Both standards must be achieved before an employment outcome is acceptable as a DVR employment outcome.

Additional clarification sought on positions within Affirmative Industries by WI DVR and RSA’s response:

In 2002, Wisconsin DVR asked RSA, If an "Affirmative Industry," with an employee mix of 60% disabled and 40% non-disabled would meet the definition of "integrated setting" at 34 CFR 361.5(b)(33). WI DVR defined an "Affirmative Industry" as a an entity established by a Community Rehabilitation Facility (CRF) in which individuals with disabilities and non-disabled individuals work together in similar positions. These Industries are typically located away from the CRF, in industrial settings, and individuals with disabilities receive the customary wages and benefits paid to non-disabled individuals performing similar work.

Technical assistance provided by the RSA policy group determined that employment in an "Affirmative Industry," did not meet the definition for integrated employment i.e., “a setting typically found in the community”. Work settings that are purposely set up to employ a given number or percentage of persons with disabilities are not "typically found in the community”.

Further RSA direction was provided in the 2005 Technical Assistance Circular on “integrated settings” where RSA states *“We want to point out that entities that are set up specifically for the purpose of providing employment to individuals with disabilities will likely not satisfy the definition of “integrated setting.” The high percentage of individuals with disabilities employed with these entities most likely would result in little to no opportunities for interaction between individuals with disabilities and non-disabled individuals. These entities, therefore, would be considered sheltered or non-integrated employment sites. (Final Regulations State VR Services Program, 62 Fed. Reg. 6307, 6311 ((Feb. 11, 1997)).*

Practical parameters for determining a DVR employment outcome in Wisconsin within a CRP or under a CRP contract:

Based on regulation and RSA guidance, DVR does not accept an employment goal or outcome in a work center or community employment setting created specifically for the purpose of employing persons with disabilities (e.g., disability enclave, affirmative or other disability-focused industry) because these settings do not meet the integrated setting standard defined in regulation and supported by RSA guidance.

DVR has on a case-by-case basis, accepted community-based JWOD placements as an acceptable employment goal and outcome. The case-by-case considerations that are given to JWOD contracted work and employment placements can be extended to CRP community contracts as well as State Use contract work performed in businesses that constitute *everyday work settings that exist without consideration of whether employed individuals are disabled.*

Employment in a CRP, where the mission is to employ individuals with disabilities or in other situations where the CRP is the employer of record may also be determined to meet the integrated standard. For example, some CRPs have positions such as administrative staff, laborers, lead workers, or supervisors where anyone can apply for and obtain the job and the individual works alongside others, who are in positions only filled with people with disabilities. These openly competed positions could, on a case-by-case basis, be considered integrated.

DVR Note: Since employment in a CRP regular or contracted position does not require “job development” services, as specifically outlined in the DVR technical specifications, http://dwd.wisconsin.gov/dvr/service_providers/tech_specs/job_development.pdf. DVR would not pay for job development services. However, DVR could pay for support services (e.g. job coaching, etc.) necessary for the consumer to achieve the IPE outcome.

WI DVR will make a determination on a case-by-case basis with an on-site analysis conducted by the VR agency Vocational Rehabilitation Counselor regarding whether a particular job meets both the integrated setting and competitive employment standards. The following three questions must be answered “yes” to meet the standards.

1. Is the employment in the integrated labor market and a setting typically found in the community?
2. Does the individual with a disability have the same opportunity to interact with non-disabled individuals that non-disabled individuals in the same or similar jobs interact with other persons? “Other persons” include co-workers, the general public, customers, and vendors, but not those providing services to the individual or a supervisor.
3. Is the individual 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?

Source Documents:

- <http://www2.ed.gov/legislation/FedRegister/finrule/2001-1/011701a.pdf>
- <http://www2.ed.gov/policy/speced/guid/rsa/tac-06-01.pdf>

[Frequently Asked Questions \(FAQs\)](#)

AN EMPLOYMENT OUTCOME

The following decision matrix provides a guide for determining if an individual's employment meets the standards to be considered an employment outcome.

