



APSE'S CALL TO PHASE OUT SUB-MINIMUM WAGE BY 2014

As an organization that promotes national, state, and local policy development which enhance the social and economic inclusion and empowerment of individuals with disabilities, the Executive Board of APSE is calling for the complete phase out of sub-minimum wage for all individuals with disabilities by the end of 2014.

Underlying Principles and Concepts

In calling for phase out of sub-minimum wage, APSE recognizes the importance of undertaking such action in a way that is carefully thought out, and leads to movement of individuals currently being paid sub-minimum wage into individual, integrated employment opportunities paying minimum wage or higher, and avoiding unintended consequences that would not only damage efforts to expand community employment, but result in actual loss of rights and opportunities for individuals with disabilities to full integration and inclusion in society. Therefore, elimination of sub-minimum wage must be accomplished based on the following principles and concepts:

- Phase out of sub-minimum wage should occur over time, accompanied by a comprehensive national systems change movement based on the principle that employment in the community be the first or preferred service option for service recipients – i.e., Employment First. As part of such a systems change effort, technical assistance and supports should be provided to systems that currently rely on service provider delivery of services using 14(c) certificates, and to the holders of 14(c) certificates themselves, in order to move the individuals currently receiving sub-minimum into employment opportunities in the community at minimum wage or higher.
- In conjunction with the phase-out of sub-minimum wage, a national effort must be undertaken to improve the overall quality of community employment outcomes both in terms of individual outcomes (wages, hours, diversity of employment), and system outcomes (efficiency and effectiveness). Such efforts should be undertaken in conjunction with current systems change efforts, including the CMS funded Medicaid Infrastructure Grants, and similar efforts.
- The movement of individuals into non-work day habilitation facilities, instead of into community employment, is not an acceptable outcome of the phase out of sub-minimum wage. Similarly, it is not acceptable to reclassify individuals currently receiving sub-minimum wage as “trainees” or similar designation, to comply with the requirement to discontinue use of sub-minimum wage. Finally, it is unacceptable to eliminate an individual’s day services and supports as a result of the phase out of sub-minimum wage.
- A key focus of efforts to phase out sub-minimum must be ending the use of sub-minimum wage for students entering the world of work, including: a) elimination of the use of 14(c) certificates for students currently in school; b) elimination of placements in jobs using 14(c) certificates as a post-secondary outcome.
- To assist in ending any expansion in use of sub-minimum wage, issuance of new sub-minimum wage 14(c) certificates to employers by the US Department of Labor should end immediately.

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- The Rehabilitation Act should be amended to prohibit closures into positions at less than minimum wage.
- A federal cross-agency task force should be created to develop and implement the phase out of sub-minimum wage in conjunction with implementation of a cross-disability national Employment First Policy. Agencies represented on this task force should include but not be limited to: the Rehabilitation Services Administration, Centers for Medicare and Medicaid Services, Substance Abuse and Mental Health Services Administration, Office of Special Education Programs, Social Security Administration, Office of Disability Employment Policy, and Wage and Hour Division – USDOL.

Background and Underlying Rationale

Since establishment of the federal minimum wage in 1938, a special minimum wage generally known as the sub-minimum wage has existed for individuals with disabilities. This provision allows employers, holding a 14(c) certificate from the US Department of Labor (DOL), to pay individuals with disabilities less than the federally or state minimum wage that is generally mandated for all other workers. Pay is related to the individual's production level, with the intent of paying individuals in proportion or commensurate to their productivity compared to workers without disabilities. Currently there are approximately 5,600 employers who hold 14(c) certificates, employing approximately 425,000 individuals with disabilities at sub-minimum wage. Approximately 95% of these individuals are employed in sheltered workshops. Approximately three-quarters of all workers receiving sub-minimum wage in sheltered workshops have an intellectual or developmental disability. More than half (54%) of workers in sheltered workshops earn less than \$2.50 per hour, with 23% earning less than \$1.00 per hour.ⁱ

Recently, the issue of the payment of sub-minimum wages has come under increased scrutiny. In February 2009, it was discovered that 21 men with intellectual and developmental disabilities had been working in a turkey processing plant in Iowa for twenty to thirty years at well below minimum wage. The employer, Henry's Turkey Service, was housing these individuals in a cockroach infested 106 year old "bunk house" with no central heating, taking their wages and SSI checks in return. As a result, US Senator Tom Harkin held a hearing in March 2009 that looked at the issue of sub-minimum wage. However, questions over the proper use of sub-minimum wage are not new. Over the last several years there have been increasing concerns regarding both the oversight and practices of employers holding 14(c) certificates. These include a March 2001 DOL Inspector General's Report that was highly critical of DOL's oversight of 14(c)ⁱⁱ, a September 2001 Government Accountability Office (GAO) report that echoed the findings of the Inspector General's reportⁱⁱⁱ, and increases in findings by DOL that 14(c) certificate holders have underpaid workers, requiring the payment of back wages^{iv}. Despite the attention paid over the last several years to the issue of lack of oversight and misuse of the 14(c) program, in the wake of the scandal at Henry's Turkey Service, DOL officials admitted that holders of 14(c) certificates are still subjected to minimal oversight and few potential penalties other than payment of back wages.^v



In examining the issue of sub-minimum wage, the Executive Board of APSE has determined that that while the sub-minimum wage may have at one time been a valid and effective strategy for enhancing employment of people with disabilities, the evolution in disability rights and community employment makes the sub-minimum wage no longer necessary or acceptable.

- **Individuals don't need sub-minimum wage for employment success:** The underlying rationale for the existence of sub-minimum wage has been that it creates employment opportunities for individuals with disabilities, which would not otherwise be available. Yet the evidence to the contrary in recent years is quite clear: that with proper planning, the right job match, the right supports, and right funding incentives, that even individuals with the most significant disabilities can work successfully in the community at minimum wage or higher.
- **Service providers don't need sub-minimum wage for employment success:** Over the past 20 years, numerous facility-based programs utilizing 14(c) certificates have been converted to a service model that supports individuals with a full range of disabilities in integrated community employment. The evidence is clear that sheltered workshops and similar programs have the ability to change their method of doing business to one that is in synch with our national disability policy of full integration and inclusion of people with disabilities into mainstream society.
- **States don't need sub-minimum wage for employment success:** Outcome data show massive variability from state-to-state in terms of employment outcomes for people with disabilities. For example, in 2007 the integrated employment outcomes for state Intellectual/Developmental Disability agencies varied from over 60% to less than 4%.^{vi} It is clear from this data that within the context of a solid values base, a network of dedicated stakeholders, and clarity about the system's goals, states can move away from reliance on sub-minimum wage and sheltered workshops.
- **Bad job matches are the real issue:** For every individual, there are jobs and tasks we are good at and those we are ill-suited for. People with disabilities are no different. The work that individuals are required to perform at sub-minimum wage is nothing more than simply a bad match for their skills, abilities, and interests - and in fact the sub-minimum regulations reinforce this. Per DOL, in order for an individual with a disability to be paid sub-minimum wage, the individual's disability must impair their capacity to earn wages or productivity *for the specific work being performed* (not every job). Furthermore, *a blanket assumption of sub-minimum wage for all types of work is not permitted*, and the regulations specifically note that there may be other types of work or other employment settings where the individual is entitled to the minimum wage.^{vii}
- **Productivity rate is not a fair basis for wages:** Sub-minimum wage is based on the concept that production rate is the sole or primary criteria on which a business bases compensation and values a worker. This is a simplistic notion, not at all based on the realities of operating a business and managing employees, particularly in the 21st century economy. Individuals are valued as employees for a wide range of abilities, gifts and talents: their customer service



skills, their ability to get along with co-workers, their reliability, the quality of work, etc. The argument that the value of an employee should be solely based on a “production rate” is an outdated concept.

- **The productivity standard is discriminatory towards people with disabilities:** People with disabilities are among the few groups whose pay is based strictly on a productivity rate. It is discriminatory that individuals with disabilities are subjected to such a standard, while most workers are not.
- **Use of sub-minimum wage conflicts with self-determination and choice:** Earning sub-minimum wage in a facility-based program is in conflict with the concept of self-determination and choice, with the individual having little control over how they spend their day, use their talents, gifts and abilities, and how much they earn. In contrast, community employment provides tremendous opportunities to exercise self-determination and choice, through economic empowerment, the ability to choose from among a broad array of possible job and career options, and the opportunity to use skills and abilities in a way that the individual chooses and that best meets their specific needs.
- **People with disabilities want to work in the community:** Studies have shown that individuals with disabilities would prefer to work in the community, instead of spending their days in facility-based work programs.
- **Sub-minimum wage is at odds with national disability policy:** The existence and use of sub-minimum wage is a reflection of viewing people with significant disabilities as incapable of being fully integrated into the general labor force, a view that is at odds with the disability policy framework that has emerged over the past 40 years.^{viii} This framework is a result of a multitude of legislative and policy developments (particularly the Americans with Disabilities Act and IDEA), that has made it very clear that the public policies of the United States should be based on viewing disability as a natural part of human experience that in no way diminishes a person’s right to fully participate in all aspects of life. It is not acceptable to use public resources in a way that is in conflict with our national disability policy.
- **Sub-minimum wage is being used to support a more costly service delivery model:** Research indicates that over time, supported employment is cost efficient - for every \$1 of costs taxpayers and workers invest into supported employment, more than \$1 is returned in the form of monetary benefits.^{ix} A study of all 231,000 individual supported employment cases closed by public Vocational Rehabilitation between 2002 and 2007 found that the average supported employee generated a net monthly benefit to taxpayers of \$251 per individual, and a benefit-cost ration of 1.46.^x Further, supported employees were cost-efficient regardless of their primary disability or presence of secondary conditions. Additionally, studies indicate that supported employment is significantly less expensive than sheltered workshops.^{xi} Sub-minimum wage is not only a bad deal for individuals with disabilities – it’s a bad deal for taxpayers.



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- ⁱⁱ United States Department of Labor. (2001, March 19). *Audit report no. 05-01-002-04-420: The wage and hour division's administration of special minimum wages for workers with disabilities*. <http://www.oig.dol.gov/public/reports/oa/2001/05-01-002-04-420.pdf>
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- ^v Brasher, P. (2009, March 10). *Labor Officials Admit Atalissa Shortcomings*. Des Moines Register. <http://www.desmoinesregister.com/article/20090310/NEWS10/903100398>
- ^{vi} Butterworth, J., Smith, F., Hall, A. Migliore, A., Winsor, J. (2008). *StateData: The National Report on Employment Services and Outcomes*. Boston, MA: Institute for Community Inclusion. http://www.communityinclusion.org/article.php?article_id=250
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- ^{ix} Citera, R. (2000). The Cost-Efficiency of Supported Employment Programs: A Literature Review. *Journal of Vocational Rehabilitation*. 14(1), 51-61.
- ^x Citera, R. (in press). Supported Employment's Cost-Efficiency to Taxpayers: 2002 to 2007. *American Journal on Intellectual and Developmental Disabilities*.
- ^{xi} Citera, R. (2007). *The Cumulative Cost-Effectiveness of Supported and Sheltered Employees with Mental Retardation*. 32(4), 247-252.