

# Initial background brief: Subminimum wage use, concerns, trends among states, and resources

Updated and revised March 1, 2022

This document is intended for members of the Task Force on Eliminating Subminimum Wages as an initial and preliminary summary of information on subminimum wages from a national and state perspective. It is not a complete description of all aspects for the topic. The information was compiled jointly by staff from the Disability Services Division (DSD) within the Minnesota Department of Human Services (DHS) and Management Analysis and Development (MAD) within Minnesota Management and Budget (MMB). MAD and DHS will update and revise as useful. As the task force identifies priority topics and information needs, DSD and MAD will provide additional subject matter expertise and research support.

## Federal law for subminimum wages

Section 14(c) of the federal Fair Labor Standards Act (FLSA) allows employers to pay wages less than the federal minimum wage to workers who have disabilities that affect their productive capacity.<sup>1</sup> This practice began in 1938 and continues at the federal level today, despite a decline in the use of subminimum wages nationally and a phase-out of the policy in some states.

## How it works for employers

Employers who pay subminimum wages apply for and maintain certificates – commonly called “14(c) certificates” or “special minimum wage certificates” – from the Wage and Hour Division of US Department of Labor (US DOL), allowing them to pay less than minimum wages to their workers with disabilities.<sup>2</sup> The employers are also required to conduct studies for individual workers to determine their productive abilities and calculate a commensurate wage that is based on the prevailing wage for workers without disabilities in an industry but then reduced to match the lower productive ability of the worker with a disability.<sup>3</sup> The worker’s productivity and commensurate wage are required to be reviewed and recorded every 6 months thereafter. Historically, there have been concerns about US DOL’s enforcement of requirements for the subminimum wage program.<sup>4</sup>

## Community rehabilitation providers of employment services

The vast majority of 14(c) certificate holders are organizations that provide disability employment services—called “community rehabilitation providers” (CRPs). These CRPs enter into contracts with community businesses

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<sup>1</sup> More information about wages and the Fair Labor Standards Act can be found at: <https://www.dol.gov/agencies/whd/flsa>.

<sup>2</sup> More information on the federal requirements for subminimum wages and the application process can be found at <https://www.dol.gov/agencies/whd/special-employment>.

<sup>3</sup> Detailed descriptions of commensurate wages, prevailing wages, and the employer process for determining commensurate wages can be found at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs39b.pdf>.

<sup>4</sup> “Special Minimum Wage Program: Centers Offer Employment and Support Services to Workers with Disabilities, but Labor Should Improve Oversight,” US General Accounting Office, September 2001, pp. 4-5, <https://www.gao.gov/assets/gao-01-886.pdf>.

to produce goods and services. The CRP employs the person with a disability who is earning subminimum wage. Work is typically conducted at a CRP facility, which is sometimes referred to as a sheltered workshop. CRP workers might also operate as a mobile work crew that moves around to different businesses and work sites.

For people with disabilities working at subminimum wages, a CRP provides employment services and supports—typically through Medicaid waiver services or disability services funded through county governments—intended to develop the person’s work skills. This approach is designed to help the worker with a disability progress towards participation in competitive employment at or above the minimum wage. In this way, the CRP acts as both the employer and the service provider.

## Subminimum wage use in Minnesota

The bullet points below present data about the use of subminimum wages in Minnesota in order to provide some information and context for the task force. The data regarding employers who pay subminimum wages and persons with disabilities who earn them tie back to US DOL 14(c) certificates, but federal 14(c) data is imperfect and incomplete, as documented by the US Commission on Civil Rights<sup>5</sup> and others. (For more about data on subminimum wages for employers and workers with disabilities, refer to [the section below](#) under resources.).

- Approximately 75 Minnesota employers are paying subminimum wages to workers with disabilities. This estimate is based on the October 2021 US DOL list of 51 Minnesota employers holding active 14(c) certificates and 26 other employers with certificates pending. Nearly all these employers operate primarily as employment service providers under Minnesota’s federally approved home and community-based Medicaid waivers for day services to people with disabilities.
- While not exact, a reasonable estimate for the number of workers with disabilities earning subminimum wages in 2021 is between about 4,500 and about 6,000. This estimate stems from two data sources. First, eight centers for Independent Living (CILs) conducted 5,716 career counseling, information, and referral (CCIR) conversations with persons earning subminimum wages in Minnesota from July 2020 through June 2021, done under contract with Minnesota’s Department of Employment and Economic Development (DEED) and as required by Section 511 of the federal Workforce Innovation and Opportunity Act (WIOA). While CCIR conversations must take place once a year, individuals in their first year of earning subminimum wages are interviewed every six months. This means new workers may be included twice in the counts of CCIR conversations for any given year, although the duplicate counts of new workers will be relatively low compared to the number of workers overall. Second, MAD used the incomplete US DOL 14(c) certificate data for October 2021 to estimate about 4,700 Minnesota workers earning the subminimum wage at that time, based on reports from the employers with active 14(c) certificates plus an estimate for employers with certificates pending.<sup>6</sup>

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<sup>5</sup> “Subminimum Wages: Impacts on the Civil Rights of People with Disabilities,” US Commission on Civil Rights, September 2020, p. 62, <https://www.usccr.gov/files/2020/2020-09-17-Subminimum-Wages-Report.pdf>.

<sup>6</sup> For this estimate of workers earning subminimum wages from the federal 14(c) certificate data, MAD took the number of workers earning subminimum wages as reported by the 51 Minnesota employers with active 14(c) certificates (3,710) and then used the median number of workers for these 51 employers (38) to approximate the number of workers earning subminimum wages at the 26 Minnesota employers with pending 14(c) certificates (38 x 26 = 988). This is an imperfect but reasonable approach to estimating the workers missing from the 14(c) data.

- Employment at subminimum wages declined during the COVID-19 pandemic because health concerns and because mandated safety protocols limited the use of day and employment services by persons with disabilities, especially in congregated settings. For example, the number of CCIR conversations with workers earning subminimum wages dropped significantly in Minnesota from 9,901 in 2018-19, before the start of the COVID-19 pandemic, to 5,716 in 2020-2021. It is true, too, however that the downward trend for people with disabilities earning subminimum wages started before the pandemic, with CCIR conversations dropping from 11,802 in 2016-17 to the 2018-19 level of 9,901. US DOL data from 14(c) certificate holders show similar trends nationwide.<sup>7</sup>
- Among the 41 states in the October 2021 US DOL count of 14(c) certificate holders and workers, Minnesota ranked 3rd behind the much larger states of Illinois and California for number of persons with disabilities being paid subminimum wages.<sup>8</sup> Adjusting this data to allow for comparisons among states of different sizes, Minnesota ranked 1st for the number of persons being paid subminimum wages in proportion to the state's overall population.<sup>9</sup>
- Minnesota's Department of Human Services (DHS) in 2018 spent \$239.0 million funding facility-based work—often paying subminimum wages—compared to \$20.9 million on integrated employment services, according to the Institute for Community Inclusion. Funding for integrated employment amounted to 5.1 percent of the total DHS funding in 2018 (\$409.9 million) for all intellectual and developmental disability services.<sup>10</sup>
- Of the persons with disabilities in Minnesota who engaged in CCIR conversations from June 2020 to July 2021, 10 percent (562) said expressed interest in pursuing competitive, integrated employment, based on data collected by DEED under the WIOA. For other recent years from July through June, 12 percent said yes to interest in competitive, integrated employment for the 2019-20 period and 17 percent said yes for the 2018-19 period. (For more, refer to [Table 2](#) below on WIOA Section 511 data.)

## Subminimum wages from an effectiveness perspective

There is a lack of reliable evidence demonstrating that subminimum wages are effective strategies that lead to competitive, integrated employment for people with disabilities. A national survey of work centers and businesses that paid subminimum wages found that only 5 percent of workers earning subminimum wages left those jobs within one year to take others in their community also paying subminimum wages, paying minimum wage, or paying more, according to a 2001 report by the US General Accounting Office (GAO). Additionally, that

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<sup>7</sup> For national data, refer to “Trends and Current Status of 14(c),” Association of People Supporting Employment First, October 2021, p. 2, [https://apse.org/wp-content/uploads/2021/10/10\\_20\\_21-APSE-14c-Update-REV.pdf](https://apse.org/wp-content/uploads/2021/10/10_20_21-APSE-14c-Update-REV.pdf). The count of workers earning subminimum wages from US DOL 14(c) data for October 2021 was 39,386.

<sup>8</sup> “14(c) Certificate Holders,” US DOL Wage and Hour Division, accessed February 2022 for October 2021 data, <https://www.dol.gov/agencies/whd/workers-with-disabilities/section-14c/certificate-holders>.

<sup>9</sup> MAD used US DOL data for workers paid subminimum wages from the listing of 14(c) certificate holders as of October 2021 and divided those counts by overall state populations for July 2021 from the Census Bureau to calculate the state data on persons paid subminimum wages as a proportion of each state's population. This adjustment for population allows for reasonable comparisons among states of different population sizes.

<sup>10</sup> “StateData: The National Report on Employment Services and Outcomes through 2018,” Jean Winsor and others, Institute for Community Inclusion, University of Massachusetts Boston, p. 94, [https://www.thinkwork.org/sites/default/files/files/state\\_data\\_2021\\_F.pdf](https://www.thinkwork.org/sites/default/files/files/state_data_2021_F.pdf).

report found that more than half of all 14(c) workers employed by work centers had been at their same place of employment for 5 years or longer, with some staying with their work centers for over 20 years.<sup>11</sup>

There are other viable strategies that have been shown to support people with disabilities in obtaining and maintaining competitive integrated employment, ones that do not rely on the use of subminimum wages. Examples of these strategies include supported employment, customized employment, and individual placement supports.

## Subminimum wage concerns from a civil rights perspective

There are significant concerns about the use of subminimum wages from a civil rights perspective, including national bodies recommending ending use of subminimum wages. For example, the recommendations in a September 2020 report by the US Commission on Civil Rights on subminimum wages include the following:

- The phase-out of subminimum wages.
- Expanded capacity for supported employment programs.
- More stringent reporting and accountability for 14(c) holders during the phase-out period.<sup>12</sup>

Issues with the subminimum wage that the Commission on Civil Rights identified include the following, among others:

- Subminimum wages have at times contributed to segregation of persons with disabilities because some employers use separate work centers such as sheltered workshops.
- People who were once assumed to be capable only of working for subminimum wages in a sheltered environment have transitioned to and excelled in competitive integrated employment.
- The people interviewed as part of the report who had transitioned out of subminimum wages were adamantly against the 14(c) program. Despite this, 98% of people who sent a comment to the Commission expressed the opinion that the government should keep the 14(c) program.<sup>13</sup>

Additionally, an October 2018 report by the federal government's National Council on Disabilities also recommended phasing out the 14(c) program for subminimum wages and also called for expanded and increased support for integrated and customized employment, a moratorium on new 14(c) certificates, and more intensive technical assistance and qualified and trained staff to assist with employment supports.<sup>14</sup>

## Civil Rights Commission recommendations and potential relevance to state efforts

Many of the federally focused findings and recommendations from the 2020 US Commission on Civil Rights report are relevant to action on subminimum wages at the state level, including the following examples:

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<sup>11</sup> "Special Minimum Wage Program," US General Accounting Office, p. 4.

<sup>12</sup> "Subminimum Wages," US Commission on Civil Rights, p. xvi. For additional information about the commission, a 5-minute video called "Subminimum Wage: Impacts on the Civil Rights of People with Disabilities" is available on YouTube: <https://www.youtube.com/watch?v=0aa-ZQbC2Ac>.

<sup>13</sup> "Subminimum Wages," US Commission on Civil Rights, pp. vii-xi.

<sup>14</sup> "National Disability Employment Policy, From the New Deal to the Real Deal: Joining the Industries of the Future," National Council on Disability, October 11, 2018, p. 14, [https://ncd.gov/sites/default/files/Documents/NCD\\_Deal\\_Report\\_508.pdf](https://ncd.gov/sites/default/files/Documents/NCD_Deal_Report_508.pdf).

- 1) **Planned phase-out period:** There should be a planned and defined period of time for phasing out the 14(c) program for subminimum wages in order to allow time for service providers and people with disabilities to transition to alternative service models that prioritize competitive employment.<sup>15</sup> For states, this might involve a specific date after which subminimum wage employment will no longer be supported by Medicaid payments.
- 2) **Rethinking support for employment without retreating from it:** The phase-out of subminimum wages should be accompanied by investments to strengthen and improve support for successful employment among people with disabilities.<sup>16</sup> For states, efforts to end subminimum wages should not be conducted as strategies to reduce supports or shift funding away from employment supports—and should not be perceived as strategies for this.
- 3) **Expanding supported employment services:** Phasing out subminimum wages should be accompanied by expanded supported employment services, with needed funding and prioritization for states committed to moving away from 14(c) programs.<sup>17</sup> In states, the lead agency—such as DHS in Minnesota—could help service providers transition to new business models for supported employment services and help educate people receiving services on the changes and the importance of employment.

## A shift away from subminimum wages in other states

With its path toward eliminating the subminimum wage, Minnesota is among a variety of states nationwide that have shifted their approach to employment and wages for people with disabilities. Since 2015 and up to early 2022, 15 other states and the District of Columbia are known to have taken action to end, phase out, or restrict 14(c) programs and the subminimum wage (Table 1).

Five states have eliminated subminimum wages, from as far back as New Hampshire in 2015.<sup>18</sup> Two other states and the District of Columbia have no 14(c) certificate holders. This includes Vermont, which does not support center-based or group-supported employment services and has had no people with disabilities earning subminimum wage since 2016. Five states are in the process of phasing out subminimum wages for people with disabilities, with end dates ranging from June 2023 to July 2025. A sixth state, Texas, will end the use of subminimum wages in September 2022 but will continue to allow exemptions.<sup>19</sup> In addition, North Carolina announced an agreement in late January 2022 with disability rights groups to end subminimum wage employment at sheltered workshops over a five-year period, pending implementation funding from the legislature.<sup>20</sup>

Illinois has eliminated use of the subminimum wage for contract work from state government. In addition, the legislatures in a number of other states have introduced but not yet passed legislation to phase out 14(c)

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<sup>15</sup> “Subminimum Wages,” US Commission on Civil Rights, p. 223.

<sup>16</sup> “Subminimum Wages,” US Commission on Civil Rights, p. 223.

<sup>17</sup> “Subminimum Wages,” US Commission on Civil Rights, p. 223.

<sup>18</sup> “Trends and Current Status of 14(c),” Association of People Supporting Employment First, pp. 3-6.

<sup>19</sup> “Texas Must Do More to End Wage Discrimination against People with Disabilities,” Robert Stack, El Paso Herald Post, April 6, 2021, <https://elpasoheraldpost.com/op-ed-texas-must-do-more-to-end-wage-discrimination-against-people-with-disabilities/>.

<sup>20</sup> “NCDHHS Launches New Plan to Advance Employment for Individuals with Intellectual/Developmental Disabilities,” North Carolina Department of Health and Human Services, January 20, 2022, <https://www.ncdhhs.gov/news/press-releases/2022/01/20/ncdhhs-launches-new-plan-advance-employment-individuals-intellectualdevelopmental-disabilities>.

programs.<sup>21</sup> While continuing to allow operations by 14(c) certificate holders, 30 states have Employment First programs that prioritize competitive integrated employment.<sup>22</sup>

Table 1. Restrictions on subminimum wages in other states and the District of Columbia

Other States and DC	Subminimum wage eliminated	No active or pending 14(c) certificates	Phasing out subminimum wages	No subminimum wage for state contract work
Alaska	X			
California			X	
Colorado			X	
Delaware			X	
District of Columbia		X		
Hawaii	X			
Illinois				X
Maine	X			
Maryland	X			
North Carolina			X	
New Hampshire	X			
Blank cell			X	
Rhode Island		X		
Texas			X (with exemptions)	
Vermont		X		
Washington			X	

The strength of the economy and other factors greatly influences the employment rates for workers, including people with disabilities. For this reason, it is difficult to link employment trends for people with disabilities to state policies regarding the subminimum wage. The US Commission on Civil Rights noted this in its 2020 report on subminimum wages but also pointed out that the employment rate for people with disabilities in 2017 among six states it examined was highest in Vermont, the one state that had completed phased out subminimum wages prior to that year.<sup>23</sup> In an October 2021 update about 14(c), the Association of People

<sup>21</sup> “Trends and Current Status of 14(c),” Association of People Supporting Employment First, pp. 3-6.

<sup>22</sup> “Subminimum Wages,” US Commission on Civil Rights, p. 141.

<sup>23</sup> “Subminimum Wages,” US Commission on Civil Rights, p. 143. The states featured in the report are Arizona, Maine, Missouri, Oregon, Vermont, and Virginia.

Supporting Employment First compares employment rates for people with disabilities for three states that discontinued use of subminimum wages from the year those states took that action to 2018, and rates rose in all three.<sup>24</sup>

## List of resources and more information

### Data on workers earning subminimum wages

Sections of this brief draw on federal and state data sources regarding employers paying subminimum wages and persons with disabilities earning it. No one, definitive dataset offers complete and accurate counts for the number of persons with disabilities earning subminimum wages in Minnesota—a problem that exists for Minnesota and other states.<sup>25</sup>

The points made above in this brief about these topics draw in part on data that employers with active 14(c) certificates report to US DOL. As noted earlier, the 14(c) data are imperfect and incomplete. For example, counts from the 14(c) dataset for the number of individuals receiving subminimum wages are flawed by variations in reporting times for the employers, outdated data, and missing data for employers that pay subminimum wage while their 14(c) applications are pending, according to a report from the US Commission on Civil Rights.<sup>26</sup> APSE also calls out problems with the worker counts in the 14(c) certificate data. A 2021 report from APSE states, “A prevailing unknown in the policy discussion regarding 14(c) is the total number of individuals with disabilities served currently in 14(c) settings, especially given the lack of understanding of how many individuals are being served in settings where the 14(c) certificate is listed as “pending” in US DOL reports....”<sup>27</sup>

The points made above in this brief regarding employers and workers also draw on data that Centers for Independent Living collect for DEED on career counseling, information, and referral conversations with individuals earning subminimum wages. DEED’s Vocational Rehabilitation Services (VRS) is responsible for ensuring CCIR conversations every six months for individuals in their first year of earning subminimum wages and then annually after that for these workers and all others who earn subminimum wages. This is required under WIOA’s Section 511: Limitations on the Use of Subminimum Wages. For these conversations, DEED-VRS contracts statewide with the eight Centers for Independent Living, which hold one-on-one meetings with individuals earning subminimum wages to discuss their work options and their interest in competitive, integrated employment.<sup>28</sup> This Section 511 data from the CCIR conversations offers good year-to-year counts, but its drawbacks include that the data counts some workers more than once if those workers are in their first year of earning subminimum wages and therefore are interviewed every six months. In addition, CILs must rely on the employers with 14(c) certificates to inform them of workers in need of these conversations.<sup>29</sup>

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<sup>24</sup> “Trends and Current Status of 14(c),” Association of People Supporting Employment First, p. 3. The report presents 2018 data for Maryland, New Hampshire, and Vermont.

<sup>25</sup> Rie Rei Kennedy-Lizzote, now the former Director of Employment Policy at the National Association of State Directors of Developmental Disabilities Services, confirmed this lack of complete and ongoing data in a conversation on February 11, 2022.

<sup>26</sup> “Subminimum Wages,” US Commission on Civil Rights, p. 62.

<sup>27</sup> “Trends and Current Status of 14(c),” Association of People Supporting Employment First, p. 2.

<sup>28</sup> “WIOA Limitations on the Use of Subminimum Wage,” Department of Employment and Economic Development, accessed January 18, <https://mn.gov/deed/job-seekers/disabilities/youth/pre-ets/wioa/>.

<sup>29</sup> Task force member Amanda Jensen-Stahl, the Manager of Interagency Partnerships and Business Engagement at DEED’s VRS, provided background information and advice to MAD on February 15, 2022, regarding the Section 511 data.



Table 2 below shows counts for the number of individuals engaged in CCIR conversations from July through June in 2016-17 to 2020-21. It lists the total number of individuals engaged in CCIR conversations and the number marked as “yes” for the conversations, meaning they are interested in pursuing competitive, integrated employment. How that query is framed and recorded may vary based on the person conducting the conversation.

Table 2. WIOA Section 511 Data from CCIR conversations (from DEED as reported by the CIL’s)

<b>Center for Independent Living</b>	<b>Total 2016-17</b>	<b>Yes 2016-17</b>	<b>Total 2017-18</b>	<b>Yes 2017-18</b>	<b>Total 2018-19</b>	<b>Yes 2018-19</b>	<b>Total 2019-20</b>	<b>Yes 2019-20</b>	<b>Total 2020-21</b>	<b>Yes 2020-21</b>
Access North	904	202	865	184	845	182	414	129	352	32
Freedom	720	94	705	89	659	196	419	139	291	86
ILICIL	1,774	226	1,545	170	1,432	292	2,278	204	1,240	223
MCIL	4,241	867	3,613	709	3,305	612	2,689	349	1,662	124
Options	362	84	313	75	300	57	174	24	186	2
SEMCIL	1,952	238	1,798	120	1,758	88	1,547	48	1,325	27
SMILES	1,112	135	933	43	906	80	320	38	192	2
SWCIL	737	144	602	92	696	128	424	68	468	66
<b>Statewide totals</b>	<b>11,802</b>	<b>1,990</b>	<b>10,374</b>	<b>1,482</b>	<b>9,901</b>	<b>1,635</b>	<b>8,265</b>	<b>999</b>	<b>5,716</b>	<b>562</b>

## Resources used

The following lists information sources used in this document as well as additional information that may be of interest:

- [Association of People Supporting Employment First \(APSE\) Call to Phase Out 14\(c\) and Sub-Minimum wage by 2022.](#)
- National Association of State Directors of Developmental Disability Services, July 28, 2021: [NASDDDS Position on Equity Wages for People with Intellectual and Developmental Disabilities](#), calling for an end to non-competitive wages.
- U.S. Commission on Civil Rights, September 2020, [Subminimum Wages: Impacts on the Civil Rights of People with Disabilities](#), recommending the phase-out of subminimum wages.
- US General Accounting Office (GAO), September 2001, [Special Minimum Wage Program: Centers Offer Employment and Support Services to Works with Disabilities, But Labor Should Improve Oversight](#), finding that DOL’s management of the special minimum wage program was ineffective with inadequate data collection and compliance management.
- Vox, March 16, 2020, [Why Businesses can still get away with paying pennies to employees with disabilities.](#)



## Other resources from US DOL about subminimum wages and employers

- US Department of Labor, Wage and Hour Division, accessed February 2022, [14\(c\) Certificate Holders](#), October 2021 data.
- US Department of Labor, Wage and Hour Division, July 2008, [Fact Sheet #39: The Employment of Workers with Disabilities at Subminimum Wages](#).
- US Department of Labor, Wage and Hour Division, July 2008, [Fact Sheet #39B: Prevailing Wages and Commensurate Wages under Section 14\(c\) of the Fair Labor Standards Act \(FLSA\)](#).
- US Department of Labor, Wage and Hour Division, [Questions and Answers: Section 511 of the Rehabilitation Act—Limitations on Use of Subminimum Wage](#).
- US Department of Labor, Wage and Hour Division, [Subminimum Wage](#).

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