



Sub-Minimum Wage In NM

The Arc New Mexico Position

The Arc New Mexico Position Summary

- The Arc New Mexico supports integrative, inclusive employment for individuals with intellectual/developmental disabilities.
- The Arc New Mexico supports the concept of real pay for real work-meaning minimum wage or higher in meaningful employment in community settings.
- The Arc New Mexico supports best practices in individuals working in jobs that are not “owned” by an agency. There can be a conflict of interest when an agency assumes the double role of employer and provider.
- The Arc New Mexico supports a plan to reduce both the use of sub-minimum wage certificates and “sheltered” employment, to not allow any new enrollees in sub-minimum wage employment programs, and to consider a transition plan for those individuals currently in programs who would benefit from a transition to inclusive, minimum wage employment
- The Arc New Mexico understands that some individuals who have been enrolled in “sheltered” programs earning less than minimum wage for decades will have challenges in transitions and are not advocating for immediate closure or discontinuation of those programs for those individuals until required by federal law and only then with careful transition planning. We believe the numbers in this category are quite small.

What needs to change now in “sheltered” employment

- No new enrollees in sub-minimum wage, “sheltered” workshop programs
- Immediate, real time transition planning for those individuals who would benefit from community employment with longer term planning for those individuals with a long history of being enrolled in programs.
- Individuals should be informed when they are working on a contract and are getting paid for the activities they are doing that day (whether on time-study or piece work). This is a basic human right.
- For time when an individual is not getting paid, they should have a choice of meaningful activities including community integrated activities.

What needs to change in general

- New Mexico needs better alternatives to “sheltered” employment for individuals with more significant impact of disability.
- The Arc New Mexico applauds efforts by the NM Department of Health DDSD and the Public Education Department DVR to bring innovation to the state including Project Search and customized employment initiatives, but would encourage strategies to make these approaches more broad based and successful.
- Approaches need to include a differential rate for individuals requiring customized employment, higher salaries to attract employment professionals to the field, a strong and robust DVR which is fully staffed, funded, and not under an order of selection.

From the United States Department of Labor

- **Characteristics**
- Section 14(c) of the FLSA authorizes employers, after receiving a certificate from the Wage and Hour Division, to pay [subminimum wages](#) - wages less than the Federal [minimum wage](#) - to workers who have disabilities for the work being performed.
- A worker who has disabilities for the job being performed is one whose earning or productive capacity is impaired by a physical or mental disability, including those relating to age or injury. Disabilities which may affect productive capacity include blindness, mental illness, developmental disabilities, cerebral palsy, alcoholism and drug addiction. The following, taken by themselves, are not considered to be disabilities for purposes of paying [subminimum wages](#): education disabilities, chronic unemployment, receipt of welfare benefits, nonattendance at school, juvenile delinquency, and correctional parole or probation.
- Section 14(c) does not apply unless the disability actually impairs the worker's earning or productive capacity for the work being performed. The fact that a worker may have a disability is not in and of itself sufficient to warrant the payment of a [subminimum wages](#).

History

- Sub-minimum wages for individuals with disabilities have been around since the 1930's with several changes over the years.
- The National Industrial Recovery Act (NIRA) of 1933-35 set the first productivity based subminimum wage which was adopted again with the FLSA in 1938.
- Sub- minimum wage was originated as a way to encourage businesses to hire physically disabled individuals to work in the competitive manufacturing industries of the time. It was meant to be a training wage.
- Today very few sub-minimum wage employers exist outside of the service delivery system. It is unclear for what community positions individuals are being trained.

Quote from Anil Lewis in the Braille Monitor
November 2011 “Fair Wages for People with
Disabilities.”

“The Fundamental fallacy is in considering subminimum wage as true employment. The entities that engage in this practice are not employers. They are daycare providers for people with disabilities, offering days filled only with repetitive drudgery for sometimes third-world wages and leading nowhere for their workers but toward despair and greater dependence on social programs and public assistance. Imprisoning these workers in this adult daycare environment keeps them from acquiring the necessary training and opportunity to identify the skills or jobs that could lead to their competitive, integrated employment at the federal minimum wage or higher...”

Quote from APSE Blog September 13, 2018

Some Say Employer, others say congregate employment setting

“Too many policymakers, and lobbyists for congregate employment settings, do not distinguish disability services providers from “Employers”, when in fact that can be both employers of record and providers of disability services. These services are paid for by both state and federal dollars through Vocational Rehabilitation and Medicaid and can be quite lucrative. Its important to recognize that paying providers to deliver disability services while acting as employers creates a conflict of interest.”

People with Disabilities Can Work

The assumption behind sheltered employment is that workers with disabilities are less productive than other workers and therefore should receive a wage commensurate with their productivity.

Consider instead that all human productivity varies according to unique talent, skills sets, and challenges. All humans would have lower productivity in jobs that do not match those talents, skills sets and challenges – regardless of a disability. We should assume competence.

We, also, tend to categorize jobs that we think people with intellectual disabilities can do with complete disregard for the fact that individuals with intellectual disabilities are unique individuals.

Can't Rely on Federal Government

- The Workforce Innovation and Opportunity Act (WIOA) has restrictions to sub-minimum wage including assuring that individuals have informed choice related to other options.
- This restriction demonstrates the nation's move away from Sub-minimum wages.
- The APSE blog quoted in a previous slide would indicate that the current Federal administration might be looking to make changes to the rules in WIOA .
- The CMS final setting rule has already been moved from requiring state to be in compliance by 2019 to a new implementation date of 2022.
- Alaska, Maryland and New Hampshire have already ended sub-minimum wage within their states.