

APPENDIX B

U.S. Department of Labor Employment Standards

Wage and Hour Division
Washington, DC 20210

STATEMENT OF PRINCIPLE

The U.S. Department of Labor and community-based rehabilitation organizations are committed to the continued development and implementation of individual vocational rehabilitation programs that will facilitate the transition of persons with disabilities into employment within their communities. This transition must take place under conditions that will not jeopardize the protections afforded by the Fair Labor Standards Act to program participants, employees, employers, or other programs providing rehabilitation services to individuals with disabilities.

GUIDELINES

When ALL of the following criteria are met, the U.S. Department of Labor will NOT assert an employment relationship for purposes of the Fair Labor Standards Act.

- Participants will be individuals with physical and/or mental disabilities for whom competitive employment at or above the minimum wage level is not immediately obtainable and who, because of their disability, will need intensive ongoing support to perform in a work setting.

- Participation will be for vocational exploration, assessment or training in a community-based placement work site under the general supervision of rehabilitation organization personnel.
- Community-based placement will be clearly defined components of individual rehabilitation programs developed and designed for the benefit of each individual. The statement of needed transition services established for the exploration, assessment or training components will be included in the person's Individualized Written Rehabilitation Plan (IWRP).
- Information obtained in the IWRP will not have to be made available, however; documentation as to the individual's enrollment in the community-based placement program will be made available to the Department of Labor. The individual and, when appropriate, the parent or guardian of each individual, must be fully informed of the IWRP and the community-based placement component and have indicated voluntary participation with the understanding that participation in such a component does not entitle the participant to wages.
- The activities of the individuals at the community-based placement site does not result in an immediate advantage to the business. The Department of Labor will look at several factors.
 1. There has been no displacement of employees, vacant positions have not been filled, employees have not been relieved of assigned duties, and the individuals are not performing services that, although not ordinarily performed by employees, clearly are of benefit to the business.
 2. The individuals are under continued and direct supervision by either representatives of the rehabilitation facility or by employees of the business.
 3. Such placements are made according to the requirements of the individual's IWRP and not to meet the labor needs of the business.
 4. The periods of time spent by the individuals at any one site or in any clearly distinguishable job classification are specifically limited by the IWRP.
- While the existence of an employment relationship will not be determined exclusively on the basis of the number of hours, as a general rule, each component will not exceed the following limitations:

Vocational exploration	5 hours per job experienced
Vocational assessment	90 hours per job experienced
Vocational training	120 hours per job experienced

An employment relationship will exist unless *all of the criteria* described in the policy are met. If an employment relationship is found to exist, the business will be held responsible for full compliance with the applicable sections of the Fair Labor Standards Act, including those relating to child labor.

Business and rehabilitation organizations may, at any time, consider participants to be employees and may structure the program so that the participants are compensated in accordance with the requirements of the Fair Labor Standards Act. Whenever an employment relationship is established, the business may make use of the special minimum wage provisions provided pursuant to section 14(c) of the Act.

—Donald J. Hinkel, Chair
National Rehabilitation Facilities Coalition
U.S. Department of Labor

—Karen R. Keesling, Acting Administrator
Wage and Hour Division