



## **Special Wages within Section 14(c) of the Fair Labor Standards Act**

### **Background**

In 1938 Congress enacted Section 14(c) of the Fair Labor Standards Act (FLSA) to allow payment of special wages commensurate with individuals' levels of productivity. The Act was intended "to prevent the curtailment of opportunities for employment" of persons with significant disabilities. Although widely used in the past, as of one year ago, approximately 195,000 workers with disabilities in this country earn subminimum wages, and about 75% are individuals with intellectual disabilities.

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 the wage is adjusted based on the actual productivity levels of the individuals. The wages are intended to provide fair and equitable payment for work produced.

With the implementation of the Workforce Innovation Opportunity Act (WIOA), youth with disabilities transitioning out of school must now receive Vocational Rehabilitation (VR) services and cannot be employed in a job that pays subminimum wages until the Division of Vocational Rehabilitation determines the individual has completed preemployment transition services and is not a candidate for competitive employment. Adult workers earning commensurate wages must receive career counseling with annual consultations. The WIOA changes will succeed if State VR programs are aggressive in assessing and meeting the employability needs of those served. Caution is offered that mandatory vocational rehabilitation involvement should not become a barrier to those with limited opportunities for employment who desire facility-based opportunities earning special wages.

### **Position Statement**

Florida ARF supports "Employment First" policies for youth with disabilities who are transitioning from school, and our member agencies seek competitive employment opportunities for all individuals with disabilities. We also believe a fair and reasonable policy supports a full continuum of community-based work opportunities for persons with the most significant disabilities and should allow the opportunity for individuals to make an informed choice, including the right to work wherever they choose if the choice is commensurate wages.

With advancements in vocational rehabilitation services, assistive technology, and other supports, individuals with disabilities have greater employer options and should always seek employment opportunities that maximize their potential. For those with limited employment options, elimination of commensurate wages would result in many individuals with significant disabilities having no opportunity for productive employment. Individuals who earn wages as part of their meaningful day activity program would be particularly harmed.

### **Conclusion**

The Florida Association of Rehabilitation Facilities supports the concept of competitive, integrated employment for all individuals with disabilities. Even so, many of our members oppose total phase out of Section 14(c) commensurate wage certificates and believe a fair and reasonable employment policy should support a full continuum of community-based work opportunities for persons with the

most significant disabilities, including supported employment, customized employment in integrated settings, and center-based employment opportunities when appropriate and desired. And while our members strongly value competitive employment for all individuals, most support the right of individuals with significant disabilities to make an informed choice which could include the right to work in a center-based program that provides individualized jobs, ongoing services and supports, job stability, and the security if that is what the individual desires.

The Florida ARF membership 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.