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Department of Labor Cessation of 14(c) Program Impacting Minimum Wage Pay for Individuals with Disabilities

Summary:

The Department of Labor has recently proposed a rule to eliminate the 14(c) certificate program of the Fair Labor Standards Act that allows employers to pay disabled employees less than minimum wage. Tens of thousands of disabled workers utilize these certificates, yet 23.1% of all working-age adults with disabilities are more than twice as likely to live in poverty than their able-bodied counterparts. Eliminating these certificates so that disabled workers are given at least minimum wage will help them become more independent and actively participate in their community. This policy brief is in support of the proposed rule.

Currently, under Section 14(c) of the Fair Labor Standards Act (FLSA) from 1938, employers are able to pay disabled employees subminimum wages. In 2023, disabled workers earned 20% less than those without disabilities.³ Furthermore, according to a 2023 Government Accountability Office (GAO) report, it is estimated that tens of thousands of disabled workers are being paid less than \$3.50 per hour, while the federal minimum wage is \$7.25 per hour.¹ Employers are authorized to pay wages based on the “productive capacity” of the disabled worker with , Recent studies report that 23.1% of disabled, working-age adults are more than twice as likely to live in poverty, greatly due to being paid subminimum wages.² Additionally, 60% of all working-age adults with disabilities reported difficulty paying expenses and 24.6% reported food insecurity.² Disabled people of working age with cognitive disabilities were 24.1% more likely to live in poverty than other adults.³ Furthermore, disabled adults are more likely to experience housing insecurity, struggle with access to transportation, and have difficulty paying expenses such as groceries, health care, and other basic needs. The unemployment rate is much higher for workers reporting any disability than for those without disabilities, but even when employed, workers with disabilities are

significantly more likely to receive low pay. Thus, disabled workers rely on income support from the government, requiring them to keep their income below a certain threshold to continue receiving benefits (e.g., SSI, SSDI, EBT). This leaves workers with disabilities in a never-ending conundrum, which is often referred to as the “poverty trap.”⁵

It should be noted that California has very recently prohibited the practice of subminimum wages as of January 1, 2025.⁴ The Department of Labor has recently proposed a rule to eliminate the 14(c) subminimum wage certificate. Across the board, disability advocacy groups are in favor of this change. While this is a change in a positive direction, it needs to be recognized that this group of people may lose their eligibility for income support as they receive higher wages. Education and information sessions are necessary to prepare workers with disabilities for this change, transition to economic self-sufficiency, and to provide them with alternative options⁵ (e.g., individual development accounts).

We strongly encourage the Department of Labor to proceed with their proposal to cease issuance of new 14(c) certificates and eliminate the program. It is an outdated program from the 1930s that is rooted in ableism. Although its intentions may have been good, these certificates promote the continued isolation and lack of independence for disabled workers, as noted above.

Opponents to eliminating the program argue that if everyone is required to be paid minimum wage, then disabled people may not get jobs over able-bodied employees, and the unemployment rate of disabled people will increase. Additionally, they argue that employers won’t be able to afford to pay them an increased wage. However, the current labor market shows a significant worker shortage, and the number of job openings exceeds the number of unemployed individuals⁶. This is a good opportunity to benefit both the labor market and workers with disabilities as they can fill in the need for additional workers. It is also important to recognize the ableist ideologies perpetuated by Section 14(c) of the FLSA. From a social justice standpoint, it continues to promote the false idea that a disabled person’s work is worth less than an able-bodied employee. If an employer believes that a disabled person has the proper skills and experience to do a job, then they should be paid the same as any other person who performs that job. The work that disabled individuals are currently doing for subminimum wage will still need to be performed, so most disabled employees should be able to keep their

jobs with a pay increase. Others who oppose the proposal state that disabled people may lose their eligibility for income support, and as argued above, this change is a step towards economic self-sufficiency, and an opportunity to create alternative systems of support. Additionally, this possibly frees up government money that can be utilized for programs centered on financial and economic self-sufficiency given that with increases in income and decreases in payments from programs such as SSI, food support and health care needs will remain the same. Disabled people are entitled to autonomy and should have the same opportunities to live above the poverty line and pay for their basic daily needs. Eliminating the 14(c) certificate program is a great first step towards attaining those goals.

We strongly believe that the prompt cessation of the 14(c) program is essential to promote equity and equality for disabled workers. By moving forward with this proposal, the Department of Labor can ensure workplace equity, reduce overall economic poverty rates, and ultimately promote better financial stability and independence for individuals with disabilities.

References:

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