Wage and Hour Division

Section 14(c) Today: Keys to Compliance

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Poll Question

Which laws are enforced in full or in part by WHD?

Select all that apply

a. Employee Polygraph Protection Act
b. Family and Medical Leave Act
c. Consumer Credit Protection Act, Title III
d. McNamara-O'Hara Service Contract Act
e. Section H-2A of the Immigration and Nationality Act
f. Families First Coronavirus Response Act

Wage and Hour Division

- US Department of Labor Wage and Hour Division (WHD) administers and enforces laws which collectively cover virtually all private and state and local government employment

- Our mission is to promote and achieve compliance with labor standards to protect and enhance the welfare of the Nation's workers

Family First Coronavirus Response Act (FFCRA)

- Signed into law March 18, 2020
    - Emergency Paid Sick Leave Act (EPSLA)
    - Emergency Family and Medical Leave Expansion Act (EFMLEA)

- Effective April 1, 2020

- Expires December 31, 2020

- Enforced by the U.S. Department of Labor Wage and Hour Division (WHD)
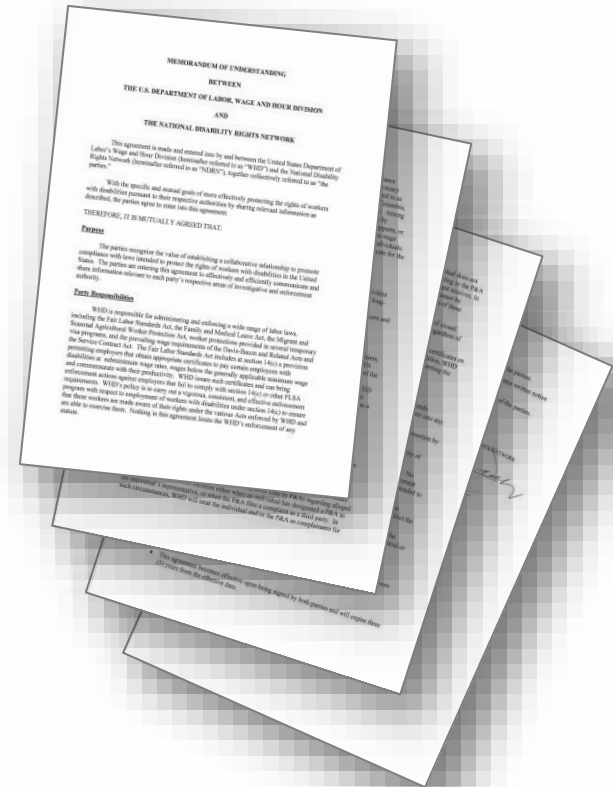
NDRN Memorandum of Understanding

- Protect rights of workers with disabilities
- Share relevant information

NATIONAL DISABILITY RIGHTS NETWORK
Protection & Advocacy for Individuals with Disabilities

NDRN Memorandum of Understanding

Main Areas of Impact:

- Complaint Intake
  - 15 WHD investigations concluded based upon complaints received from a P&A

- Investigations

NDRN Memorandum of Understanding

- Sharing Data
  - Certificate Lists
    - Updates
    - New Information

Poll Question

Have you contacted a WHD office (by mail or telephone) to file a complaint on behalf of a worker earning subminimum wages?

- Yes
- No

Wage and Hour Division

It is the responsibility of WHD to carry out a vigorous, consistent, and effective compliance program with respect to employment of workers with disabilities under section 14(c) of the FLSA

Section 14(c) of the FLSA

- Authorizes the employment of workers with disabilities at subminimum wages when the disabilities impair their productivity for the work being performed

- Subminimum wages can only be paid when authorized by a certificate issued to the employer by DOL

14(c) Certification

- Only employers who have applied for and received a certificate from the Wage and Hour Division may choose to pay commensurate wages to workers who are disabled for the work being performed

- The granting of a certificate is NOT a statement of compliance by the Wage and Hour Division

- Certificates will not be issued retroactively

Types of Establishments

- WHD issues 14(c) certificates to:
  - Community Rehabilitation Programs (CRPs)
    - 2 year certificates
  - Establishments that employ patient workers
    - 2 year certificates
  - Business establishments
    - 1 year certificates
  - School Work Experience Programs (SWEPs)
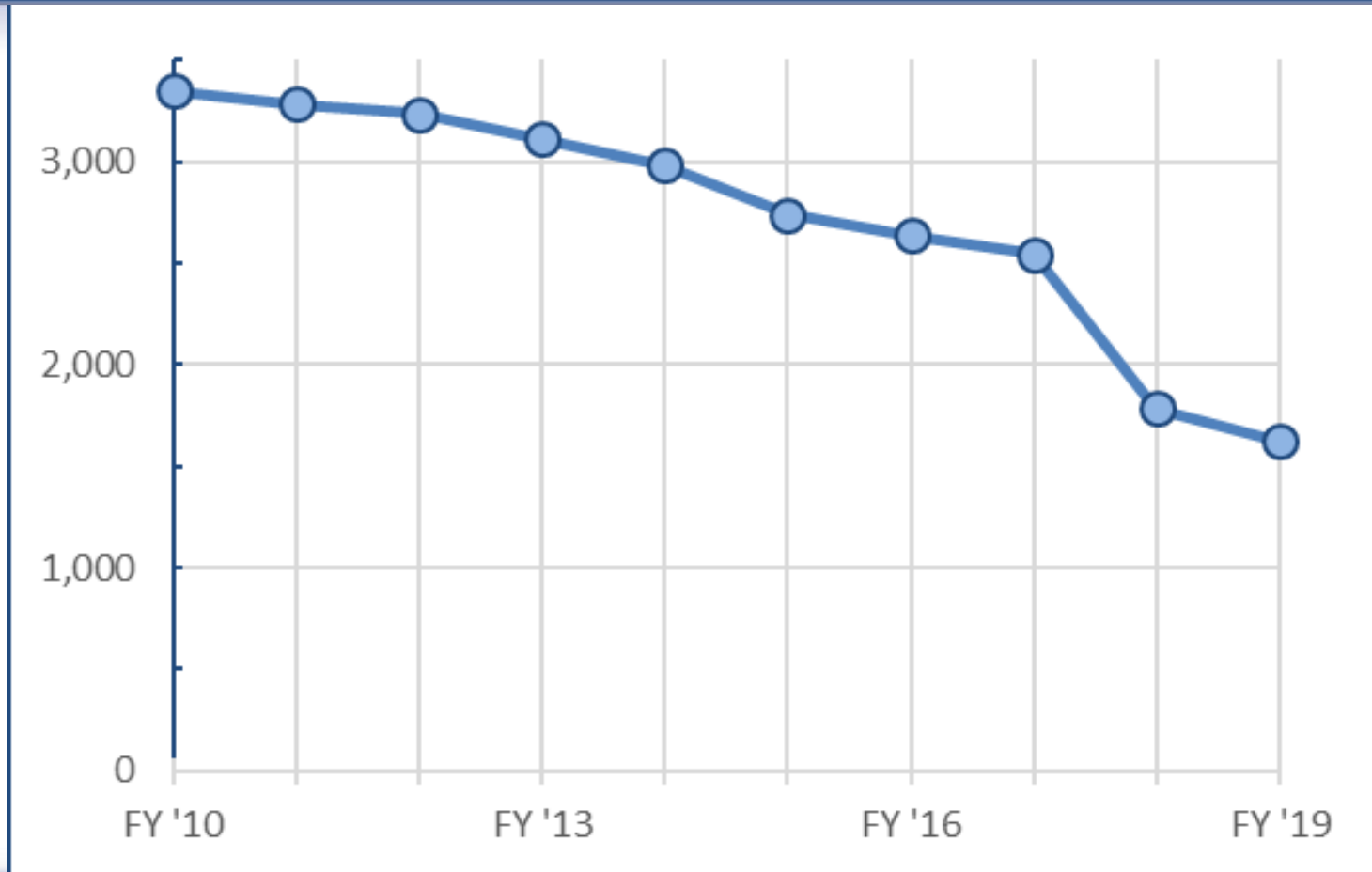   - 1 year certificates

Application Processing

- WHD Wage Specialists review each application for completeness, accuracy, and compliance with the provisions of section 14(c)

- Once the review is completed, a certificate will be issued or denied

Section 14(c) Certificate Holders

Certificate Revocation

- A certificate may be revoked by the WHD Administrator for the following reasons:
  - False statements were made or facts were misrepresented in obtaining the certificate
  - The certificate holder violated any of the provisions of the FLSA or terms of the certificate
  - It is determined that the certificate is no longer necessary to prevent the curtailment of employment opportunities for workers with disabilities
- A petition for review may be filed within 60 days

Certificate Revocation

Between June 2013 and September 2019, 14(c) certificates have been revoked from 6 employers:

- Training Thru Placement, Inc.
- Harold A. Birch Vocational Center and School
- Buckhannon-Upshur Work Adjustment Center, Inc.
- Rock River Valley Self Help, Enterprises
- Becky Home Health Care, LLC
- James L. Maher Center

FLSA Principles

- Apply to all employees:

    - Coverage

    - Employment relationship

    - Hours worked

Subminimum Wage

- Must be commensurate with the workers' productivity as compared to the wage and productivity of experienced workers who are not disabled for the work

- May be less than federal FLSA rate or wage determination rate for SCA

The Process to Determine a Commensurate Wage

- Develop a job description

- Determine the prevailing wage

- Define the work

- Establish the standard

- Measure the worker

- Calculate and implement rate of pay

Employer Responsibilities

- Certificate Attestations
  - Each employer requesting a 14(c) certificate attests to providing accurate information and complying with the FLSA and other labor statutes, etc.

- Records
  - Must document the requirements to pay subminimum wages

- Notice
  - Must notify each worker paid a subminimum wage orally and in writing of the terms of the 14(c) certificate

Executive Order 13658

- Effective January 1, 2015, establishes a minimum wage to be paid to workers performing on or in connection with a covered contract with the Federal government

- Section 14(c) certificate holders may continue to pay commensurate wages to workers employed on or in connection with MW EO-covered contracts ONLY if the rate is no less than the MW EO minimum wage (currently $10.80 per hour)

Workforce Innovation and Opportunity Act (WIOA)

WIOA places limitations on the payment of subminimum wages to individuals with disabilities by mandating the completion of certain requirements prior to the payment of a subminimum wage

Section 511's Two New Requirements

- Pre-Subminimum Wage Employment – Youth (age 24 or younger) with a disability

- During Subminimum Wage Employment – **Any** subminimum wage employee

WOIA Records

- Employer must maintain documentation that an individual age 24 or younger has received required services.

- Employer must verify that all individuals employed at a subminimum wage have received the required services and provide information to these workers.

WHD Enforcement

- Conduct investigations of 14(c) certificate holders to ensure continued compliance

- Develop enforcement strategies to create the most impact possible through our investigations
  - Including inter-agency collaboration and cross-training to maximize referral opportunities

- Use all available enforcement tools to remedy violations and deter future violations

WHD Enforcement

- In fiscal year 2019 alone, WHD recovered nearly **$2.5 million** for workers in 227 section 14(c) investigations

- Affecting more than 9,000 workers

Section 14(c) Compliance Assistance Materials

- An e-Laws Advisor and Online Calculators

- Workers' Rights Cards

- Fact Sheets, Field Assistant Bulletins, Administrator Interpretations, and Letters to Certificate Holders

- Poster and Application Forms (WH-226 and WH-226A)

- Field Operations Handbook Chapter 64

- Section 14(c) and WIOA PowerPoint Presentations

- Free Regional Seminars

Poll Question

If we had more time, I most wish WHD would talk more about:

Select one

- Details of the WHD/NDRN MOU
- Mechanics of section 14(c)
- More specifics of Executive Order 13658
- Details of the section 511 requirements
- More WHD enforcement stats and stories

Questions

Visit the WHD homepage at:
http://www.dol.gov/whd