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*Equity, Opportunity, and Inclusion for People with Disabilities since 1975*

## **TASH Policy Statement on Sub-Minimum Wage**

Section 14(c) of the Fair Labor Standards Act (FLSA) currently allows public and private employers, and Medicaid-funded disability service providers (sheltered workshops) to apply for and receive permission from the Department of Labor (DOL) to pay individuals with disabilities at rates below the current federal minimum wage. Actual wages paid are determined through the use of a time study that is intended to accurately measure an individual's productivity. Individuals with disabilities can legally be paid as little as a fraction of one cent per hour under this program due to the absence of a wage floor for the program. Section 14(c) was enacted in 1938 for reasons that are far different from the ones that sustain it today. Concerns regarding the implementation and effectiveness of the sub-minimum wage provision in FLSA have been repeatedly expressed to DOL.<sup>1</sup> These include:

***Implementation and enforcement.*** Years of efforts by DOL to increase and improve oversight of employers holding 14(c) sub-minimum wage certificates program have failed to ensure people with disabilities are adequately protected from exploitation, either intentional or as the result of incompetence on the part of 14(c) certificate holders.

***Effectiveness.*** It has become overwhelmingly clear that the intent of section 14(c) has not been realized despite seventy-four years of implementation. While section 14(c) was intended to prevent the curtailment of opportunities for people with disabilities to work in the mainstream workforce, the program has largely become a tool for Medicaid-funded habilitation service providers to maintain segregated work environments which have proven ineffective in enabling individuals with disabilities to gain competencies, skills and opportunities and transition to employment in the general workforce at competitive wages. These segregated environments also contradict the intent and spirit of the Americans with Disabilities Act and the Supreme

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<sup>1</sup> Morris, M., Ritchie, H., and Clay, L. (2002). *Section 14(c) of the Fair Labor Standards Act: Framing Policy Issues*. Des Moines, IA: Law, Health Policy & Disability Center, University of Iowa College of Law.

Court's Olmstead decision.<sup>2</sup> Other public funding streams and proven rehabilitation strategies now exist for enabling individuals with disabilities, who might otherwise be paid sub-minimum wages, to obtain and maintain employment in the general workforce. There is no longer a need, nor a justification for the continuation of section 14(c).

***Barrier to expanding integrated employment opportunities.*** Some argue that people with disabilities should have the ***choice*** to work at less than minimum wage when opportunities to pursue and obtain employment at minimum wage or higher are available. Research suggests that when offered an informed choice, individuals with intellectual disabilities overwhelmingly state that they would prefer to work in a community job (NLTS2, Migliore et al). Despite this, only 12% of funds for day and employment supports are used for integrated employment. Such arguments for choice have no place in the public policy of our country, as they would advance the notion that individuals with disabilities should have ***the choice to be more reliant and dependent on publicly funded benefits and services than they otherwise need to be.*** Such a policy position would bankrupt our country and deny people with disabilities the benefits of realizing their full potential as the result of being fully expected and supported to do so.

**TASH supports the immediate need for federal legislation or policy that will result in a planned phase-out and elimination of section 14(c) of the FLSA. As part of this phase-out, no person with a disability who wishes to work should be denied the assistance they need to secure employment in the general workforce at minimum wage or higher.**

The elimination of Section 14(c) should be done according to the following principles:

- A. Sub-minimum wage should be eliminated through carefully planned phase out that ensures the desired outcomes are achieved for the vast majority of people with disabilities who are impacted. Some unintended, negative consequences may occur, but these should not be widespread, nor should they be predictable and therefore avoidable.

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<sup>2</sup> Civil Rights Division, U.S. Department of Justice (June 2011). Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.*

- B. Desired outcomes are wage equality and integration. No plan for elimination should be supported that inadvertently inhibits the achievement of one or both of the desired outcomes.
- C. Results of the phase out of sub-minimum wage should include ***no decline in the employment rate*** among people with disabilities impacted by phase out (i.e. those working at sub-minimum wage immediately prior to phase out). This will require some states to evaluate and modify their employment service funding infrastructure to support integrated employment outcomes.

The time is long overdue for Congress and the Administration to end the use of subminimum wage and other practices that put citizens with disabilities in jeopardy of exploitation in the workforce. TASH supports the immediate introduction and swift passage of carefully crafted legislation to end sub-minimum wage employment for all citizens in our country.