



November 25, 2019

The Honorable Catherine E. Lhamon
Chair
United States Commission on Civil Rights
1331 Pennsylvania Ave., NW
Suite 1150
Washington, DC 20425

Dear Chair Lhamon:

Thank you for conducting the public briefing on subminimum wages for people with disabilities on November 15, 2019. During the open comment portion of the briefing, I was able to provide my own prepared remarks. However, there are some additional comments that I would like to make which pertain to specific arguments made during the briefing.

Congress passed the Fair Labor Standards Act (FLSA) of 1938 to protect employees from exploitation. It is ironic that a law designed to uphold workplace protections can also be used as an excuse for workplace discrimination through the use of one of its provisions, Section 14(c). Identifying Americans with disabilities as a separate and unique group that is not entitled to the same protections as all other Americans is the epitome of civil rights discrimination. While the original intent of the law may have been an incentive to hire more Americans with disabilities, it is woefully failing that goal today. The use of 14(c) certificates to pay people with disabilities less than minimum wage does not correlate to increased employment rates for workers with disabilities. In 2016, Mississippi had the tenth highest rate of people with disabilities paid subminimum wages, but ranked 46th in the rate of people with disabilities who were employed. This lags far behind New Hampshire, which outlawed the payment of subminimum wages to people with disabilities in 2015, yet had the eighth highest employment rate for people with disabilities.

According to the 2017 American Community Survey, the employment rate for Americans with disabilities is 37.3 percent while the employment rate for Americans without disabilities is 79.4 percent. The primary reason for this disparity is the pervasive low expectations many Americans have towards people with disabilities. The first step towards eradicating these low expectations is to end the statutory low expectations contained in section 14(c) of the FLSA. Examples of these systemic low expectations were evident at the public briefing. Witnesses said that some of the workers are "too handicapped" to earn the minimum wage. Using the pejorative term "handicapped," combined with the lack of understanding of the techniques that can be employed to utilize the talents of workers with disabilities, is short sighted. The combination of reasonable accommodations, job coaching, supported employment, and additional training are just some of the techniques that can be used to maximize the potential of workers with disabilities.

Certain witnesses stated that Americans with disabilities appear to be happy at sheltered workshops, or that workers with disabilities should be able to “choose” subminimum wage employment as if this was preferable to earning the minimum wage or the prevailing wage. People with disabilities should not be penalized for their alacrity and tenacity. Many workers with disabilities make the best of their disability and their work conditions. This attitude should be applauded, not exploited. Additionally, numerous disability groups who represent the voice of thousands of disabled Americans working in subminimum wage employment support the Transformation to Competitive Employment Act (H.R 873/S. 260). Notable supporters of the bill include: American Association of People with Disabilities, American Council of the Blind, Association of Programs for Rural Independent Living, Autistic Self Advocacy Network, Council of State Administrators of Vocational Rehabilitation, Disability Rights Education & Defense Fund, National Association of Councils on Developmental Disabilities, National Association of the Deaf, National Council on Independent Living, National Down Syndrome Congress, National Down Syndrome Society, National Federation of the Blind, Paralyzed Veterans of America, TASH, and United Spinal Association.

During the briefing, it was recommended that the Commission tour facilities that employ Americans with disabilities at less than minimum wages. In the event you decide to tour any sheltered subminimum wage workshops, I urge you to tour an equal number of entities employing workers with disabilities without the use of a 14(c) certificate. A prime example would be Melwood, located just outside of Washington, DC in Upper Marlboro, Maryland. At the briefing the president and CEO of Melwood, Cari DeSantis, testified that her organization was able to transform their business model from subminimum wages to prevailing wages. After completing the transition, she relinquished their 14(c) certificate. Melwood accomplished this without terminating any of their more than 1,000 workers with disabilities due to increased wages.

The ideas of some witnesses at the briefing demonstrate the low expectations some people have of workers with disabilities. They do not think we even have the ability to dream for a better life, to want to make our own money, or to live independently. They think workers with disabilities are happy doing the same mind-numbing, repetitive work year after year for little remuneration. This attitude, and particularly the ensuing system of segregated and sheltered subminimum wage employment it has created, is discriminatory and a violation of our civil rights.

If you have any further questions, or if I can be of assistance in any way, please do not hesitate to contact me at 410-659-9314, extension 2218, or by email at jpare@nfb.org.

Sincerely,



John G. Paré, Jr.
Executive Director for Advocacy and Policy
National Federation of the Blind