

Draft Definitions Related to DOJ Informed Choice/Integrated Setting

"Informed choice" means a voluntary decision made by a prospective or current worker or that person's legal representative, after a reasonable, objective assessment process. The assessment process shall include the following steps: (1) identify the individual's needs; (2) consider whether individuals with similar needs are working and receiving services in integrated employment settings with appropriate supports; (3) identify the supports and services necessary for the individual to succeed in an integrated setting; (4) provide the individual with sufficient relevant written and verbal information about the benefits of employment in integrated settings, at an appropriate comprehension level and in a manner consistent with the appropriate mode of communication and primary language used by the individual or that person's legal representative; (5) facilitate visits *and* other experiences in integrated settings; (6) offer the individual opportunities to meet with other individuals with disabilities who are working and receiving services in integrated employment settings; (7) offer the individual's family, if appropriate, opportunities to meet with families of other individuals with disabilities who are working and receiving services in integrated settings; (8) offer the individual opportunities to meet with other service providers who are supporting individuals with disabilities in integrated employment settings; (9) identify the objections and concerns expressed by the individual, and family members if applicable; (10) identify remedies to address the individual's and family members' objections and concerns; (11) ask the individual if they are opposed to working in an integrated setting, and if not opposed, initiate the referral process, internally or externally, for competitive employment with ongoing employment support services. ~~becoming familiar with worker rights and with alternative service options, and having been provided sufficient relevant written and verbal information at an appropriate comprehension level and in a manner consistent with the appropriate mode of communication and primary language used by the prospective or current worker or that person's legal representative.~~ Evidence of each step of this process shall be documented in the case record. The process shall be repeated annually for all workers reported in segregated settings. [3300.2005, subp. 23]

Issue/rationale: Uses DOJ-recommended process identified in TA Guide, and adds specificity about the type (written and verbal) information to be provided in item 4, and the manner in which the information is delivered from the current EE rules. Note: item 5 goes beyond DOJ recommendation using *AND* instead of *OR*.

"Integrated setting" ~~with respect to an employment₂ outcome,~~ means a setting typically found in the community in which an individual with the most severe disabilities interacts with nondisabled individuals, other than nondisabled individuals who are providing services to that individual, to the same extent that nondisabled individuals in comparable positions interact with other persons. that (a) provides individuals with disabilities opportunities to work and receive services in the greater community, like individuals without disabilities; (b) is

located in mainstream society; (c) offers access to community activities and opportunities at times, frequencies, and with persons of an individual's choosing; (d) affords individuals with disabilities choice in their daily life activities; and (e) provides individuals with disabilities the opportunity to interact with nondisabled persons **who are not paid care-givers** to the fullest extent possible **based on the typical interactions of the type of job.**

[3300.2005, subp. 25]

Issues/Rationale:

- 1.) "Interacts to the same extent that nondisabled individuals in comparable positions..." forces DEED to define and measure interactions. The often-stated "*I'll know it when I see it*" standard is subjective - reviewers are unlikely to interpret uniformly, cannot establish standards for auditors, and unlikely to prevail on appeal.
- 2.) To avoid unintended violations of ADA/Olmstead, and to promote consistency across agencies with a role in MN's Olmstead Plan, the DOJ's definition is proposed.

"**Segregated setting**" means (a) congregate settings populated exclusively or primarily with individuals with disabilities, (b) congregate settings characterized by regimentation in activities, lack of privacy or autonomy, policies limiting visitors, or limits on individuals' ability to engage freely in community activities and to manage their own activities of daily living, (c) settings that provide for daytime activities primarily with other individuals with disabilities, (d) **employment settings not located in mainstream society's competitive labor market, (e) employment settings where individuals with disabilities are assembled into a collective or work group; (f) employment settings where individuals with disabilities are present in greater numbers than nondisabled workers, customers or the general public, as applicable; (g) employment settings whereby individuals with disabilities contribute more than 50% of the direct labor to the production of goods or services for government contracts, such as NISH or NIB contracts authorized by the JWOD Act mandating "qualifying organizations must receive at least 75% of their direct labor from individuals who are blind or have severe disabilities."** No EE worker shall work in a segregated setting before the results of the informed choice process determine the individual is inappropriate for integrated employment or the individual opposes work in an integrated setting. The informed choice process shall be conducted yearly prior to developing the individual's annual *Extended Employment Support Plan*, or more frequently as changes occur in the workers' circumstances.

[NEW definition]

Issue/Rationale:

- 1.) The DOJ considers work that is *not* in mainstream society (competitive labor force) to be segregated.
- 2.) JWOD Act requires Federal agencies purchase products/services from certain nonprofit orgs. Facilities must be affiliated with NISH/NIB to receive JWOD contracts. "*Qualifying orgs must receive at least 75% of their direct labor from individuals who are blind or have severe disabilities.*" (www.dol.gov/whd/FOH/ch64/64k00.htm)

"Enclave work site" means the job site of a business in mainstream society where an individual with a most severe disability, or a group of individuals with most severe disabilities, work and the supervision is provided by the CRP. The CRP is the payroll agent and may have authorization to pay a special minimum wage based on the CRP's DOL Wage & Hour certificate. Work performed on the premises of a CRP shall not constitute an enclave work site. CRPs must evaluate each enclave work site and determine whether they are integrated or segregated. The evaluation and determination must be documented and available for review by the Department. [NEW definition]

Issue/Rationale:

- 1.) While single site placements are clearly integrated, and center-based employment is clearly segregated, the enclave work site may be either. Define for max clarity.
- 2.) Work on the premises of a CRP should not be considered an enclave, but center-based employment as workers don't perform duties in mainstream society and the CRP continues to control duties, schedules, etc.

"Special minimum wage" means a wage paid a worker with a disability that is commensurate with that worker's individual productivity as compared to the wage and productivity of experienced workers who do not have disabilities performing essentially the same type, quality, and quantity of work in the vicinity where the worker with a disability is employed. The commensurate wage is always a special minimum wage, i.e., a wage below that required by DOL, FLSA, Section 64(a). Before a special minimum wage rate may be paid, the employer must obtain a certificate under Section 14(c). [NEW definition]

Issues/Rationale:

- 1.) Used in the enclave definition
- 2.) A defining factor in the determination of competitive employment

~~"Center based employment~~ **Non-competitive employment** means employment of a person with a most severe disability who (a) because of the nature and severity of their disability is compensated under a U.S. DOL certificate for *special minimum wage*; and/or (b) for whom work and services in an *integrated setting* are determined inappropriate or are opposed by the individual with a disability after a recent, reasonable and objective *informed choice process*. ~~provides paid work on the premises of an extended employment provider and training services or other services necessary for employment on or off the premises of an extended employment provider to persons who, because of the nature and severity of their disabilities, need intensive ongoing employment support services funded by the state unit in order to work. [3300.2005, subp. 6]~~

Issues/Rationale: DOL defines discrimination as unjustified segregation. If EE is to continue non-competitive employment we need to clearly define what it is and that it is allowable only after the DOJ's recommended informed choice process.

"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.

Issues/Rationale: full and part time are immaterial to the definition – drop.

"Supported employment" means competitive employment ~~in an integrated setting~~ with ongoing employment support services for individuals with the most severe disabilities ~~for whom competitive employment has not traditionally occurred or for whom competitive employment has been interrupted or intermittent as a result of a severe disability; and who, because of the nature and severity of their disabilities, need~~ require intensive ongoing employment support services to maintain employment from the designated state unit and extended services after transition in order to perform this work; or transitional employment for individuals with the most severe disabilities due to mental illness.