



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. Over the years, the Act was amended to prescribe how such payments should be calculated. In 1986, the law was amended to eliminate any statutory wage floor for people with disabilities.

Advancements in vocational rehabilitation services, assistive technology, and training now provide greater employment opportunities to individuals with disabilities. Consequently, the need for special minimum wages based on levels of productivity has declined. According to Department of Labor data, as of January 2018, employers hold more than 1,700 certificates that cover more than 150,000 workers receiving wages based on productivity levels. Historically, about 75% of those receiving such wages have been individuals with intellectual disabilities.

In 2016, the Workforce Innovation and Opportunity Act (WIOA) imposed additional vocational rehabilitation and training requirements on employers that pay special wages to individuals with disabilities based on production levels. The Act requires that employers pay individuals who are age 24 or younger minimum wages or higher unless the employer obtains, verifies, and maintains documents proving the workers have completed specific requirements designed to improve their access to competitive integrated employment. All individuals who earn commensurate wages are to receive annual counseling regarding employment options. Per the WIOA, individuals under age 24 must 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 protections promote person-centered, employment options for individuals with 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 the wages are adjusted based on the actual productivity levels of individuals with significant disabilities. Done correctly, the wages 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.

Why support continuation of 14(c) wage certificates?

Arguably, 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.

Critics argue use of special wage certificates to provide rehabilitation and training to individuals with significant disabilities exploits individuals with disabilities because they are paid lower wages and are performing work that does not realistically prepare them for competitive employment. While some argue wages based on production levels mean low labor costs for employers, supervision requirements, quality oversight needs, and cost of needed supports can result in higher costs for community rehabilitation providers. Even so, such costs are sometimes deemed worth the investment to offer individuals with significant disabilities an opportunity to experience the inherent benefits of work.

Florida ARF and its member agencies believe public policy regarding employment of individuals with disabilities should first and foremost promote competitive, integrated employment for those who can meet production standards and perform the essential functions of a job, with or without a reasonable accommodation.

Florida ARF and its member agencies also believe 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 in integrated settings, and center-based employment when appropriate for individuals' needs. The right of an individual with a significant disability to make an informed choice should include the right to work wherever they choose, and in some cases may include commensurate wages.

Florida ARF views proposals to completely abolish 14(c) wages as an instance of rejecting something that is favorable for some individuals with significant disabilities, when the real need is to eliminate the inappropriate use of such wages.

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. Such a movement could be particularly damaging for individuals with significant disabilities who earn wages as part of their day activities.

Conclusion

Florida ARF and its member agencies believe all individuals with disabilities must have access to a full continuum of community-based work opportunities that are responsive to the least and most significant disabilities. With WIOA and Employment 1st protections in place, such a continuum can include options such as competitive employment, supported employment, customized employment in integrated settings, and center-based employment in some cases.

We believe all individuals with disabilities should have access to the supports they need to achieve their employment goals. We also believe individuals with significant disabilities can make an informed choice to work in a center-based program that provides individualized jobs, ongoing services and supports, job stability, and desired security. In this regard, our membership opposes a total phase out of Section 14(c) special wages but supports strict enforcement and close oversight by the Department of Labor to ensure that Section 14(c) provisions are used correctly and in the best interest of individuals with significant disabilities.