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## FISCAL IMPACT REPORT

**SPONSOR** Ferrary/Rubio/ Thomson      **ORIGINAL DATE** 02/18/21  
**LAST UPDATED** \_\_\_\_\_      **HB** 214  
**SHORT TITLE** Repeal Min Wage For Disabled Persons      **SB** \_\_\_\_\_  
**ANALYST** Dinces

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Indeterminate	Indeterminate	Indeterminate	Recurring	DOH & WSD General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to House Bill 110 which seeks to increase the minimum wage and remove minimum wage exemptions.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Economic Development Department (EDD)  
 Governor's Commission on Disability (GCD)  
 Department of Health (DOH)  
 Workforce Solutions Department (WSD)

#### No Response Received

Developmental Disabilities Planning Council (DDPC)

### SUMMARY

#### Synopsis of Bill

This Bill repeals Section 50-4-23 NMSA 1978, which provides for reduced minimum Wages for persons with disabilities.

### FISCAL IMPLICATIONS

The bill may have an indeterminate impact on DOH's and WSD's Operating Budget. With a change in labor laws, WSD may receive increased reports of violations and DOH may have impacts to their workload or services.

Furthermore, according to the Department of Health the fiscal impact is difficult to project in relation to repealing subminimum wage. As it relates to state general fund match, the impact could be decreased services or cause movement to other services.

## **SIGNIFICANT ISSUES**

The United States Department of Labor/Wage and Hour Division under section 14(c) of the Fair Labor Standards Act has the authority to issue certificates, commonly known as 14(c) certificates, that allow employers to pay workers with disabilities less than minimum wage. A 2012 the National Council on Disability report included a number of findings and recommendations regarding subminimum wage and supported employment. The committee determined there should be a transformation strategy to phase out the subminimum wage policy and increase the use of supported employment. Furthermore in September 2020, the U.S. Commission on Civil Rights released a report that determined the 14(c) program was inconsistent with the civil rights protections to which people with disabilities are entitled.

According to the Workforce Solutions Department, New Mexico ranks forty-third in the nation in employment for people with disabilities. There are 169.3 thousand working age (18-64 years of age) New Mexicans with disabilities and approximately 34 percent or slightly over 57 thousand are employed.

According to the Governor's Commission on Disability:

In a report issued in September 2020, the U.S. Commission on Civil Rights found that section 14(c) of the Fair Labor Standards Act of 1938, which allows employers to employ people with disabilities below the federal minimum wage, actually limits people with disabilities from realizing their full potential and allows employers to profit from their labor.

Although the intent of section 14(c) was to support people with disabilities in becoming ready for competitive employment, it has not had that outcome. The Commission on Civil Rights recommends that repeal of subminimum wage laws should be paired with investment in other supportive work opportunities for people with disabilities. Some states have already started to implement subminimum wage phase out plans. The Commission's report can be found here - <https://www.usccr.gov/files/2020-09-17-Subminimum-Wages-Report.pdf>

According to the Department of Health:

HB214 could have an impact on New Mexico Department of Health stakeholders and customers, including individuals receiving Home and Community Based Services (HCBS) through the Developmental Disabilities (DD), Mi Via, Medically Fragile, and Supports Waivers and State General Funded services for people with Intellectual and Developmental Disabilities.

There are two (2) agencies in New Mexico who are certificate holders and use those certificates to pay their employees less than minimum wage. Per the Department of Labor/Wage and Hour Division website, the two (2) providers in New Mexico are CARC, INC in Carlsbad, whose 14(c) certificate expires on January 31, 2021, CARC supports 59 individuals, and Zuni Entrepreneurial Enterprises, Inc. in Gallup whose application is in Pending Status, so the number of individuals supported is unknown/unavailable. It should be noted that in January 2018 there were a total of 430 individuals who were permitted to make less than minimum wage in New Mexico. The number of individuals who make less than

minimum wage has dropped significantly, as have the number of agencies holding 14 (c) certificates (down from three (3) to two (2)).

The Developmental Disabilities Supports Division (DDSD) adopted an Employment First Policy in 2016 which “establishes procedures for supporting working age adults to have access to valued employment opportunities as the preferred service in New Mexico. Access to competitive integrated employment will enable the person to engage in community life, control personal resources, and receive services in the community.” The policy also defined “Supported Employment” which means competitive, integrated employment for people with severe disabilities and a demonstrated need for support to obtain and maintain employment. Supported employment occurs in typical integrated business, industry, or government environments and includes: Minimum wage or better; Support to obtain and maintain jobs; Opportunity for career development; and Workplace diversity. Employment First has been integrated into the standards that dictate services provided in all waivers. More information on Employment First can be found here: [Supported Employment \(nmhealth.org\)](http://nmhealth.org)

The Workforce Innovation and Opportunity Act (WIOA), passed in 2014, set restrictions on the use of 14 (c) certificates. Workers who are paid less than minimum wage are required to receive counseling about alternate employment options. In New Mexico, the Division of Vocational Rehabilitation is the party who is responsible to provide this counseling. <https://www.dol.gov/agencies/whd/fact-sheets/39h-14c-WIOA> . Subminimum wage is no longer considered a best practice and is being phased out in New Mexico. Waiver services encourage and provide supports for individuals to move into competitive integrated employment.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB110 also repeals the unused statutory provision (§ 50-4-23) that authorizes the employment of certain individuals with physical or mental disabilities at subminimum wage rates and also eliminates almost all other exemptions to the statewide minimum wage, which it increases to \$15 an hour by 2024, with subsequent annual increases tied to a cost-of-living index.

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