

## UNPAID WORK EXPERIENCE

Providing for the employability skills necessary to attain and maintain employment throughout life is an essential part of transition planning for youth, particularly those with disabilities. IDEA 2004 mandates that all students with Individual Education Programs (IEPs) have appropriate transition planning that prepares them for postsecondary education, vocational education, and integrated employment (including supported employment). This requires that schools provide opportunities for students with disabilities to attain skills related to employment. It is very important for schools and their personnel to know that if a student is participating in work experience (paid or unpaid) within the school or community, ALL state and local labor laws must be observed and practiced.

The Colorado Department of Education, Exceptional Student Services Unit has provided tools to document unpaid work experience. The tools can be found in *Charting a Course for the Future- A Transition Toolkit*, which can be downloaded at [www.cde.state.co.us/cdesped/Transition\\_TK.asp](http://www.cde.state.co.us/cdesped/Transition_TK.asp).

### What is Unpaid Work Experience (UWE)?

Unpaid Work Experience (UWE) is an educational tool and an opportunity to learn employment/career skills in order to increase overall employability. UWE is a mechanism for providing authentic learning experiences to improve work outcomes post school. Typically, students spend part of their day on a job site, supported by school personnel to gain skills specifically linked to their IEPs. Students may receive educational credit through unpaid work experiences

### When must a student be paid?

If at any time it is clear that the business is gaining immediate benefit from the unpaid student worker or the student has developed the needed skills, it is the responsibility of the supervising teacher to address the issue and the business. At this time, the business or the school needs either to pay the student as a regular employee of the business or to change placement of the student to a different job where the seven criteria will be met.

### Does Unpaid Work Experience require Authorization?

**YES**, unpaid work experience is a tool allowed by the U.S. Department of Labor for students with disabilities meeting very stringent criteria in order to gain meaningful work experience. It is essential to know that ALL of the following seven criteria must be met and documented in order for a student to participate in unpaid work experiences. When all seven criteria are met, the U.S. Department of Labor will NOT assert the existence of an employment relationship:

1. Competitive employment at minimum wage is not immediately available to the student because of the disability
2. The need for Unpaid Work Experience MUST be indicated clearly in the IEP
3. Enrollment in the experience is voluntary with no expectation of remunerations.
4. The work performed by the student does NOT provide an immediate advantage to the employer nor displace any regular employees
5. Experience is for vocational exploration, assessment and training purposes only
6. Employee/Employer relationship will NOT exist so long as the following parameters are maintained:
  - Vocational exploration *does not* exceed 5 hours
  - Vocational assessment *does not* exceed 90 hours
  - Vocational training *does not* exceed 120 hours
7. The student and family understand that the student is NOT entitled to a paid position at the end of the experience

For a full description of the Statement of Principles FOH64c08, please visit <http://www.fsa.gov.uk/pubs/hb-releases/rel40/rel40aper.pdf>

**May a student utilize all three types of unpaid work experience for a cumulative experience of 215 hours?**

**YES**, one student could stay at that one job experience for a total of 215 hours (5 vocational exploration, 90 vocational assessment, and 120 vocational training) ---as long as ALL the criteria of the Statement of Principles continue to be met. The policy is only for once per student per job experienced. An example is if they learned to bus tables the first year, then the 2nd year was assigned to a restaurant to bus tables, you could not use the 215 hours a second time for that same job experience for that same student. If he/she was assigned a different job experience, for example, stock clerk, in the same year or a different year, and again ALL criteria continue to be met, then you could use up to (another) 215 hours.

**What is the difference between “unpaid work experience” and a “volunteer?”**

Unpaid Work Experience is not equivalent to volunteerism. According to the U.S. Department of Labor’s definition of volunteerism, it is by nature a community service and not a mechanism to teach employment skills. One may only volunteer for non-profit organizations in duties clearly and often performed by other volunteers. One may NOT volunteer for any for profit business or company. Volunteers must truly be there on a voluntary basis, meaning that no direct or indirect pressure or coercion may be placed upon an individual to volunteer. The condition of a grade or the credits for a course may be interpreted as indirect pressure and therefore make it improper to utilize volunteerism as a mechanism by which to teach students employment skills. If the student is placed in a volunteer position as part of a work program, then the Fair Labor Standards Act guidelines should apply. Do not attempt to circumvent the Fair Labor Standards Act provisions by calling Unpaid Work Experiences volunteering.

**Can students be compensated by the School District or an employer during an Unpaid Work Experience?**

**NO**, the provision of money to a student based on hours worked, tasks completed, or piecework finished constitutes a wage. Once a student is paid or otherwise compensated for work performed, an employee/employer relationship is created and the Fair Labor Standards Act is triggered. Some examples of compensation might be:

- Sub minimum wage payments often described as “stipends”
- Play money that can be used to purchase goods or privileges in school
- Other goods or services

Non-monetary benefits may be provided at the employer’s discretion so long as it is not provided as a direct result of work performed. An example of this may be an employer providing the student worker a meal as in the case of many food service positions where a meal is provided to all workers during a shift.

**Who is responsible for Worker’s compensation during unpaid work experiences?**

The school district is responsible. Colorado State statute makes very clear that any student participating in an UNPAID work experience that is coordinated through the schools, with oversight by a board (including school boards), has inherent coverage by the Workers’ Compensation Policy already owned by the school district. Only at the point by which the student becomes an employee of the participating agency or business, does this burden shift to the employer. This requirement is clearly outlined in the Colorado Statutes: title 8 labor and industry: labor II - workers' compensation and related provisions. <http://www.colorado.gov/cs/Satellite/CDLE-WorkComp/CDLE/1240336932511>

**Can a school opt out of providing unpaid work experience to avoid being responsible for Worker’s Compensation Insurance?**

Nothing in the Fair Labor Standards Act or Colorado State Labor laws specifically requires any school district or rehabilitation agency to provide Unpaid Work Experience. While districts/administrative units are not required to provide UWE, IDEA requires that special education students be provided with appropriate transition planning and services that prepare them for post-secondary education, vocational education, and integrated employment, including supported employment. It is important then to note that if a school district does not have the instructional resources to provide for the attainment of the employability skills necessary to achieve the stated post school goal related to employment, a district would need to either utilize the opportunities for Unpaid Work Experiences as provided by the



Fair Labor Standards Act, partner with community agencies that provide employment related services to youth, or find other means of appropriately meeting the student's transition needs.

### **Can an employer pay a student less than minimum wage?**

**YES**, the employer may pay a student with disabilities less than minimum wage in the following two circumstances.

- The employer can pay a wage less than minimum by applying for a sub minimum wage certificate using form WH-226 and supplemental form WH-226A. This wage waiver is often referred to as a 14C certificate. A student may be paid a sub minimum wage based on their performance as compared to non-disabled workers performing the same task. This wage is paid on an individual student basis derived from specific time trials occurring prior to the work experience, 1 month after beginning and every 6 months thereafter.
- The employer may also exercise a youth minimum wage of not less than 15% below the established State minimum wage for un-emancipated youth under 18 OR for an employee with a physical disability that is certified by the Director of the Colorado Department of Labor.

More detailed information and instructions for gaining approval can be found at:

<http://www.dol.gov/dol/topic/wages/subminimumwage.htm>

### **When a student with a disability is paid by a school/district, can it be at a rate less than minimum wage?**

**YES**. However, schools must follow the same guidelines and procedures as employers when determining if and when a student can be paid less than the established minimum wage.

### **Can schools partner with other agencies to provide work experience for students?**

**YES**. There may be opportunities for a student to access work experience services through an agency such as Vocational Rehabilitation, Workforce Center youth program, or community based non-profit organization (i.e. Goodwill Industries) while they are still a part of the school system. These work experiences may be unpaid or wages may be paid by the agency. Worker's Compensation and other benefits may be available through the agency provider. When a student has access to work experience opportunities through another agency, it is critically important that the supervising teacher coordinate with the agency counselor to determine the services that might be available and clearly document which services will be provided by each entity. Agency counselors will be aware of state and local labor laws that apply.

## **References**

The Association for Career and Technical Education: <http://www.acteonline.org>

Youth Labor Laws: <http://www.colorado.gov/cs/Satellite/CDLE-LaborLaws/CDLE/1248095305832>

The Fair Labor Standards Act: <http://www.dol.gov/whd/flsa/>

U.S. Department of Labor Wage and Hour Division: <http://www.dol.gov/whd/index.htm> (Special thanks to Judith Edmondson)

Comparison of Federal and Colorado youth laws: <http://www.colorado.gov/cs/Satellite/CDLE-LaborLaws/CDLE/1251566742206>

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