



Section 14(c) of the Fair Labor Standards Act White Paper

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' level of productivity. The Act was intended "to prevent the curtailment of opportunities for employment" of persons with significant disabilities. As of 2013, approximately 425,000 workers with disabilities in this country received special minimum wages. Of this total, about 75% were 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 work produced.

While Florida ARF supports Florida's Employment First strategy for youth with disabilities who are transitioning from school, we also believe individuals with severe disabilities must not be denied the opportunity to work at center-based employment sites earning a fair wage when this is their chosen option.

Why support continuation of 14(c) wage certificates?

Simply stated, eliminating or repealing Section 14(c) provisions would deny work opportunities to 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 exploits individuals with disabilities because they are paid less than federal minimum wages. Combined with supervision, quality oversight needs, and the extensive supports that are often provided, the special wage provision can be even more 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 special minimum wage would result in many individuals with significant disabilities having no opportunity for productive employment.

Done correctly, 14(c) wages are fair and are paid based on 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.

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?

Over the last several years, federal legislation has been proposed to eliminate use of 14(c) wage certificates. Florida ARF views the proposal to eliminate 14(c) wages as an instance of “throwing the baby out with the bathwater.” Such a movement would be particularly damaging for individuals with significant disabilities who earn wages as part of their day activity program.

We note that under the recently amended Workforce Innovation Act, individuals under age 24 now have to complete the following steps before they can be hired to work under subminimum wage arrangements:

- Receipt of pre-employment transition services;
- Application for vocational rehabilitation services and either found ineligible or, if eligible, has not achieved success working towards employment outcomes specified in the individualized employment plan within a reasonable amount of time despite having appropriate supports and services, and the individual’s vocational rehabilitation case is closed after the individual’s VR counselor and individual both agree that continued efforts by the individual to work toward an employment outcome will likely not be successful.
- The individual or parent or guardian has received career counseling, and understands and consents to work for the employer at a subminimum wage.

These changes are consistent with Florida’s Employment First initiative and will give transitioning youth the services and supports they need to ensure that they reach their employment goals.

Florida ARF supports the Employment First initiative but also realizes that all individuals with disabilities need a full continuum of community-based work opportunities that are responsive to 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.

Conclusion

The Florida Association of Rehabilitation Facilities supports Florida's Employment First initiative as well as all options that enhance employment options for individuals with significant disabilities. We also oppose a total phase out of Section 14(c) subminimum wage certificates. The Association also supports 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.