

Phasing Out Subminimum Wage in Ohio

The Ability Center's Advocacy team is part of the Ohio 14(c) Coalition to phase out sub-minimum wage for workers with disabilities in Ohio. This blog seeks to explain the issue and why it is important to The Ability Center.

14(c) is a provision of federal law that makes it legal for employers to pay workers with disabilities less than the minimum wage. The law is supposedly based on the lower productivity of workers with disabilities, but in modern times, is outdated and discriminatory. 14 other states have taken action to phase out subminimum wage in their state, and Ohio should be next.

In 1938, after the Great Depression, President Franklin Roosevelt led Congress to pass a comprehensive bill giving workforce protections to U.S. Citizens – the Fair Labor Standards Act (FLSA). Among other things, the FLSA created the U.S.'s forty-hour work week, overtime protections, and minimum wage. At the time, Americans with disabilities often had little to no access to work for many reasons – in 1938, the general societal belief was that people with disabilities should be institutionalized and live separate from society. It was legal for schools to refuse to admit a person with a disability and for employers to refuse to hire people with disabilities solely because of their disability. Thus, when FLSA was passed, Congress created an exception to the standard minimum wage, 14(c) of FLSA, that allowed workers with disabilities to be paid lower than minimum wage if they had lower productivity than other workers as an incentive for employers to hire and train them.

The 14(c) provision of FLSA did not work in the way that it was intended. Many sub-minimum wage employers created segregated settings where people with disabilities worked only with other people with disabilities, doing skills that would not translate to the general workforce. In 2020, the US Commission on Civil Rights conducted an investigation and issued a report on sub-minimum wage. The report highlighted that, while sub-minimum wage settings were intended to be transitional, over 80 years after passage of the act, people working in those settings were not moving out, not getting into competitive employment, and making well below minimum wage.¹

While 14(c) may have served a purpose at one time, society has changed since 1938, and people with disabilities have much greater access to competitive, integrated employment than they once did. In 1975, Congress passed the Education for all Handicapped Children Act, which made it unlawful for schools to refuse to educate children with disabilities (eventually, this became the IDEA). In 1990, Congress passed the Americans with

¹ U.S. Commission on Civil Rights, Subminimum Wages: Impacts on the Rights of People with Disabilities, 2 <https://www.usccr.gov/files/2020/2020-09-17-Subminimum-Wages-Report.pdf> (2020).

Disabilities Act, which made it unlawful for employers to refuse to hire a person solely because of their disability. More and more, people with disabilities have access to education, training, employment assistance, and employment in the community at an equal wage to others who are doing the same work. In its report, the US Commission on Civil Rights also noted while taking testimony on this issue that, as of 2016, both party platforms favored eliminating subminimum wages for workers with disabilities.²

Ohio's modern employment system supports people with disabilities' equal access to community, competitive employment. In 2012, Governor Kasich issued an Executive Order making Ohio an Employment First State, which means that Ohio prioritizes competitive, integrated employment for people with disabilities first and dedicates additional resources to the Opportunities for Ohioans with Disabilities Department (OOD) to assist workers with disabilities in job training and finding such employment opportunities. Currently, Ohio has vocational training programs, disability-specific employment agencies, and government-paid employment supports for people with disabilities to find competitive, integrated employment. Because of the national increased education, training, and support offered to those with disabilities, enrollment in 14(c) settings national has decreased 68% since 2018.³

Some people who are currently in 14(c) settings are afraid of this change. But, in reality, the proposed law would only eliminate sub-minimum wage, not necessarily each setting that is currently a 14(c) setting. Additionally, the proposed bill would phase out subminimum wage over a five-year period, require employers to work with the OOD to create transition plans for each person currently enrolled in a 14(c) setting, and would offer tax incentives to 14(c) settings, as well as the businesses that contract with them, to assist with the transition.

Despite the changes inherent in the modern system, Ohio law still permits people with disabilities to be paid less than the minimum wage set for people without disabilities, often for equal work. The Ability Center believes that workers with disabilities should be treated equally under the law to those without disabilities, have full access to our community, and be challenged to reach their full potential -- not paid less than others solely because of their disability and because of an outdated system.

² U.S. Commission on Civil Rights, Subminimum Wages: Impacts on the Rights of People with Disabilities, XV, <https://www.usccr.gov/files/2020/2020-09-17-Subminimum-Wages-Report.pdf> (2020).

³ U.S. Commission on Civil Rights, Subminimum Wages: Impacts on the Rights of People with Disabilities, 1, XV, <https://www.usccr.gov/files/2020/2020-09-17-Subminimum-Wages-Report.pdf> (2020).

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