

# PSO Survey and Labor Laws

*This document provides labor-related laws, regulations, and standards related to Post School Outcomes (PSO) Survey data collection.*

## **Federal Laws Related to PSO Survey Questions:**

### **Individuals with Disabilities Education Act ([IDEA](#)):**

“The [IDEA](#) is a law that makes available a free appropriate public education to eligible children with disabilities throughout the nation and ensures special education and related services to those children.”

- To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further *education, employment, and independent living*.

[20 U.S.C. § 1400\(d\)\(1\)\(A\)](#)

- **[IDEA Part B](#) Indicator 14:**

Percentage of youth who are no longer in secondary school had IEPs in effect at the time they left school and were:

1. enrolled in *higher education*
2. *competitively employed*
3. enrolled in *postsecondary education or training*
4. some *other employment*

within one year of leaving high school.

[20 U.S.C. § 1416\(a\)\(3\)\(B\)](#)

Office of Special Education Programs (2019). [Part B State Performance Plan and Annual Performance Report Part B Indicator Measurement Table](#) (OMB NO: 1820-0624 / Expiration Date: 8/31/2020).

### **Workforce Innovation and Opportunity Act ([WIOA](#)):**

“[The Workforce Innovation and Opportunity Act \(WIOA\) \(Pub. L. 113-128\)](#) is a transformative law designed to strengthen our nation's public workforce system, helping Americans, particularly youth and those with barriers to employment, access the education, training, and support services they need to obtain and advance in quality jobs and careers, and to help businesses hire and retain the skilled workers they need to succeed in a global economy. WIOA ensures that the needs of businesses and workers drive workforce solutions and it increases and aligns coordination among key employment, education, and training programs.”

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<p style="text-align: center;"><u>WIOA</u> Definition of Competitive Integrated Employment</p>	<p style="text-align: center;"><u>PSO</u> Definition of Competitive Employment</p>
<p><i>Bold text indicates specific components of the WIOA definition addressed by the 2019 PSO Survey questions. Highlighted text indicates updates to the PSO definition for the 2019 data collection season.</i></p>	
<p><b>(5) Competitive integrated employment</b> The term "competitive integrated employment" means work that is performed on a <b>full-time or part-time basis</b> (including self-employment)-</p> <p>(A) for which an individual-</p> <p>(i) is <b>compensated at a rate that-</b></p> <p>(I)(aa) <b>shall be not less than</b> the higher of the rate specified in <a href="#">section 206(a)(1) of this title</a> or the rate specified in the applicable <b>State or local minimum wage</b> law; and</p> <p>(bb) <b>is not less than the customary rate</b> paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities, and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; or</p> <p>(II) in the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities, and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills; and</p> <p>(ii) <b>is eligible for the level of benefits provided to other employees;</b></p> <p>(B) that is at a <b>location where the employee interacts with other persons who are not individuals with disabilities</b> (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons; and</p> <p>(C) that, as appropriate, presents <b>opportunities for advancement</b> that are similar to those for other employees who are not individuals with disabilities and who have similar positions.</p> <p><a href="#">29 U.S.C. § 705(5)</a></p>	<ul style="list-style-type: none"> <li>• Average <b>20 hours</b> a week</li> <li>• <b>90 days</b> (cumulative) since leaving high school</li> <li>• Includes <b>military</b> employment</li> <li>• Worked for pay at or above the <b>minimum wage</b> while earning <b>customary pay rate*</b></li> <li>• <b>Setting</b> with others who are non-disabled <b>where interaction is at a level comparable to co-workers without disabilities who perform the same job description</b></li> <li>• <b>Available benefits and opportunities for advancement as those without disabilities</b></li> </ul> <p>*A customary pay rate involves a former student compensated at the same wage rate as co-workers without disabilities for the same/similar job description.</p>

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## **Federal Laws Related to WIOA Definition of Competitive Integrated Employment:**

### **Americans with Disabilities Act ([ADA](#)):**

“The [ADA](#) is one of America's most comprehensive pieces of civil rights legislation that prohibits discrimination and guarantees that people with disabilities have the same opportunities as everyone else to participate in the mainstream of American life -- to enjoy employment opportunities, to purchase goods and services, and to participate in State and local government programs and services.”

- No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

[42 U.S.C. § 12112\(a\)](#)

- The term “covered entity” means an employer, employment agency, labor organization, or joint labor-management committee.

[42 U.S.C. § 12111\(2\)](#)

- The term employer means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.

The term "employer" does not include

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of title 26.

[42 U.S.C. § 12111\(5\)](#)

### **Fair Labor Standards Act ([FLSA](#)):**

“The [FLSA](#) establishes minimum wage, overtime pay, recordkeeping, pay equality, and child labor standards affecting full-time and part-time workers in the private sector and in Federal, State, and local governments.”

- “Employer” includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.

[29 U.S.C. § 203\(d\)](#)

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## PSO Survey Questions Related to WIOA Definition of Competitive Integrated Employment with Labor Laws:

**Definition of a Large Well-Known Company (Question 10) based on ADA and FLSA:** A “large well-known company” can be defined as an employer who has 15 or more employees. This could be a franchise company that may have less than 15 employees in one location (e.g., Dairy Queen, Subway). When an employer has more than 15 employees, they are required to meet the letter of the law in ALL components of the WIOA definition of competitive integrated employment. The table below illustrates this concept.

PSO Survey employment questions requiring clarification related to labor laws	Components of Competitive Integrated Employment (CIE) definition per WIOA	Law(s) that require employers to offer WIOA CIE component(s) to their employees	Details
<p>7. Were you paid at least minimum wage at the time of employment?                      [NOTE: 2018 minimum wage was \$10.50 per hour, 2019 minimum wage increased to \$11.00]</p>	<p><b>For pay at or above the minimum wage</b></p>	<p>Fair Labor Standards Act  <a href="#">29 U.S.C. § 206(a)</a></p>	<p><u>Every employer</u> shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates: (1) except as otherwise provided in this section, not less than...(C) \$7.25 an hour, beginning 24 months after that 60th day.</p> <p><u>Note:</u> Many states also have minimum wage laws. In cases where an employee is subject to both the state and federal minimum wage laws, the employee is <a href="#">entitled to the higher of the two minimum wages</a>.</p> <p>Arizona's 2019 minimum wage is \$11/hour.</p> <p><a href="#">National and AZ Minimum Wage</a></p>

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		Americans with Disabilities Act <a href="#">42 U.S.C. § 12112(a)</a>	No covered entity shall discriminate against a qualified individual on the basis of disability in regard to... <u>employee compensation</u> .
8. Describe the job you currently have or have had?	<b>Integrated setting</b>	Americans with Disabilities Act <a href="#">42 U.S.C § 12112(b)(1)</a>  <a href="#">28 C.F.R. § 35.130(d)</a>	The term "discriminate against a qualified individual on the basis of disability" includes (1) limiting, <u>segregating</u> , or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;  Title II (government entities): A public entity shall administer services, programs, and activities in <u>the most integrated setting</u> appropriate to the needs of qualified individuals with disabilities.
11. When doing your job did you interact or talk with co-workers without a disability to get your job done? [NOTE: Emphasis is on interaction with other employees, not supervisors or customers.]	<b>Level of interaction</b>	<a href="#">28 C.F.R. § 36.203</a>  <a href="#">28 C.F.R. Pt. 35, App. A (2010) (addressing § 35.130)</a>	Title III (public sector): A public accommodation shall afford goods, services, facilities, privileges, advantages, and accommodations to an individual with a disability in <u>the most integrated setting</u> appropriate to the needs of the individual.  2010 guidance and analysis of the "integration regulation" explains that "the most integrated setting" is one that "enables individuals with disabilities <u>to interact with nondisabled persons to the fullest extent possible.</u> "

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<p>12. In this job, were you eligible for (can you get) a pay raise or promotion?</p>	<p><b>Opportunities for advancement</b></p>	<p>Americans with Disabilities Act <a href="#">42 U.S.C. § 12112(a)</a>  <a href="#">42 U.S.C § 12112(b)(5)(B)</a></p>	<p>No covered entity shall discriminate against a qualified individual on the basis of disability in regard to...<u>advancement</u>...of employees.</p> <p>The term "discriminate against a qualified individual on the basis of disability" includes...<u>denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability</u>, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;</p>
<p>13. Were you paid the same as other people who work in a similar job with the same skills, experience, and training?</p>	<p><b>Customary pay rate</b></p>	<p>Americans with Disabilities Act <a href="#">42 U.S.C. § 12112(a)</a></p>	<p>No covered entity shall discriminate against a qualified individual on the basis of disability in regard to...<u>employee compensation, job training, and other terms, conditions, and privileges of employment</u>.</p>
<p>14. In this job, did you receive benefits (such as group insurance like health, dental, vision, paid sick leave or vacation, social security, unemployment insurance, workers' compensation)?</p>	<p><b>Available benefits</b> <u>Note</u>: The level of benefits will vary depending on the employer. <i>If no one is receiving a specific benefit, then the former student is receiving the "same" level of benefits as his or her co-workers without disabilities.</i></p>	<p>Americans with Disabilities Act <a href="#">42 U.S.C. § 12112(a)</a></p>	<p><u>All Benefits-</u> No covered entity shall discriminate against a qualified individual on the basis of disability in regard to...<u>employee compensation, job training, and other terms, conditions, and privileges of employment</u>.</p>

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		<p><a href="#">42 U.S.C § 12112(b)(4)</a></p>	<p>The term "discriminate against a qualified individual on the basis of disability" includes...<u>excluding or otherwise denying equal jobs or benefits</u> to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;</p>
		<p>Affordable Care Act (ACA)* <a href="#">42 U.S.C. § 18081</a></p> <p>IRS Reporting Requirements for ACA <a href="#">26 U.S.C. § 4980H</a></p>	<p><u>Medical Benefits-</u> The ACA Employer Mandate applies to all Applicable Large Employers, which are US employers having 50 or more full-time employees (or equivalents) in the previous tax year. Under the ACA, these employers must periodically offer a certain quality health insurance to full-time employees or risk paying a penalty. These employers must provide affordable coverage that meets minimum value to all full-time, eligible employees.</p>
		<p>Family Medical Leave Act (FMLA)* <a href="#">29 U.S.C. § 2611</a></p>	<p><u>Extended Medical Leave-</u> Applies to only "covered employers" which may be public agencies and school, regardless of the number of employees they employ, as well as a private-sector employer if it employs with 50 or more employees in 20 or more workweeks in the current or preceding calendar year. "Covered employers" must offer their employees FMLA if they meet the eligibility criteria.</p>

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			<p>An eligible employee is one who:</p> <ol style="list-style-type: none"> <li>1. Has worked for the employer for at least 12 months as of the date the FMLA leave is to start,</li> <li>2. Has at least 1,250 hours of service for the employer during the 12-month period immediately before the date the FMLA leave is to start (a different number of hours of service requirement applies to airline flight crew employees), and</li> <li>3. Works at a location where the employer employs at least 50 employees within 75 miles of that worksite as of the date when the employee gives notice of the need for leave.</li> </ol>
		<p>Fair Labor Standards Act*  <a href="#">29 U.S.C. § 207</a></p>	<p><u>Overtime Pay-</u>                  Unless exempt, employees covered by the Act must receive overtime pay for hours worked over 40 in a workweek at a rate not less than time and one-half their regular rates of pay.</p>
		<p><a href="#">A.R.S. § 23-901</a> and  <a href="#">A.A.C. R20-5-101</a>*</p>	<p><u>Workers Compensation-</u>                  If an employer regularly hires workers in its customary business then the employer is required to carry workers' compensation insurance regardless of the number of workers they have, whether those workers are part-time, full-time, minors, aliens, or family members.</p>
<p>*These laws are not all-inclusive.</p>			

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## Additional Resources

More information about these laws:

### **Americans with Disabilities Act**

[ADA- Disability Discrimination](#)

[Fact about ADA](#)

[Job Accommodation Network ADA Library](#)

### **Affordable Care Act**

[Affordable Care Act Tax Provisions for Employers](#)

[Affordable Healthcare Act \(legal verbiage\)](#)

### **Fair Labor Standards Act**

[Fact Sheet #22: Hours Worked Under the FLSA handy reference guide for FLSA](#)

[Fair Labor Standards Act of 1938, as amended \(legal verbiage\)](#)

[Minimum Wage Laws in the United States](#)

[Handy Reference Guide to the FLSA](#)

[Who is Covered by the Fair Labor Standards Act?](#)

### **Family Medical Leave Act**

[Employers Guide to FLMA](#)

[Fact Sheet #28: The Family and Medical Leave Act](#)

### **Individuals with Disabilities Education Act**

[Grads 360](#)

[IDEA Part B 2019 Measurement Table](#)

[NTACT Indicator 14 Data Collection Protocol: Revised](#)

### **Workforce Innovation and Opportunity Act**

[Innovation and Opportunity Network](#)

[Office of Special Education and Rehabilitative Services'](#)

[RSA: Integrated Location Criteria of the Definition of](#)

["Competitive Integrated Employment" FAQs](#)

[Workforce Innovation and Opportunity Act \(legal verbiage\)](#)

### **Workman's Compensation**

[The Industrial Commission of Arizona's Workers'](#)

[Compensation Insurance FAQ](#)

Other employment-related resources:

[AZCIS Section on Employment Laws](#)

[Department of Labor Employment Law Guide](#)

[Equal Employment Opportunity Commission Prohibited](#)

[Employment Policies/Practices](#)

[Summary of Major Laws of the Department of Labor](#)

[Types of Employee Benefits and Perks from The](#)

[Balance Careers](#)

[What are Required Employee Benefits for U.S.](#)

[Businesses? from The Balance Careers](#)

Other legal resources:

[Arizona Administrative Code](#)

[Arizona Revised Statutes](#)

[Cornell Law School Legal Information Institute](#)

[Electronic Code of Federal Regulations](#)

[Office of the Law Revision Counsel United States Code](#)

[United States Government Publishing Office's govinfo](#)

[Service](#)

## **PSO Contact Information**

### **Arizona Department of Education**

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Fax: 602-542-5404

PSO Email: [PSOInbox@azed.gov](mailto:PSOInbox@azed.gov)

[ADE Secondary Transition Webpage](#)

[Secondary Transition Training Request Form](#)