



**Testimony Prepared for a Public Hearing on Employment Opportunities for People with Disabilities by the NYS Assembly Standing Committee on People with Disabilities, Assembly Standing Committee on Labor, Assembly Subcommittee on Employment Opportunities for People with Disabilities**

**OCTOBER 20, 2021**



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**Introduction**

The Arc New York is the largest non-profit provider for individuals with intellectual and developmental disabilities (I/DD) in New York state. Our 36 local Chapters collectively support 60,000 people and employ more than 30,000 staff. The parents who created our organization were among the earliest advocates for quality services and opportunities for people with intellectual and developmental disabilities (I/DD). In the more than 70 years since our founding, New York has developed a robust system of exceptional, comprehensive individualized services and programs that aid independence, support families, and emphasize inclusion in communities.

Our mission emphasizes choice in all aspects of the lives for the people we serve. Choice is essential to ensuring that people with I/DD are free to define their personal vision of a rich, full life, and to strive toward those goals, rather than have their potential and sense of fulfillment defined for them. The Arc New York recognizes and believes that the choice to pursue employment is a valued opportunity for many people we serve – an opportunity which provides a sense of contribution, satisfaction and community.

**Employment Models for People with I/DD**

The Arc New York supports at least 6,000 people across the state in competitive community-based employment. Our job coaches offer guidance in vocational placement, workplace skills, identifying appropriate

accommodations, and on-the-job coaching. With this support, the people we serve in community-based employment compete in their local job market, performing the essential functions of a job in their community, and earning minimum wage or above for their work.

We also operate work centers across the state, where we support approximately 1,200 people through site-based prevocational services. Historically, our work centers were segregated workshops, solely employing people with I/DD. However, as the service model has transformed, our workshops have evolved into integrated work centers. These work centers employ nondisabled people alongside individuals with disabilities to fulfill private and government contracts, primarily in manufacturing and light industry.

The people supported through prevocational services in our work centers want to work, but they are not capable of performing the essential duties of a minimum wage job in the competitive employment market. These individuals are not protected by the Americans With Disabilities Act in regards to employment, as the ADA only extends protections to qualified individuals who can perform all the essential functions of a position, with or without reasonable accommodation. Our work centers provide employment opportunities to people for whom community-based employment is not an option. For some, our work centers serve as a bridge to a long-term goal of transitioning to community-based employment. For others who are not qualified to compete in the employment market, work center jobs offer an opportunity for contribution, independence and community that would otherwise not be available.

In order to provide these valuable habilitation choices, employers apply for a wage certificate defined in Section 14(c) of the Fair Labor Standards Act, which authorizes employers to secure waivers to pay a special minimum wage below the statutory minimum for individuals with severe disabilities. There has been much debate about the continuation of 14(c), as some view it as an unfair labor practice, while others understand that it is the only option for paid employment for some people with intellectual and developmental disabilities.

We believe that the dialogue around the elimination of Section 14(c) is well-intentioned, and aimed to improve equity for people with disabilities. However, the 14(c) provision supports opportunity and choice for people with I/DD who cannot compete in the competitive employment market with appropriate supports, and its elimination could result in the closure of work centers and loss of opportunity and choice for the people we serve.

Our work centers, and similar centers run by providers throughout the state, are mission-driven programs, often run at a loss. The special minimum wage allows these programs to remain viable while offering the people we support the pride of earning a paycheck in conjunction with receiving supports and services.

### **How a Special Minimum Wage Creates Opportunity**

There is not a set special minimum wage paid to people with disabilities who are not protected under the ADA. The proportional wages are calculated individually, and established through productivity testing, which is conducted at least twice a year, with wages adjusted accordingly. As an example, if productivity testing determines that non-disabled workers in a work center can successfully stitch the brims on average 20 hats in an hour, and an individual receiving supports can assemble 15 hat brims an hour, the individual with disabilities would be determined to achieve 75 percent of the productivity standard, and would receive 75 percent of minimum wage for their work – or 75 percent of prevailing wage, based on the production contract, which can often exceed minimum wage.

Requiring a business to pay someone stitching two brims an hour the same wage as someone stitching 20 brims an hour is not economically sustainable or realistic. It will not achieve equity for people with I/DD, or forward community integration. Our work centers could be forced to close, and very few for-profit businesses could hire someone to complete a fraction of a job for full pay. People who can't produce competitively will simply lose the opportunity to work altogether.

### **Federal and State Proposals to Eliminate the Special Minimum Wage**

Legislation in the U.S. House of Representatives proposes to eliminate section 14(c) of the Fair Labor Standards Act. H.R. 2373, “Transition to Competitive Integrated Employment Act” would gradually eliminate a special minimum wage across the country through a 5-year phase out period. While the bill would assist employers with transforming their business and program models that support individuals with disabilities through competitive integrated employment, the reality is that abolishing a special minimum wage will limit and, in some cases, eliminate employment opportunities for many people with I/DD. Also the recommended funding is inadequate to support a transition as recommended.

In New York, A3103 (Steck) / S1828 (Skoufis) seeks to eliminate the use of special minimum wage certificates without any notable glide path or resources for developing comparable programs. In fact, the sponsor’s memo references other states who have taken a similar course, but offers no examples of benefit to the people who are supported by the program. Without proper planning and research, this ill-conceived action would result in the complete upheaval of people’s lives.

### **Insufficient Alternatives to Special Minimum Wage Employment**

Today, individuals we support who are not able to compete in community employment have the choice to participate in day services or to seek employment opportunities in our work centers. The Arc New York supports tens of thousands of people throughout the state in site-based and community-based day programs, which are generally focused on volunteering, community participation, recreation opportunities and daily living skills. For people who choose to participate in day services, these opportunities are valuable and enriching. However, for people who prefer to work, eliminating their jobs would be devastating.

We reject the notion that options such as volunteering and day habilitation represent an equal and suitable alternative to job opportunities created through special minimum wage certificates or other avenues. On the



contrary, replacing these job opportunities with completely unpaid work constitutes an egregious violation of person-centered choice.

Work is a valued activity for people with disabilities. It promotes independence, builds self-confidence, allows for development of lasting friendships, and enables people to participate in the work environment and earn a paycheck. Providing people with choice on how they want to spend their day is a central tenant of supports and services.

Simply eliminating or phasing out the use of the certificate as outlined in H.R. 2373 and A3103 (Steck) / S1828 (Skoufis) will result in thousands of New Yorkers with disabilities losing their jobs. According to a 2020 report, more than 750 employers pay special minimum wages to approximately 55,832 workers with disabilities in the United States. Completely phasing out the special minimum wage would likely result in individuals with significant disabilities receiving no wage at all.

In our experience, the opportunity to earn a paycheck brings people immense pride, confidence and independence. The people working for a proportional wage have their basic needs subsidized through Medicaid-funded supports. This is not a living wage issue. It is an issue of the right to choice – the right for people with disabilities to define their vision of a rich, full life. The people who are employed in our work centers have chosen to work for a proportional wage, instead of to participate in day services. Eliminating their option to work is eliminating their freedom of choice.

## **Recommendations**

- The Arc New York supports the goal of meaningful employment at or above minimum wage for all people with I/DD who wish to work. Should the special minimum wage come to an end, a thoughtful transition is critical. A 10-year glide path or phase-in would allow integrated work centers to fully transition, test how best to keep integrated businesses open and operational – and keep people with disabilities employed. Adequate resources are essential to ensure an effective transition.

- More funding should be redirected for subsidizing integrated businesses to meet the minimum wage. If paying for day services is the alternative to employment, those funds should be redirected to support the individual's choice.
- New York must enforce the Preferred Source program within state and county agencies. In addition, people with I/DD should be given greater priority among preferred sources, opening up opportunities for them to provide OGS approved commodities and services. This will help create more jobs across the board.
- Bureaucracy has severely affected the transition from NYS Adult Career and Continuing Education Services-Vocational Rehabilitation (ACCES-VR) to Supported Employment (SEMP) for people with I/DD who once received services provided by ACCES-VR. These services are administered by two separate agencies, the NYS Education Department (SED) and the Office for People with Developmental Disabilities (OPWDD). Despite working with the same population and on the same core mission, people must apply for SEMP eligibility separately from ACCES-VR. In some instances, approval can take six months to one year, leaving a gap in employment services. We ask that this process be thoroughly reviewed and streamlined in order to eliminate the barriers to access these services.
- Across all employment services, regulations and administrative paperwork should be reviewed for efficiency and efficacy. Excessive time spent on documentation can take away from time delivering direct employment services for people with I/DD.
- Higher rates are required in order to attract and retain qualified staff who support people with I/DD, as we have noted in previous hearings on the workforce crisis. Experienced and knowledgeable counselors and job coaches are vitally important to help connect people to the most appropriate and person-centered services available.

- Every effort should be made to engage the business community and increase participation with supported employment services. The needs and types of businesses are ever-evolving, and opportunities exist to expand beyond a traditional list of vocations and consider other employment pipelines.
- The Arc New York fully supports, and consistently advocates for, programs and policies that expand employment opportunities for people with disabilities. We gladly champion tax incentives for employers who hire people with disabilities (S3458/A3960), and nurture partnerships with local businesses. We have proposed a pilot job carving program (A2381) for Civil Service jobs in New York state. This supported employment strategy creates new community-based job opportunities by analyzing the essential functions of existing jobs and breaking out specific duties that can be completed by an individual with disabilities to create new positions that can be fulfilled in their entirety with a more focused skill set.

## Conclusion

The Arc New York is enthusiastic about innovative solutions that build employment opportunities for people with I/DD. We will continue to advocate for good public policy and legislation at the State and Federal levels to ensure that people with I/DD who want to work and earn a paycheck are able to do so and live a rich, and full life.