



## International Association of Rehabilitation Professionals

[www.rehabpro.org](http://www.rehabpro.org)

*Uniting Rehabilitation Professionals*

### **IARP – DFEC WORK GROUP – WHITE PAPER**

California Chapter Board

Enrique Vega

[Enrique@choicesvocrehab.com](mailto:Enrique@choicesvocrehab.com)

Ellie Ettner

[ettner@unum.com](mailto:ettner@unum.com)

Carmen Roman

[rvs.carmen@sbcglobal.net](mailto:rvs.carmen@sbcglobal.net)

Steve Jacobs

[steven.jacobs@genexservices.com](mailto:steven.jacobs@genexservices.com)

Lisa Broering

[lbroering@ergolinks.biz](mailto:lbroering@ergolinks.biz)

Frank Diaz

[diazcompany@diazcompany.com](mailto:diazcompany@diazcompany.com)

Mark Remas

[mremas@remasgrp.com](mailto:mremas@remasgrp.com)

The following are recommended standards for Vocational Rehabilitation Experts in California. This paper is prepared by the International Association of Rehabilitation Professionals (IARP) – Diminished Future Earning Capacity (DFEC) Work Group and is intended to provide guidance to professionals assigning or performing Vocational Evaluations.

### **BACKGROUND**

The International Association of Rehabilitation Professionals (IARP) has more than 2,500 professional and associate members in the United States, Canada and Ireland. IARP represents professionals practicing in the fields of long-term disability and disability management consulting, vocational rehabilitation case management, work evaluation, managed care, forensics and expert testimony, life care planning, and Americans with Disabilities Act (ADA) cases. IARP sponsors research and publishes a peer-reviewed quarterly journal. IARP members adhere to a professional code of ethics and competency standards, and attend continuing education programs. Members work closely with other professional organizations, government agencies and industry, promoting quality services to those who have injury and illness-related impairments.

Vocational Rehabilitation was first presented in 1917 as a service for Veterans. Since that time several laws have been passed in every state and through the Federal government to address the issues of disability and the impact disability has on earning capacity. The benchmark American with Disabilities Act in 1990 established a broad base of technical and civil regulations to insure access to employment and address issues of employment discrimination.

The growth of programs to address the issues surrounding disability led to the development of a class of professionals that have the training and experience to evaluate how a person's disability impacts on his or her ability to work and what steps should be initiated to prepare the person for employment. The Vocational Rehabilitation Expert's background includes experience in working face to face with employers, physicians, attorneys and individuals from all walks of life to assess the impact of disability on employment. The Vocational Rehabilitation Expert works directly to assist individuals with and without disabilities in vocational planning, job analysis, job placement, labor market research, return to work intervention, and job accommodation. Vocational Rehabilitation Experts also provide legal testimony related to personal injury, marriage dissolution, and

employment discrimination in order to assess options for employability based on the individual's capacities as well as the demands of the local labor market.

Building upon the above-described foundation in vocational rehabilitation practice, extensive experience has been gained over the past several decades regarding the use of vocational rehabilitation consultants as experts in a variety of legal settings to determine issues of employability, life care needs, vocational rehabilitation potential, and future earning capacity. Vocational Rehabilitation Experts are used in all 50 states and many other countries, and in multiple legal jurisdictions including: Workers' Compensation, Social Security, Personal Injury, and employment and family law cases. There exists an extensive body of literature describing professional and evidentiary standards for Vocational Experts, including issues of educational competency, ethics, best practices and methodologies.

#### PROFESSIONAL QUALIFICATIONS OF A VOCATIONAL REHABILITATION EXPERT

Following is a list of recommended qualifications for a Vocational Rehabilitation Expert.

- 1) Graduate degree in vocational rehabilitation, the behavioral sciences, human services or a related field;
- 2) Specialized training in the area of vocational rehabilitation as it relates to forensics;
- 3) Certification as a Certified Rehabilitation Counselor (CRC), no additional experience or Certified Disability Management Specialist (CDMS) and 3 years of experience. Both certifications require passage of a national certification examination, adherence to a code of ethics, continuing education requirements, and a peer review process (The certifications are awarded and monitored by the Commission on Rehabilitation Counselor Certification and the Certification of Disability Management Specialists Commission respectively);
- 4) Vocational Rehabilitation Experts have the knowledge, skill, experience, training and education to provide opinions and testimony regarding the effects of impairments and disabilities on employability and earning capacity;
- 5) Membership in relevant professional organizations or associations.

#### ETHICS

- 1) The Vocational Rehabilitation Expert adheres to the code of ethics governing their certification(s).
- 2) Primary Obligations. Vocational Rehabilitation Experts produce unbiased, objective opinions and findings that can be substantiated by information and methodologies appropriate to the evaluation, which may include examination of individuals, research, and/or review of records. Vocational Rehabilitation Experts form opinions based on their professional knowledge and expertise that can be supported by the data gathered in evaluations. Vocational Rehabilitation Experts define the limits of their opinions or testimony, especially when an

examination of individuals has not been conducted. Vocational Rehabilitation Experts acting as expert witnesses generate written documentation if requested, either in the form of case notes or a report, as to their involvement and/or conclusions.

3) Payments and Outcome. Vocational Rehabilitation Experts do not enter into financial commitments that may compromise the quality of their services or otherwise raise questions as to their credibility. Vocational Rehabilitation Experts neither give nor receive commissions, rebates, contingency or referral fees, gifts, or any other form of remuneration when accepting cases or referring evaluatees for professional services. Payment is never contingent on a case outcome or monetary award.

### EVALUATION OF EMPLOYABILITY

To determine Employability, the evaluation should include, but is not limited to:

- a. An Interview which *includes* review of: work, medical and educational background and psychosocial data;
  - Interviews should be conducted in a manner in which the evaluatee's communication needs are considered.
  - Consideration of the evaluatee's perception of his/her functional capacities and activities of daily living. This may involve obtaining a description of activities of daily living from the evaluatee.
- b. Assessment of existing employment related skills and abilities. Factors that may be considered but are not limited to include:
  - Employment background
  - Education and/or training acquired
  - Certifications and/or other qualifications
  - Familiarity with work-related products, subject matter, services and materials
  - Time factors: (1) period of experience with the skill;(2) time elapsed since the skill was last performed.
  - Barriers to labor market access, i.e. geographic restrictions, transportation, family requirements, etc.
- c. Consideration of the current physical and/or mental limitations as established in medical and psychiatric records and as presented by the evaluatee. This should include some or all of the following:
  - Medical and psychiatric reports
  - Reports or documents demonstrating the evaluatee's perception of work capacity
  - Functional capacity evaluation reports
  - Work evaluation or situational assessment reports
  - Deposition transcripts
  - Any additional applicable records as deemed necessary by the Vocational Rehabilitation Expert

- e. Transferable Skills Analysis to identify vocational strengths; including knowledge, work skills, education/training, and tested aptitudes and academic abilities.
  - The Vocational Rehabilitation Expert should assess whether vocational testing is necessary to determine the evaluatee's employability.
- f. Occupational and labor market research.
  - Reliable and empirically derived statistical data and/or other documented information as to the demands of specific occupations, training/qualifications required, wage range, and the availability of jobs in a given geographic area.
- g. Identification of factors that may delay, prevent, or enhance participation in reemployment efforts.
  - Analysis of job accommodation options.
- h. Consideration of additional services that may enhance employability when appropriate.
- i. Other factors as determined by the expert.

After completing the evaluation, the Vocational Rehabilitation Expert is responsible to form and be prepared to express his/her opinions regarding:

- a. Is the evaluatee EMPLOYABLE. This finding should include information regarding the types of occupations that were considered and a specific occupation, or list of occupations that the evaluatee is qualified and able to perform.
- b. What other services may be required, if any, to facilitate the evaluatee's reemployment, including the estimated time frames and costs involved,  
  
or;
- c. The evaluatee is UNEMPLOYABLE. This finding should include information regarding the types of occupations that were considered and why the evaluatee is unqualified and/or unable to perform the essential functions of the targeted occupations.
- d. If found UNEMPLOYABLE, specify recommendations the evaluatee could pursue and/or identify factors that need to change and/or improve to ultimately attain employability, and comment on a time frame for reevaluation.

#### EVALUATING EARNING CAPACITY

Based upon the determined employability of a given evaluatee, the Vocational Rehabilitation Expert can provide opinions as to the **Earning Capacity** of the individual, both in regard to

their **past earning capacity** as well as the **future earning capacity**. As part of this evaluation, the following steps should be taken:

Wage & Benefit Research: Reliable and empirically derived statistical information or other documented information about occupational wages and benefits in a given geographic area. Sources include, but are not limited to:

- a. Documentation of the evaluatee's prior income from W-2's, Social Security Report, or other authenticated records;
- b. California Employment Development Department;
- c. The U.S. Department of Labor and Bureau of Labor Statistics;
- d. Other publicly-available and statistically reliable published wage and benefit data;
- e. As required, labor market sampling, research, and relevant contacts with employers, unions, schools and/or organizations to verify wage and benefit data.

Other Statistical Data: As deemed appropriate by the Vocational Rehabilitation Expert, it may be necessary to consult other sources of information regarding issues of labor force participation and statistical worklife. The Vocational Rehabilitation Expert should exercise caution as to the source of information, their own clinical experience in using the data, and define the appropriate application of the data on a given case.

#### METHODOLOGY:

There are a number of methods by which future earning capacity, and loss of earning capacity, can be calculated. There are often legal issues that need to be understood that will determine which method is most applicable to a given case. Legal guidance should be sought as needed. Where Vocational Rehabilitation Expert opinion on earning capacity is being provided, the Vocational Rehabilitation Expert should be prepared to discuss his/her choice of a particular method.

The Vocational Rehabilitation Expert is responsible to apply a methodology to identify relevant employment factors for a specific individual and to utilize documentary evidence to identify and be prepared to discuss his/her opinions regarding the individual's Past and Future Earning Capacity and discuss the rationale for those opinions that may include, but are not limited to:

- a. Documents utilized to identify the evaluatee's prior wage, annual income, and benefits to identify Past Earning Capacity.
- b. Compare prior wages to reliable statistical data to identify the wage range for the evaluatee's occupation as representative of pre-event Earning Capacity.
- c. Determine the wages and benefits that can be derived from post-event future work activity in a specific occupation(s) at various levels of experience, i.e. entry-level and experienced.

- d. Estimate earning capacity, including benefits, over a specified time frame, as appropriate to the case.
- e. Compare the pre-event Earning Capacity to the post-event Earning Capacity to identify the loss of income & benefits over a specified time frame.

## **REPORTING**

The Vocational Rehabilitation Expert report shall provide, but is not limited to, the following information:

1. A description of the information considered as a basis for the opinions formed;
2. The work performed that serves as a basis for the opinions formed;
3. A clear statement of all opinions formed and a rationale for each of the opinions.

It may be appropriate for the Vocational Rehabilitation Expert to provide a critique or rebuttal to the opinions of another Vocational Rehabilitation Expert. However, the critique or rebuttal shall be limited to the work performed or not performed and the opinions expressed and should not be targeted at the Expert individually.

Members of the IARP/DFEC Work Group were comprised of Vocational Rehabilitation Experts providing professional services throughout California. The Work Group met in San Diego, California on May 23, 2009 and continued to work on the White Paper until completion. This paper was unanimously approved on July 6, 2009. The contributors are, in alphabetical order:

Tauna Austin MS,CRC, La Mesa,CA  
Behnush Barzegarian, MS, CRC, San Diego, CA  
Mary Ciddio, MA, CRC, Oakland, CA  
Robert Cottle, EdD, CDMS, Walnut Creek, CA  
Frank Diaz, Pacifica, CA  
Kenneth P. Ferra, MS, C.R.C., Bakersfield, CA  
Robert Hall, Ph.D., CRC, San Diego, CA.  
Colleen Harmon MS, CRC, San Diego, CA  
Ray Largo, MA, CRC, Irvine, CA  
Katie Macy-Powers, MS, CRC, San Diego, CA

Mark Remas, MA, CRC, San Diego, CA  
Carmen Roman, CDMS, CPDM, Burbank, CA  
Scott Simon, MS, CRC, San Jose, CA  
Joe Torres, Orange, CA  
Lynne Tracy, MA, CRC, Calabasas, CA  
Eugene E. Van de Bittner, Ph.D., CRC, Walnut  
Creek, CA  
Enrique N. Vega, MS, CRC, Los Angeles, CA  
Ann Wallace, Ph.D., CRC, Solvang, CA  
Kelly Winn-Boaitey, MS, CRC, Costa Mesa, CA