

DRAFT Position Statement

Sub Minimum Wage

“Segregated, subminimum-wage work is just an expression of low expectations that instills a false sense of incapacity in individuals who could become competitively employed with the proper training and support.”

-- Representative Gregg Harper [R – Miss]

Background

Nationally, there are 420,000 people with Intellectual and Developmental Disabilities in sheltered workshops who are paid subminimum wage, which is a wage that much lower than the national minimum wage. A majority of the individuals are paid only a dollar per hour or less. The original purpose of sheltered workshops was to teach young adults with intellectual and developmental disabilities real-world job skills so they can receive minimum wages, or more, by participating in competitive and integrated employment⁽¹⁾.

A nearly 80-year-old exemption in the U.S. Fair Labor Standards Act, however, allows employers across the country to pay these so-called "subminimum" wages to hundreds of thousands of people with disabilities. In addition, sheltered workshops do not teach workers skills that are usable in the open market; therefore, they do not leave sheltered workshops. Studies have shown that workers who have spent years in workshops were never asked what type of employment they wanted or developed employable skills. For example, in a report published by the National Disabilities Rights Network ⁽²⁾,

“People with disabilities are often fast tracked into segregated employment and do not have the benefit of individualized work assessments. Even though most individuals with disabilities in sheltered workshops favor employment outside of workshops,⁷⁵ questions about where an individual would like to work, or what skills they can strengthen or develop are irrelevant. Choice is largely irrelevant. While individuals may experience the normal task requirements of work such as using a time clock, working a fixed schedule, and being supervised, most provide bench work and do not promote self-direction, self-determination or skill development. Many times the very environments they are required to work in do not take into account their disabilities.”

This violates the original intent of the Fair Labor Standard Act Section 14(c)⁽³⁾, the Olmstead Decision⁽⁴⁾, and the Americans with Disabilities Act (ADA.) ⁽⁵⁾

Subminimum wage demeans the value of people with disabilities not only in the employment setting, but in the general community as well. When individuals are only making a fraction of a dollar an hour solely because they have a disability, it will automatically puts people with disabilities in a second-class of community members. Every other minority group, such as women, *(remove comma)* and African-Americans have the right to legal measures if they are not paid an equal wage for equal work. This is the same for people with disabilities.

Training also is part of the issue. When people with disabilities are in school, particularly in segregated schools, they very rarely are trained in competitive employment. Instead of learning how to use a computer, for example, they will be putting puzzles together or writing their name all day. These are actual practices that young adults and teenagers must endure while they attend a segregated school. They leave the setting with no marketable or academic skills to further their careers.

What is Subminimum Wage?

Employers are allowed to pay wages below minimum wages to individuals with disabilities who typically work in sheltered workshops or supported employment if the employer is certified under section 14(c) of the Work Opportunity and Innovations Act (WOIA) of 2014, which reauthorizes the Fair Labor Standard Act (FLSA). The hourly wage for this population is based upon how much of the same type of work an individual without a disability can do in a certain time limit. The amount of work becomes the basis for the sub minimum wage. This practice has become derogatory towards people with disabilities. People could be receiving 25-cent paychecks because the administration of the workshop focused only people's deficits as opposed to strengths. The only justification for the lower wage is the administration of the workshop believes the individual has limited ability; therefore, cannot work at the rate of their peers without disabilities.

Accommodations, as required by The Americans with Disabilities Act, are typically not offered. These accommodations assist people with disabilities in working side-by-side with peers without disabilities as long as the individual has the skills and education to perform

Under the WIOA, the subminimum wage regulations changed somewhat, but not enough. Since the passage, employers may not pay sub minimum wages to anyone under the age of 24 unless the employer is certified to pay sub minimum wage under the Fair Labor Standards Act or the individual has met certain conditions before accepting a position that pays sub minimum wage. The first condition is that he or she must have received pre-employment transition services as outlined by the Individuals with Disabilities Education Act or the Rehabilitation Act. In addition, he or she must have applied for Vocational Rehabilitation (VR) services but was found ineligible and was given information about the Client Assistance

Program, -- an agency that advocates for individuals that were refused services laid out by the Rehabilitation Act. Another condition for sub minimum wage is the individual was determined eligible for VR services, has a an individualized plan for employment, is working towards the plan with appropriate services and supports for a reasonable amount of time without success and the VR case is closed. (A "reasonable amount of time" is defined differently in each state.) He or she also must have been provided career counseling, information, and referrals to other resources that offer employment related services and supports designed to enable the person to explore, discover, experience, and attain competitive, integrated employment, not sub minimum wage.

If the individual is found eligible for sub minimum wage employment, two conditions must be met under WIOA. First, the employer may not continue to provide sub minimum wages to the employee unless he or she is provided career counseling and other information in a way that helps him or her make an informed choice about employment and career advancement. In addition, he or she must be informed about local self-advocacy, self-determination, and peer mentoring programs that are provided by programs with no financial interests. These services must be provided once every 6 months for the first year and annually thereafter.

Recommendations

1. Require reasonable accommodations as defined by the Americans with Disabilities Act in each step of determining employment services and placement.
2. Establish mandatory, intensive career training in competitive and integrated employment settings as opposed to 'pretend' job sites in schools or sheltered workshops.
3. Develop a Money Follows the Person⁽⁶⁾ type program for individuals who desire to go into competitive employment settings. In other words, the money that would be used to place and support individuals in sheltered workshops would be redirected to support individuals in competitive employment with the proper supports and services. Staffing for oversight and coaching can come from staff of the sheltered workshop.
4. With the support of the Employment First Oversight Commission⁽⁷⁾, compose a study to examine the amount of state money used in sheltered workshops versus competitive employment. [Studies in other states have demonstrated that competitive employment is less expensive.] Disseminate the results to legislators, policymakers, and advocacy groups in order determine a path for the results.
5. With the support of the Employment First Oversight Commission, establish timelines within the state so individuals can actually choose for themselves if they wish to stay in sheltered workshops or go to competitive employment.

6. Provide education and advocacy on the recently introduced federal bill to support workers with disabilities; the Time Act (H.R. 188)⁽⁸⁾ which would repeal discriminatory Section 14(c) of the Fair Labor Standards Act (U.S. Senator Kelly Ayotte R-NH).

¹ Electronic Code of Federal Regulations, 34 CFR 361.5 (b) (11) [Title 34 – Education; Subtitle B -- Regulations of the Offices of the Department of Education; Chapter III -- Office of Special Education and Rehabilitative Services, Department of Education; Part 361 -- State Vocational Rehabilitation Services Program; Subpart A – General], the term *competitive employment* means “work -- (i) In the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and (ii) 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.”
http://www.ecfr.gov/cgi-bin/text-idx?SID=3faf99bbf8ce9fd15991d8f7c7acd84&mc=true&node=pt34.2.361&rgn=div5#se34.2.361_15

² National Disabilities Rights Network (NDRN), “*Segregated and Exploited, the Failure of the Disability Service System to Provide Quality Work*,”
www.disabilityrightstx.org/files/segregated-and-exploited_v18.pdf

³ Fair Labor Standards Act (FLSA) Section 14(c),
<http://webapps.dol.gov/elaws/whd/flsa/14c/>

⁴ Olmstead Decision, <http://www.olmsteadrights.org/about-olmstead/>

⁵ Americans with Disabilities Act (ADA), <http://www.ada.gov/cguide.htm>

⁶ Money Follows the Person (MFP)
<http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Balancing/Money-Follows-the-Person.html>

⁷ Employment First Oversight Commission, signed into Delaware law by HB 319 w/ HA1 on July 16, 2012.
<http://legis.delaware.gov/LIS/LIS146.NSF/vwlegislation/AFF2FC8367D02D67852579C80076C8A5>

⁸ “Time Act,” H.R. 188 of the 114th Congress. a bill to phase out special wage certificates under the Fair Labor Standards Act of 1938 under which individuals with disabilities may be employed at subminimum wage rates.
<https://www.congress.gov/bill/114th-congress/house-bill/188/text>