

## Initial background brief: Subminimum wage use, concerns, trends among states and resources

This document is intended for members of the Task Force on Eliminating Subminimum Wages as an initial and preliminary summary of available information on subminimum wages from a national and state perspective. It is not a complete description of all aspects for the topic. The information was compiled jointly by staff from the Disability Services Division (DSD) within the Minnesota Department of Human Services (DHS) and Management Analysis and Development (MAD) within Minnesota Management and Budget (MMB). As the task force's identifies its priority topics and information needs, DSD and MAD will provide subject matter expertise and research support.

### Federal law for subminimum wages

Section 14(c) of the federal Fair Labor Standards Act (FLSA) allows employers to pay wages less than the federal minimum wage to workers who have disabilities that affect their productive capacity.<sup>1</sup> This practice began in 1938 and continues at the federal level today, despite a decline in the use of subminimum wages nationally and a phase-out of the policy in some states.

### How it works for employers

Employers who pay subminimum wages apply for and maintain certificates – commonly called “14(c) certificates” or “special minimum wage certificates” – from the Wage and Hour Division of US Department of Labor (US DOL), allowing them to pay less than minimum wages for their workers with disabilities.<sup>2</sup> The employers are also required to conduct studies for individual workers to determine their productive abilities and calculate a commensurate wage that is based on the prevailing wage for non-disabled workers in the industry but then reduced to match the lower productive ability of the worker with a disability.<sup>3</sup> The worker's productivity and commensurate wage are required to be reviewed and recorded every 6 months thereafter.

### Community rehabilitation providers of employment services

The vast majority of 14(c) certificate holders are organizations that provide disability employment services—called “community rehabilitation providers” (CRPs). These CRPs enter into contracts with community businesses to produce goods and services. The CRP employs the person with a disability who is earning subminimum wage.

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<sup>1</sup> More information about wages and the Fair Labor Standards Act can be found at: <https://www.dol.gov/agencies/whd/flsa>.

<sup>2</sup> More information on the federal requirements for subminimum wages and the application process can be found at <https://www.dol.gov/agencies/whd/special-employment>.

<sup>3</sup> Detailed descriptions of commensurate wages, prevailing wages, and the employer process for determining commensurate wages can be found at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs39b.pdf>.

Work is typically conducted at a CRP facility, often referred to as a sheltered workshop. CRP workers might also operate as a mobile work crew that moves around to different businesses and work sites.

For people with disabilities working at subminimum wages, the CRP provides employment services and supports—typically through Medicaid waiver services—intended to develop the person’s work skills. This approach is designed to help the worker with a disability progress towards participation in competitive employment at or above the minimum wage. In this way, the CRP acts as both the employer and the service provider.

## Subminimum wage use in Minnesota

Although imperfect and incomplete, the most readily available data for estimating use of subminimum wages in Minnesota is collected by the US DOL when businesses apply for or renew a 14(c) certificate. The list of these 14(c) certificates is publicly available on the US DOL website.<sup>4</sup> However, counts from that list for the number of individuals receiving subminimum wage are limited and flawed for several reasons, including outdated data, variations in reporting times for the businesses, and missing data for businesses that pay subminimum wage while their applications are pending, according to a US Commission on Civil Rights report.<sup>5</sup>

The following points, compiled from US DOL 14(c) certificate holders and other sources, provide useful information and context for subminimum wage use in Minnesota:

- 51 Minnesota employers held 14(c) certificates as of October 2021, with initial applications or renewals pending for 26 others, according to the US DOL list of 14(c) certificate holders. Nearly all those employers operate primarily as employment service providers under Minnesota’s federally approved home and community-based Medicaid waivers for day services to people with disabilities.
- 2,875 people with disabilities in Minnesota were paid subminimum wages as of October 2021, according to US DOL 14(c) certification data.
- Among the 41 states included in the October 2021 US DOL list of 14(c) certificate holders, Minnesota ranked third behind the much larger states of Illinois and California for number of people with disabilities being paid subminimum wages. Minnesota ranks 22<sup>nd</sup> among all states for overall population based on 2020 Census data.
- Minnesota’s Department of Human Services (DHS) in 2018 spent \$239.0 million funding facility-based work—often paying subminimum wages—compared to \$20.9 million on integrated employment services, according to the Institute for Community Inclusion. Funding for integrated employment

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<sup>4</sup> For the list of 14(c) employers list and limited data on the number of workers paid subminimum wages, go to: <https://www.dol.gov/agencies/whd/workers-with-disabilities/section-14c/certificate-holders>.

<sup>5</sup> “Subminimum Wages: Impacts on the Civil Rights of People with Disabilities,” US Commission on Civil Rights, September 2020, p. 62, <https://www.usccr.gov/files/2020/2020-09-17-Subminimum-Wages-Report.pdf>.

amounted to 5.1 percent of the total DHS funding in 2018 for all intellectual and developmental disability services (\$409.9 million).<sup>6</sup>

- Of the 5,716 people in Minnesota with disabilities who had career counseling conversations from June 2020 to July 2021, 562 (10%) said yes to exploring competitive, integrated employment, based on data from career counseling information and referral conversations conducted by Minnesota’s Department of Employment and Economic Development (DEED) under the federal Workforce Innovation and Opportunity Act (WIOA). For recent years from July through June, 12 percent said yes for the 2019-20 period and 17 percent said yes for the 2018-19 period. (For more, refer to the section below on Career counseling, information, and referral conversations.)

## Subminimum wages from an effectiveness perspective

There is a lack of reliable evidence demonstrating that subminimum wages are effective strategies that lead to competitive, integrated employment for people with disabilities. A national survey of work centers and businesses that paid subminimum wages found that only 5 percent of workers earning subminimum wages left those jobs within one year to take others in their community also paying subminimum wages, paying minimum wage, or paying more, according to a 2001 report by the US General Accounting Office (GAO). Additionally, that report found that more than half of all 14(c) workers employed by work centers had been at their same place of employment for 5 years or longer, with some staying with their work centers for over 20 years.<sup>7</sup>

There are other viable strategies that have been shown to support people with disabilities in obtaining and maintaining competitive integrated employment, ones that do not rely on the use of subminimum wages. Examples of these strategies include supported employment, customized employment, and individual placement supports.

## Subminimum wage concerns from a civil rights perspective

There are significant concerns about the use of subminimum wages from a civil rights perspective, including national bodies recommending ending use of subminimum wages. For example, the recommendations in a September 2020 report by the US Commission on Civil Rights on subminimum wages include the following:

- The phase-out of subminimum wages.
- Expanded capacity for supported employment programs.

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<sup>6</sup> “StateData: The National Report on Employment Services and Outcomes through 2018,” Jean Winsor and others, Institute for Community Inclusion, University of Massachusetts Boston, p. 94, [https://www.thinkwork.org/sites/default/files/files/state\\_data\\_2021\\_F.pdf](https://www.thinkwork.org/sites/default/files/files/state_data_2021_F.pdf).

<sup>7</sup> “Special Minimum Wage Program: Centers Offer Employment and Support Services to Workers with Disabilities, but Labor Should Improve Oversight,” US General Accounting Office, p. 4, <https://www.gao.gov/assets/gao-01-886.pdf>.

- More stringent reporting and accountability for 14(c) holders during the phase-out period.<sup>8</sup>

Issues with the subminimum wage that the Commission on Civil Rights identified include the following, among others:

- Subminimum wages have at times contributed to segregation of persons with disabilities because some employers use separate work centers such as sheltered workshops.
- People who were once assumed to be capable only of working for subminimum wages in a sheltered environment have transitioned to and excelled in competitive integrated employment.
- The people interviewed as part of the report who had transitioned out of subminimum wages were adamantly against the 14(c) program. Despite this, 98% of people who sent a comment to the Commission expressed the opinion that the government should keep the 14(c) program.<sup>9</sup>

Additionally, an October 2018 report by the federal government’s National Council on Disabilities also recommended phasing out the 14(c) program for subminimum wage and also called for a moratorium on new 14(c) certificates, expanded and increased support for integrated and customized employment, and more intensive technical assistance and qualified and trained staff to assist with employment supports.<sup>10</sup>

## Civil Rights Commission recommendations and potential relevance to state efforts

Many of the federally focused findings and recommendations from the 2020 US Commission on Civil Rights report are relevant to action on subminimum wages at the state level, including the following examples:

- 1) **Planned phase-out period:** There should be a planned and defined period of time for phasing out the 14(c) program for subminimum wages in order to allow time for service providers and people with disabilities to transition to alternative service models that prioritize competitive employment.<sup>11</sup> For states, this might involve a specific date after which subminimum wage employment will no longer be supported by Medicaid payments.
- 2) **Rethinking support for employment without retreating from it:** The phase-out of subminimum wages should be accompanied by investments to strengthen and improve support for successful employment among people with disabilities.<sup>12</sup> For states, efforts to end subminimum wages should not be conducted as strategies to reduce supports or shift funding away from employment supports—and should not be perceived as strategies for this.

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<sup>8</sup> “Subminimum Wages,” US Commission on Civil Rights, p. xvi. For additional information about the commission, a 5-minute video called “Subminimum Wage: Impacts on the Civil Rights of People with Disabilities” is available on YouTube:

<https://www.youtube.com/watch?v=oaa-ZQbC2Ac>.

<sup>9</sup> “Subminimum Wages,” US Commission on Civil Rights, pp. vii-xi.

<sup>10</sup> “National Disability Employment Policy, From the New Deal to the Real Deal: Joining the Industries of the Future,” National Council on Disability, October 11, 2018, p. 14,

[https://ncd.gov/sites/default/files/Documents/NCD\\_Deal\\_Report\\_508.pdf](https://ncd.gov/sites/default/files/Documents/NCD_Deal_Report_508.pdf).

<sup>11</sup> “Subminimum Wages,” US Commission on Civil Rights, p. 223.

<sup>12</sup> “Subminimum Wages,” US Commission on Civil Rights, p. 223.

- 3) **Expanding supported employment services:** Phasing out subminimum wages should be accompanied by expanded supported employment services, with needed funding and prioritization for states committed to moving away from 14(c) programs.<sup>13</sup> In states, the lead agency—such as DHS in Minnesota—could help service providers transition to new business models for supported employment services and help educate people receiving services on the changes and the importance of employment.

## A shift away from subminimum wages in other states

With its path toward eliminating the subminimum wage, Minnesota is among a variety of states nationwide that have shifted their approach to employment and wages for people with disabilities. Since 2015 and up to early 2022, 15 other states and the District of Columbia are known to have taken action to end, phase out, or restrict 14(c) programs and the subminimum wage (Table 1).

Five states have eliminated subminimum wages, from as far back as New Hampshire in 2015.<sup>14</sup> Texas law also ended the use of subminimum wages but allows for exemptions.<sup>15</sup> Two other states and the District of Columbia have no 14(c) certificate holders. This includes Vermont, which does not support center-based or group-supported employment services and has had no people with disabilities earning subminimum wage since 2016. Five states are in the process of phasing out subminimum wages for people with disabilities, with end dates ranging from June 2023 to July 2025. A sixth (North Carolina) announced an agreement in late January 2022 with disability rights groups to end subminimum wage employment at sheltered workshops over a five-year period, pending implementation funding from the legislature.<sup>16</sup>

Illinois has eliminated use of the subminimum wage for contract work from state government. In addition, the legislatures in a number of other states have introduced but not yet passed legislation to phase out 14(c) programs.<sup>17</sup> While continuing to allow operations by 14(c) certificate holders, 30 states have Employment First programs that prioritize competitive integrated employment.<sup>18</sup>

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<sup>13</sup> “Subminimum Wages,” US Commission on Civil Rights, p. 223.

<sup>14</sup> “Trends and Current Status of 14(c),” Association of People Supporting Employment First, October 2021, pp. 3-6, [https://apse.org/wp-content/uploads/2021/10/10\\_20\\_21-APSE-14c-Update-REV.pdf](https://apse.org/wp-content/uploads/2021/10/10_20_21-APSE-14c-Update-REV.pdf).

<sup>15</sup> “Texas Must Do More to End Wage Discrimination against People with Disabilities,” Robert Stack, El Paso Herald Post, April 6, 2021, <https://elpasoheraldpost.com/op-ed-texas-must-do-more-to-end-wage-discrimination-against-people-with-disabilities/>.

<sup>16</sup> “NCDHHS Launches New Plan to Advance Employment for Individuals with Intellectual/Developmental Disabilities,” North Carolina Department of Health and Human Services, January 20, 2022, <https://www.ncdhhs.gov/news/press-releases/2022/01/20/ncdhhs-launches-new-plan-advance-employment-individuals-intellectualdevelopmental-disabilities>.

<sup>17</sup> “Trends and Current Status of 14(c),” Association of People Supporting Employment First, pp. 3-6.

<sup>18</sup> “Subminimum Wages,” US Commission on Civil Rights, p. 141.

**Table 1. Restrictions on subminimum wages in other states and the District of Columbia**

Other States and DC	Subminimum wage eliminated	No active or pending 14(c) certificates	Phasing out subminimum wages	No subminimum wage for state contract work
Alaska	X			
California			X	
Colorado			X	
Delaware			X	
District of Columbia		X		
Hawaii	X			
Illinois				X
Maine	X			
Maryland	X			
North Carolina			X	
New Hampshire	X			
Oregon			X	
Rhode Island		X		
Texas	X (with exemptions)			
Vermont		X		
Washington			X	

The strength of the economy and other factors greatly influence the employment rates for workers, including people with disabilities. For this reason, it is difficult to link employment trends for people with disabilities to state policies regarding the subminimum wage. The US Commission on Civil Rights noted this in its 2020 report on subminimum wages but also pointed out that the employment rate for people with disabilities in 2017 among six states it examined was highest in Vermont, the one state that had completed phased out subminimum wages prior to that year.<sup>19</sup> In an October 2021 update about 14(c), the Association of People Supporting Employment First compares employment rates for people with disabilities for three states that discontinued use of subminimum wages from the year those states took that action to 2018, and rates rose in all three.<sup>20</sup>

<sup>19</sup> “Subminimum Wages,” US Commission on Civil Rights, p. 143. The states featured in the report are Arizona, Maine, Missouri, Oregon, Vermont, and Virginia.

<sup>20</sup> Trends and Current Status of 14(c),” Association of People Supporting Employment First, p. 3. The report presents 2018 data for Maryland, New Hampshire, and Vermont.

## Resources for more information

The following lists information sources used in this document as well as additional information sources about the subminimum wage:

- National Association of State Directors of Developmental Disability Services, July 28, 2021: [NASDDDS Position on Equity Wages for People with Intellectual and Developmental Disabilities](#), calling for an end to non-competitive wages.
- [Association of People Supporting Employment First \(APSE\) Call to Phase Out 14\(c\) and Sub-Minimum wage by 2022.](#)
- Vox, March 16, 2020, [Why Businesses can still get away with paying pennies to employees with disabilities.](#)
- U.S. Commission on Civil Rights, September 2020, [Subminimum Wages: Impacts on the Civil Rights of People with Disabilities](#), recommending the phase-out of subminimum wages.
- US General Accounting Office (GAO), September 2001, [Special Minimum Wage Program: Centers Offer Employment and Support Services to Works with Disabilities, But Labor Should Improve Oversight](#), finding that DOL’s management of the special minimum wage program was ineffective with inadequate data collection and compliance management.

## US Department of Labor information about subminimum wages and employers

- US Department of Labor, Wage and Hour Division, July 2008, [Fact Sheet #39: The Employment of Workers with Disabilities at Subminimum Wages.](#)
- US Department of Labor, Wage and Hour Division, July 2008, [Fact Sheet #39B: Prevailing Wages and Commensurate Wages under Section 14\(c\) of the Fair Labor Standards Act \(FLSA\).](#)
- US Department of Labor, Wage and Hour Division, [Questions and Answers: Section 511 of the Rehabilitation Act—Limitations on Use of Subminimum Wage.](#)
- US Department of Labor, Wage and Hour Division, [Subminimum Wage.](#)

## Career counseling, information, and referral conversations

The Department of Employment and Economic Development (DEED) – Vocational Rehabilitation Services (VRS) is responsible for ensuring annual career counseling, information, and referral (CCIR) conversations for all people earning subminimum wages, as required under the Federal Workforce Innovation and Opportunity Act (WIOA), Section 511: Limitations on the Use of Subminimum Wages. For these conversations, DEED-VRS contracts with the eight Centers for Independent Living (CIL’s) statewide to provide annual CCIR conversations. The CIL’s hold one-on-one meetings with individuals earning subminimum wages to discuss their work options and their interest in competitive, integrated employment. Table 2 below shows counts for the number of individuals interviewed from 2016 through 2021 and reflects the total number of individuals who received CCIR and of that number, how many indicated “Yes” which means they are interested in exploring competitive, integrated. The number of interviews listed in the table differs from the totals from US DOL 14(c) certificate data on people with disabilities in Minnesota earning subminimum wages in part because of differences in data collection methods and timing, but this also illustrates the difficulties in securing accurate and consistent counts.

**Table 2. WIOA Section 511 Data from CCIR conversations (from DEED as reported by the CIL's)**

<b>Center for Independent Living</b>	<b>Total 2016-17</b>	<b>Yes 2016-17</b>	<b>Total 2017-18</b>	<b>Yes 2017-18</b>	<b>Total 2018-19</b>	<b>Yes 2018-19</b>	<b>Total 2019-20</b>	<b>Yes 2019-20</b>	<b>Total 2020-21</b>	<b>Yes 2020-21</b>
Access North	904	202	865	184	845	182	414	129	352	32
Freedom	720	94	705	89	659	196	419	139	291	86
ILICIL	1,774	226	1,545	170	1,432	292	2,278	204	1,240	223
MCIL	4,241	867	3,613	709	3,305	612	2,689	349	1,662	124
Options	362	84	313	75	300	57	174	24	186	2
SEMCIL	1,952	238	1,798	120	1,758	88	1,547	48	1,325	27
SMILES	1,112	135	933	43	906	80	320	38	192	2
SWCIL	737	144	602	92	696	128	424	68	468	66
<b>Statewide totals</b>	<b>11,802</b>	<b>1,990</b>	<b>10,374</b>	<b>1,482</b>	<b>9,901</b>	<b>1,635</b>	<b>8,265</b>	<b>999</b>	<b>5,716</b>	<b>562</b>

## Contact information

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