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## Subminimum Wages for People with Disabilities The Fair Labor Standards Act (FLSA) of 1938 and Utah Tax Code

### Highlights & Key Recommendations

- Summary of the Fair Labor Standards Act, section 14(c) and Utah Code Title 34 Chapter 40 Part 104 Section 104 (2)(a)
- How section 14(c) certificates have resulted in the unequal treatment of persons with disabilities
- The Center for Persons with Disabilities recommends Utah Legislators to vote in favor of the Transformation to Competitive Employment Act (S. 260)

### Background

The Fair Labor Standards Act (FLSA), section 14(c), is a federal law passed in 1938 which “authorizes employers, after receiving a certificate from the Wage and Hour Division, to pay subminimum wages – wages less than the Federal minimum wage – to workers who have disabilities for the work being performed”<sup>5</sup>. This act provides a way for employers to obtain government certification to pay employees with disabilities below minimum wage, based on disabilities that “may affect productive capacity” which include: “blindness, mental illness, developmental disabilities, cerebral palsy, alcoholism and drug addiction”<sup>5</sup>. This policy is only supposed to be applied when a person’s disability impairs the work the individual would be doing for their employer.

The State of Utah has permitted employers the use of section 14(c) certificates through Utah Code Title 34 Chapter 40 Part 104 Section 104 (2)(a) which reads, “Persons with a disability whose earnings or productive capacities are impaired by age, physical or mental deficiencies, or injury may be employed at wages that are lower than the minimum wage, provided the wage is related to the employee's productivity”<sup>9</sup>. There are currently 17 total disability service providers<sup>7</sup> and businesses<sup>6</sup> in Utah who have been issued section 14(c) certificates, affecting over 1,000 workers with disabilities<sup>6,7</sup>.

### Areas of Concern

The Center for Persons with Disabilities has identified many issues with the FLSA, section 14(c). These issues include concerns around accountability for employers who use 14(c) certificates, lack of adequate monitoring for workplaces that pay individuals with disabilities sub-minimum wage, and the unequal treatment of people with disabilities as second-class citizens in the workplace and in society.

One of the primary concerns of the FLSA, section 14(c), is the lack of accountability of employers who use sub-

minimum wage certificates to pay individuals with disabilities. There are currently no explicit monitoring or accountability standards set up for employers who use section 14(c) certificates as well as no formal system in place to review and ensure compliance with general labor standards and practices. Without these standards and systems in place, workers with disabilities have experienced abuse, exploitation, and segregation.

Examples include:

(1) In April 2018, the U.S. Department of Labor revoked Rock River Valley Self Help Enterprises' section 14(c) certificates after finding the company has been exploiting "nearly 250 workers with disabilities". This company was found guilty of paying workers with gift cards instead of wages as well as failure to conduct the proper time studies required by the Wage and Hour Division<sup>8</sup>.

(2) In February 2016, an administrative judge from the U.S. Department of Labor found Seneca Re-Ad, a sheltered workshop based in Ohio, guilty of failure to show three employees who were being paid sub-minimum wages were "impaired for the work performed"<sup>3</sup>. The three employees who were named in the suit reported not only wrongfully being paid sub-minimum wage, but also reported being denied reasonable accommodations, such as a protective dust-mask for asthma related health needs and breaks for an individual with Autism to avoid becoming overstimulated. The three employees were awarded ongoing minimum wage and back pay<sup>2</sup>.

(3) In June 2013, The Department of Justice took action against a Rhode Island school who was using section 14(c) certificates to employ students with disabilities during their transition years. The Department of Justice found the state of Rhode Island at fault of putting these students at serious risk of being placed at segregated day services and not having opportunities to integrated programs or competitive employment. As a result, Rhode Island's governor issued an executive order to close down all sheltered workshops<sup>3</sup>.

At the root of these issues is a fundamental concern about the human rights and dignity of individuals with disabilities. If we, as a society, value the lives and labor of people with disabilities, we should be paying this population a fair and equal wage. By allowing employers to pay workers with disabilities less than minimum wage we reinforce the idea that people with disabilities are second class citizens and are less valuable than a person without a disability. The notion that the work of individuals with disabilities doesn't deserve equal pay leaves the door open "to abuse, neglect, discrimination and exploitation"<sup>1</sup>. If individuals with disabilities are not valued on a legislative level to receive equal pay for their work, how do we expect society to also value and treat them with the dignity and respect that they deserve as human beings?

## Our Position

Despite states and businesses taking action to resolve the concerns with section 14(c) certificates, there are still many corporations nationwide, and in Utah, who continue to profit from paying individuals sub-minimum wages. This 82-year-old policy allows for the blatant exploitation of workers with disabilities as well as furthers the societal stigmatization of all people with disabilities.

Policymakers need to re-center their efforts to protect the rights and privileges of people with disabilities by eliminating section 14(c) of the Fair Labor Standards Act and the Utah Tax Code that allows employers to pay people with disabilities less than minimum wage and supporting Senate Bill 260 (S260), the Transformation to

Competitive Employment Act. S260 will effectively phase out the use of section 14(c) certificates while aiming to support employers who currently utilize section 14(c) certificates in transforming their business or program model to provide workers with disabilities with competitive wages. S260 will: (1) provide six-year grants on a competitive basis to states to assist their businesses and programs in their transformation; (2) phase out the use of section 14(c) certificates through the span of six years; and (3) provide a six-year grant to a nonprofit entity who will: (a) provide technical assistance to employers who are transforming their business or program and (b) collect and disseminate best practices on transformation<sup>4</sup>.

The Center for Persons with Disabilities unequivocally supports the Transformation to Competitive Employment Act (S. 260) and all efforts to update and revise Utah’s Tax Code to protect the rights of people with disabilities to earn at least minimum wage. Allowing organizations to continue to pay individuals with disabilities sub-minimum wage fundamentally deprives this vulnerable population the opportunity to become self-sufficient and does not “adequately equip workers with disabilities for the challenges of the twenty-first century”<sup>4</sup>. By supporting the Transformation to Competitive Employment Act (S. 260) and eliminating sub-minimum wage options employers of workers with disabilities, policymakers can encourage the full participation of individuals with disabilities in the labor market and will ensure that individuals with disabilities have an opportunity to pursue self-sufficiency through the dignity of work.

## References

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- <sup>2</sup> Disability Rights Ohio. (2018, Dec 18). Three workers with disabilities previously paid subminimum wage sue Roppe Industries for employment discrimination. <https://www.disabilityrightsohio.org/news/three-workers-with-disabilities-previously-paid-subminimum-wage-sue-multinational>
- <sup>3</sup> National Disability Rights Network. (2016, Feb 4). THE WRITING ON THE WALL NEARING THE END OF SHELTERED AND SEGREGATED EMPLOYMENT. [https://www.ndrn.org/wp-content/uploads/2019/03/The\\_Writing\\_on\\_the\\_Wall.pdf](https://www.ndrn.org/wp-content/uploads/2019/03/The_Writing_on_the_Wall.pdf)
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- <sup>6</sup> U.S. Department of Labor. (2019, July 1). Business Certificate Holders List. Wage and Hour Division. Retrieved from <https://www.dol.gov/agencies/whd/workers-with-disabilities/section-14c/certificate-holders/businesses>
- <sup>7</sup> U.S. Department of Labor. (2019, July 1). Community Rehabilitation Programs (CRPs) List. Wage and Hour Division. Retrieved from <https://www.dol.gov/agencies/whd/workers-with-disabilities/section-14c/certificate-holders/county-rehabilitation-programs>
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- <sup>9</sup> Utah State Legislature. (2008). 34-40-104 Exemptions. <https://le.utah.gov/xcode/Title34/Chapter40/34-40-S104.html>