

Extended (sheltered) employment

Synopsis of federal regulations

The regulatory definition of employment outcome under the vocational rehabilitation (VR) program has been amended to refer to outcomes that occur in ***integrated settings***. Here are several pertinent definitions:

Employment outcome means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment ***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.

Reference: Sec. §361.5 (b) (16)

Extended employment means work in a ***non-integrated or sheltered setting*** for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act.

Reference: Sec. §361.5 (b) (16)

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.

Reference: Sec. §361.5 (b) (11)

Integrated setting means, with respect to an employment outcome, 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.

Reference: Sec. §361.5 (b) (33) (ii)

In addition, the federal regulations now:

- Require Rehabilitation Services (RS) to refer to local extended employment providers:
 - a. Any individual with a disability who makes an informed choice to pursue extended employment as his or her long-term employment goal.
 - b. Any individual who is determined ineligible (through the clear and convincing evidence standard) based on a finding that the individual is incapable of achieving an employment outcome in an integrated setting.
 - c. Any individuals who were initially found eligible for VR services, but are later determined unable to work in an integrated setting.
- Require that, before referring to local extended employment providers an individual with a disability who chooses to pursue extended employment, RS must:
 - a. Explain to the individual that the purpose of the vocational rehabilitation program is to assist individuals to achieve an employment outcome in an integrated setting.
 - b. Provide the individual with information concerning the availability of employment options, and of vocational rehabilitation services, in integrated settings.
 - c. Inform the individual that services under the vocational rehabilitation program can be provided to eligible individuals in an extended employment setting if necessary for purposes of training or otherwise preparing for employment in an integrated setting.
 - d. Inform the individual that, if he or she initially chooses not to pursue employment in an integrated setting, he or she can seek services from the designated State unit at a later date if, at that time, he or she chooses to pursue employment in an integrated setting.
 - e. Refer the individual, as appropriate, to the Social Security Administration (SSA) in order to obtain information concerning the ability of individuals with disabilities to work while receiving benefits from the SSA.
- Permit State VR agencies to serve individuals in extended employment settings for purposes of preparing those individuals for employment in integrated settings. The key change is that extended employment, for purposes of participating in the VR program, represents an *interim step* in the rehabilitation process rather than an end point of that process. Justification for providing services in non-integrated settings must be included in the Individualized Plan for Employment (IPE). Participants in the VR program who receive VR training services on a transitional basis in an extended employment setting may also receive other VR services necessary for their rehabilitation.

- Acknowledge that some persons with disabilities may prefer to work in extended employment facilities long-term. In recognition of that fact, the regulations assure that those wanting to work in extended employment can access the services they need directly from local extended employment facilities.
- Acknowledge that many jobs obtained by individuals with disabilities under certain types of set-aside contracts authorized by the Javits-Wagner-O'Day Act (JWOD) satisfy the definition of “employment outcome” under the VR program. More specifically, those service-related and other jobs performed under JWOD contracts or other programs that satisfy the definition of “integrated setting” would constitute an “employment outcome” for purposes of the VR program under these regulations.
- State that the determination as to whether any job, including those obtained under JWOD contracts, meets the regulatory definition of “integrated setting”, and therefore qualifies as an “employment outcome” for purposes of the VR program, must be made by State units on a case-by-case basis.
- Require annual reviews when:
 - a. An individual achieves an employment outcome in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act.
 - b. The State unit closes the record of services of an individual in extended employment on the basis that the individual is unable to achieve an employment outcome as defined by regulations.
 - c. An eligible individual through informed choice chooses to remain in extended employment.

For each of these circumstances, RS must:

- Annually review and reevaluate the status of each individual for 2 years after the individual's record of services is closed (and thereafter if requested by the individual or, if appropriate, the individual's representative) to determine the interests, priorities, and needs of the individual with respect to competitive employment or training for competitive employment.
- Enable the individual or, if appropriate, the individual's representative to provide input into the review and reevaluation and must document that input in the record of services, with the individual's or, as appropriate, the individual's representative's signed acknowledgment that the review and reevaluation have been conducted.
- Make maximum efforts, including identifying and providing vocational rehabilitation services, reasonable accommodations, and other necessary support services, to assist the individual in engaging in competitive employment.

RS policy

Determination as to whether any job meets the regulatory definition of integrated setting, and therefore qualifies as an “employment outcome” for purposes of the VR program, must be made on a case-by-case basis. There is no set ratio of people with disabilities to people without disabilities in the workforce that would by definition constitute an integrated work setting. Level of pay and benefits, while they are often measures of quality and consumer choice, are not pertinent to the determination of whether a workplace meets the criteria for an integrated setting.

The counselor makes this determination of whether a workplace meets the criteria for an integrated setting. Factors to be considered and documented in the record of services include the following:

- Is the employment environment similar to that of the typical workplace in the community? (Compare similar industries. For example, compare a manufacturing firm to a typical manufacturing firm in the community. Compare a retail outlet to a typical retail outlet in the community. Compare a fast food restaurant to the typical fast food restaurant, etc.)
- How does the percentage of workers with disabilities compare to other typical workplaces in the community? Consider how employees are assigned to specific production lines, work teams, or shift work. (Again, compare similar industries.)
- Do workers with disabilities have the opportunity to routinely interact with co-workers who are not disabled?
- Are the non-disabled workers functioning as typical co-workers, or as job coaches, or in some other support capacity?
- Are the opportunities for social interaction inherent in the workplace integrated? (For example, break schedules, break rooms, company functions.)

Federal ruling regarding Center Industries, Wichita

The U.S. Office of Special Education and Rehabilitation Services has ruled that Center Industries Corporation, Wichita, satisfies the requirements for the definition of “integrated setting.” Therefore, placements at Center Industries constitute allowable employment outcomes (Status 26s) under the VR program when the conditions for Status 26 have otherwise been met. This ruling applies to Center Industries only, and may not be applied to other entities. When placing individuals in employment at Center Industries, the analysis and documentation requirements specified in the RS Policy section above are waived. (*Reference: correspondence from John H. Hager, received February 24, 2005.*)

Reference: Federal Technical Assistance Circular RSA-TAC-06-01: Factors State Vocational Rehabilitation Agencies Should Consider When Determining Whether a Job Position Within a Community Rehabilitation Program is Deemed to be in an "Integrated Setting" (See Section 13 / Part 12)