



Margaret M O'Neill Building, 2nd Floor
410 Federal Street - Suite 2 Dover, Delaware 19901
Phone: 302.739.3333 ♦ Fax: 302.739.2015 ♦ Website: www.ddc.delaware.gov

Sub Minimum Wage

Issue

In 2023, almost 120,000 people with disabilities in the United States were paid subminimum wage. Half of them made less than \$3.50 an hour.ⁱ

A wage is how much a person is paid for an hour of work. Minimum wage is the lowest amount of money an employer can pay an employee for each hour they work. This is set in law. Subminimum wage is when someone is paid much lower than the national minimum wage. The law lets employers pay some people with disabilities subminimum wage.

Sheltered workshops are places where only people with disabilities work and they are usually paid less than minimum wage. They were started to teach young adults with intellectual and developmental disabilities (I/DD) job skills so they could get competitive, integrated employment and be paid minimum wage or more.ⁱⁱ But many people never move on to competitive, integrated employment. Competitive, integrated employment is when a person with a disability works within the community with people without disabilities and gets the same pay and benefits that people without disabilities get for doing the same job.

For over 80 years, a law called the U.S. Fair Labor Standards Act has let employers across the country pay subminimum wages to hundreds of thousands of people with disabilities. Most of them are in sheltered workshops.

Sheltered workshops do not teach workers the skills they need to get competitive integrated employment so many do not get jobs and leave sheltered workshops. Studies have shown that workers who have spent years in workshops were never asked what type of employment they wanted or learned job skills. For example, the National

Disabilities Rights Networkⁱⁱⁱ reported that people with disabilities are often sent to sheltered workshops without first trying to figure out what their abilities and interests are. Even though most people with disabilities want a job outside of workshops, they are not asked where they would like to work or what skills they can learn or improve to make that possible. They are not given a choice.

People in workshops may get work experience like using a time clock, coming to work the same time every day, and being supervised. But they do not get the chance to learn new skills, make decisions, or be in control of their lives (this is called self-direction and self-determination). This goes against what the Fair Labor Standard Act Section 14(c)^{iv}, the Olmstead Decision, and the Americans with Disabilities Act (ADA) say is supposed to happen for people with disabilities.

Subminimum wage makes people with disabilities less valued at work and in the community than people who get paid minimum wages or more. Every other minority group, like women, and African-Americans have the right to be paid an equal wage for equal work. This is the same for people with disabilities.

Training also is part of the problem. When people with disabilities are in school, they usually are not trained to get competitive employment. This is worse when they are in schools separate from students who do not have disabilities. For example, instead of learning how to use a computer, they do things like putting puzzles together or writing their name all day. They leave school without the skills and abilities they need to work in competitive, integrated employment.

Background

Employers are allowed to pay less than minimum wage to people with disabilities who work in sheltered workshops or supported employment if the employer meets the requirements described in a law called section 14(c) of the Work Opportunity and Innovations Act (WOIA) of 2014. Supported employment is when people with I/DD get help to find and keep jobs in the community working with people who do not have disabilities.

WOIA updated the Fair Labor Standard Act. The hourly wage they pay people with a disability is based on how much of the same kind of work a person without a disability can do in a set amount of time.

Here is an example for a job packing boxes when the employer is allowed to pay subminimum wages:

- Mary has a disability. John does not have a disability.
- John can pack 20 boxes an hour. Mary can pack 10 boxes an hour.
- The job usually pays \$8.00 an hour. Because Mary packs half the number of boxes that John packs, she gets paid half as much: \$4.00 an hour.

People can be paid very little if the sheltered workshop only looks at what they cannot do well rather than what they can do well. The only reason a workshop can pay a low wage is if they believe a person with a disability has little ability and cannot work as fast or as well as a person without disabilities.

A law called the Americans with Disabilities Act (ADA) requires employers to provide reasonable accommodations to people with disabilities to help them work with people without disabilities if they have the skills and education needed for the job. Reasonable accommodations are supports or changes made at work that make it possible for someone to do their job. Too often, people with disabilities do not get the reasonable accommodations they have a right to.

When a law called the Workforce Innovation and Opportunity Act (WIOA) passed in 2014, subminimum wage rules changed some, but not enough. Since the law passed, employers may not pay subminimum wages to anyone under the age of 24 unless they meet some conditions. For more information go to: <https://www.dol.gov/agencies/eta/wioa>.

In late 2023, the Department of Labor said it will review Section 14(c) of the Fair Labor Standards Act to decide if the program should continue. If the program ends, employers can no longer pay subminimum wages to people with disabilities.

Recommendations

1. Give people with disabilities reasonable accommodations when figuring out what employment services they need and when they get a job.
2. Require service providers to train people in real jobs in the community rather than in 'pretend' job sites in schools or sheltered workshops.
3. With support from the Employment First Oversight Commission, look at how much state money is used to support people with I/DD in sheltered workshops and competitive employment. Some states have found that competitive employment costs less than sheltered workshops. Share the information about costs with legislators, government leaders, and advocacy groups to help plan next steps so more people get jobs rather than go into workshops.
4. With the support of the Employment First Oversight Commission, develop timelines for people to choose they want to stay in sheltered workshops or go to competitive employment.

Where some of the information on this position statement came from:

ⁱ Subminimum Wage Program: DOL Could Do More to Ensure Timely Oversight. Published January 25, 2023. <https://www.gao.gov/assets/gao-23-105116.pdf>

ⁱⁱ 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].

ⁱⁱⁱ National Disabilities Rights Network (NDRN), "Segregated and Exploited, the Failure of the Disability Service System to Provide Quality Work."



The Delaware Developmental Disabilities Council is federally funded in compliance with the DD Act.