



Section 14(c) of the Fair Labor Standards Act

Florida ARF opposes phase out of Section 14(c) wage certificates.

Background

In 1938 Congress enacted Section 14(c) of the Fair Labor Standards Act (FLSA) to allow payment of special minimum wages commensurate with individuals' levels of productivity. The Act was intended "to prevent the curtailment of opportunities for employment" of persons with significant disabilities. As of one year ago, approximately 425,000 workers with disabilities in this country were paid subminimum wages. Of this total, about 75% are people with intellectual disabilities.

What are Section 14(c) wage certificates?

Section 14(c) wage certificates allow for payment of special or commensurate wages based on prevailing wages paid for work that a person without a significant disability could normally produce, then adjusted based on the actual productivity levels of individuals with significant disabilities. Such wages provide fair and equitable payment for the amount of work produced.

Why support continuation of 14(c) wage certificates?

Florida ARF supports Florida's "Employment First" strategy for youth with disabilities who are transitioning from school, and we support competitive employment options for all individuals with disabilities. We also believe individuals with significant disabilities must not be denied the opportunity to work at center-based employment sites earning a fair wage when this is an individual's preferred choice and such employment options meet the individual's unique needs.

Eliminating or repealing Section 14(c) provisions would deny work opportunities for individuals with the most significant disabilities who cannot meet established productivity standards established by the nondisabled workforce unless employer subsidies are provided to bridge the gap between wages paid and productive output generated. While such subsidies routinely occurred in the past, they rarely exist today.

Some argue use of special wage certificates to provide rehabilitation and training to individuals with significant disabilities to prepare them for competitive employment is in reality paying less than federal minimum wage and thereby exploits individuals with disabilities. Done correctly, 14(c) wages are fair and are paid on the basis of actual productivity. If an individual employee can only produce at a 50% productivity level, then two employees with similar productivity levels will be required to generate the same level of production that one employee could generate who produces at 100% capacity.

Combined with supervision and quality oversight needs and the extensive supports that are often involved, the special wage provision can be costly to implement; however, it is often valued by many Community Rehabilitation Provider agencies since it provides individuals with significant disabilities an opportunity to experience the inherent benefits of work. Fortunately, the advancements in vocational rehabilitation services, technology, and training now provide many individuals with disabilities greater opportunities for competitive work; even so, phasing out the subminimum wages would result in many individuals with significant disabilities having no opportunity for productive employment.

We believe public policy regarding employment of individuals with disabilities should assist in finding competitive, integrated employment opportunities (at or above the minimum or prevailing wage) for those who can meet production standards and perform the essential functions of a job with or without a reasonable accommodation. Further, a fair and reasonable policy should support a full continuum of community-based work opportunities for persons with the most significant disabilities, including supported employment, customized employment opportunities provided in integrated settings, and center-based employment opportunities. The right of an individual with a significant disability to make an informed choice should include the right to work in a center-based program that provides individualized jobs, ongoing services and supports, job stability, and the security the individual desires.

What threats exist for continuation of 14(c) wage certificates?

On July 22, 2014, President Obama signed amendments to the Workforce Innovation Opportunity Act (WIOA) which limit use of 14(c) subminimum wage certificates for students with disabilities. The Act requires that youth with disabilities transitioning out of school must be enrolled for Vocational Rehabilitation (VR) services, and that employment in a subminimum wage job cannot occur until VR determines the individual is not a candidate for competitive employment. In concept, this strategy is believed to be fair and reasonable but will succeed only if State VR programs are responsive to deciding employability status of the youth served. Caution is offered that mandatory vocational rehabilitation involvement should not become a barrier to individuals who have limited opportunities for employment.

A Department of Labor Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (ACICIEID), the National Council on Disability (NCD), and other stakeholder groups recommend the US Congress phase out the 14(c) program and create new mechanisms to support individuals in obtaining integrated employment and other non-work services.

On August 5, 2015, Senator Ayotte from New Hampshire filed the *Transitioning to Integrated and Meaningful Employment Act* or the TIME Act. If passed, the bill would prohibit the Secretary of Labor, for a three-year period, from issuing any special wage certificates under the Fair Labor Standards Act of 1938 to certain entities and would only allow payment of subminimum wages to individuals with disabilities as a renewal of a previously issued special wage certificate. Any such special wage certificates issued or renewed would be void three years after enactment of the Act. In essence, authority for such special wage certificates would be repealed as of three years after enactment of the Act. The bill has been read twice in Senate Committee but has not moved as of December 2015. To date, there is no House companion bill.

Various House and Senate bills have been filed over the last several years, but have not passed. Last year, House Bill 831 proposed a phase out and eventual repeal of 14(c) provisions within the Fair Labor Standards Act within three years. A second initiative, S. 1356, by the Senate Health, Education, Labor, and Pensions (HELP) Committee was considered a better proposal. The bill proposed to amend the Vocational Rehabilitation Act within the Workforce Investment Act to add a new section 511 list of criteria that must be met before an individual could be employed through the use of special (subminimum) wage certificates. Individuals under age 24 could be employed under a special certificate if they completed certain pre-employment transition services consistent with their individualized employment plan and had not achieved employment outcomes within a reasonable amount of time. Additionally, there was a six-month limit on employment under a special certificate that could be extended if the individual wishes, and the individual would be reassessed every six months to determine ability to transition to competitive integrated employment. Much of the Senate text was included within the WIOA amendments as discussed earlier in this paper.

Conclusion

The Florida Association of Rehabilitation Facilities opposes total phase out of Section 14(c) subminimum wage certificates, but does support strict enforcement and close oversight by the Department of Labor to ensure that the Section 14(c) provisions are used correctly and in the best interest of individuals with significant disabilities.

Ultimately, the right of an individual with a significant disability to make an informed choice should include the right to work in a center-based program that provides individualized jobs, ongoing services and supports, job stability, and the security the individual desires. For individuals with significant disabilities who earn wages as part of their day activity program, elimination of 14(c) wages would be particularly damaging.