



PROTECTING EMPLOYMENT FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES

May 2024

OVERVIEW

Today's commensurate wage work center programs for individuals with intellectual and developmental disabilities (I/DD) are provided in a safe, supportive, and positive educational and workplace setting, meeting strict licensing standards. Individuals receiving this service have cognitive or psychiatric/behavioral, as well as sometimes physical, disabilities that require extensive accommodations and supports, and often direct and continuous supervision by their professional workplace teams, for them to achieve their vocational and daily living goals in a safe and welcoming environment. Ultimately, commensurate wage work center programs are precisely what ensure that certain individuals with I/DD have a greater opportunity for employment with the accommodations and supports they need to thrive in the workplace.

These programs have been referred to historically as "sheltered workshops," but this is an oversimplification. Originally the term "sheltered" was seen in a positive light and understood to mean "safe and protected." The term has now been weaponized and used to imply a restrictive or non-inclusive workplace. In fact, these workplaces today are welcoming environments that help ensure that participants with the most significant disabilities are fully included in supportive work environments receiving all the Americans with Disabilities Act (ADA) accommodations they need to be successful. They also may be the only available opportunities for meaningful employment for over 100,000 individuals with I/DD who rely on commensurate wage work centers for their employment with extensive accommodations and supports, with significant hardship occurring if these opportunities are eliminated.

Consistent with the Supreme Court's holding in the landmark *Olmstead* decision, choice is the paramount principle here. No individual need participate in a commensurate wage program work center who does not wish to participate. In contrast, as further indicated below, removing this choice may leave employees with I/DD no opportunity to continue to have a job, directly contrary to the *Olmstead* principle. For this reason, The Coalition for the Preservation of Employment Choice was created, in order to preserve this critical program that provides the opportunity to work to so many individuals with I/DD.

It is important to understand exactly what commensurate wage work centers do, in order to see that they are necessary and should be supported. In a vocational setting that is adapted to meet their individual challenges, each employee with I/DD is receiving ongoing training to help them reach their highest potential. They are receiving specifically trained staff support and work stations that help them to complete work, along with visual aids, and at times personal care assistance and behavioral intervention, among other supports and accommodations. The ultimate goal is for the training and supports to assist them in having meaningful employment and, to the extent feasible, transitioning to competitive community employment if the individuals with I/DD so choose.

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However, each employee with I/DD's personal level of progress toward the competitive employment goal is different. Importantly, these individuals are not simply working and earning a commensurate wage (sometimes referred to incorrectly as “sub-minimum wages”); they are learning and maintaining vocational skills at a level of production that they work hard to achieve. For the employees with I/DD served, they feel accomplishment and personal fulfillment, while learning and improving their skills, earning a paycheck, and accessing much needed socialization through co-workers and peers.

Some key overview points:

- The providers offering these services are referred to as Vocational/ Employment and Home and Community Based providers for individuals with intellectual and developmental disabilities, meeting stringent federal and state requirements and monitoring.
- These providers offer a range of facility-based and community-based services to individuals with I/DD, including providing much of the Community Integrated Employment Services (CIE) in many states.
- Facility-based services often offer employment opportunities under the federal 14(c) wage program (Section 14(c) of the Fair Labor Standards Act (FLSA)). These providers have in many cases obtained competitive employment opportunities for individuals with I/DD from community businesses to allow for this work.
- The federal 14(c) rule allows specific, qualified, provider/employers to pay individuals with significantly lower productivity due to their disability less than the prevailing minimum wage for work, based upon a set of highly regulated protocols, which is called a commensurate wage.
- This amount earned is not simply “sub-minimum” wage, which is an incomplete and sometimes inaccurate description; rather it represents a portion of wage specifically measured under a formula based on productivity and other standards. **Individuals can and often do earn more than minimum wage under the program.**
- These providers offer a safe environment, with professional staffing, to allow individuals to thrive in an employment setting, work with their peers and others, and receive a paycheck.
- As mentioned, these programs have historically been referred to as “sheltered workshops” but that is an antiquated term that does not adequately describe the support provided for these individuals nor the environment they are in. These programs are essentially providing broad-based accommodations and supports to facilitate a work environment where employees with I/DD can gain skills and be successful.
- The programs also provide training to allow individuals to move on to competitive, community, employment where possible.

KEY STATS ON THE 14(C) PROGRAM

- According to 2021 data from the U.S. Census Bureau, there are approximately **42.5 million people with disabilities in the United States** (this number will likely go up as the average age of the population increases).
- According to the U.S. Department of Labor, as of 2023, the labor force participation rate for individuals with disabilities is 22.5% compared to 65.8% for individuals without disabilities.

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- The labor force participation rate is widely acknowledged to be materially lower for those individuals with the most significant disabilities that are served by the 14(c) program.
- According to the National Disability Institute, approximately **111,471 people with the most significant disabilities worked for a 14(c) certificate holder in 2019.**
- According to research conducted by UMASS Boston's Institute for Community Inclusion, **more than 90 percent of employees working in 14(c) environments have intellectual or developmental disabilities.** This was recently confirmed by a survey of community rehabilitation programs, where the Government Accountability Office found that most 14(c) workers have an intellectual or developmental disability.
- Based on the same survey, the Government Accountability Office found that **most 14(c) workers earned on average \$4.15 per hour, with 14 percent earning the federal minimum wage of \$7.25 or more.**
- Data illustrates that **individuals with intellectual or developmental disabilities have the hardest time finding employment and need the most supports in maintaining employment.** This is particularly troubling given that the Government Accountability Office has confirmed that the number of 14(c) employers decreased by about 50 percent from 2010 to 2019 – with the number of 14(c) workers decreasing from about 296,000 to 122,000 - in part due to state policies restricting the payment of wages below the federal minimum.

STATEMENT OF THE PROBLEM

Raising the Minimum Wage and Misconceptions of 14(c)

There is a clear national movement to raise the minimum wage. Unfortunately, that goal has been (inappropriately) intermixed with the elimination of the 14(c) program that allows I/DD work center programs to operate. 14(c) simply does not prevent an individual from making the choice to work in a competitive integrated employment job.

The disability community is a large and diverse community, with varying levels of need for supports and accommodations in the workplace. The disability community should not be treated with a monolithic, one-size, fits-all approach.

While there is general agreement that competitive, integrated employment is the goal for most individuals with disabilities, it may not be a realistic and desirable goal for everyone. Indeed, individuals with the most significant intellectual and developmental disabilities should have a right to choose a workplace that provides the level of protection, support, and accommodation needed for them to thrive in a workplace environment.

A one-size, fits-all approach that eliminates 14(c) would likely result in many employees with I/DD, among the most vulnerable in the workforce, facing discrimination and losing their opportunity to work altogether. They would be denied the choice to work, contrary to the *Olmstead* principles of inclusion, autonomy, and self-determination. This must not be allowed to happen.

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If 14(c) is eliminated, organizations offering facility-based services will need to scale these programs down or close entirely, to the detriment of the most vulnerable members of the workforce, who rely on the 14(c) program and have not asked that it be eliminated. This is already happening in states where 14(c) and commensurate wages have been eliminated. A fraction of participants are being supported in the community, while those most in need of supports are left unemployed or forced into day habilitation or other services not of their choosing. Without the facility-based programs and supports, these individuals are often left at home. They are not magically transformed to full-time competitive work opportunities. “Meaningful” community activities now become walks through the local malls, hanging out at libraries and parks, and so forth. The meaningful employment, support, and interaction with peers and others that commensurate wage work centers offer would be gone.

Additionally, the elimination of 14(c) would run counter to the spirit and purpose of the ADA. The ADA requires employers to provide “reasonable accommodations” to employees with intellectual and developmental disabilities, where there is not undue hardship placed on the company. However, the mechanism that assists in preventing undue hardship is the 14(c) program itself. The accommodations needed to support individuals with the most significant disabilities can be very extensive and expensive, particularly when combined with lower productivity of workers in 14(c) programs. The elimination of 14(c) would eliminate these jobs to the detriment of the employees that are in most need of the protections of the ADA and FLSA. It is important to take a different approach that preserves the benefits of the 14(c) program (increased employment for individuals with the most significant disabilities) while addressing concerns. For example, Northern European countries provide a training stipend or subsidy for individuals with reduced work capacity.

Department of Labor’s 14(c) Proposed Rule and the Lack of Congressional Authority

The U.S. Department of Labor announced in 2023 that it plans to issue tentatively in September 2024 a proposed rulemaking focused on Section 14(c). This is particularly troubling given that the Government Accountability Office is studying the impact of what happens in states to workers with intellectual and developmental disabilities where 14(c) programs have been phased out. The study will likely shed light into the detrimental impact policy changes would have on individuals with intellectual and developmental disabilities, one of the most vulnerable disability groups.

In December 2023, House Education and Workforce Committee Chair Virginia Foxx and several committee members sent a letter to the Department of Labor asking them to “refrain from making significant changes to policies related to sheltered workshops and provide information that could inform legislation on this issue.” It is the position of the Coalition for the Preservation of Employment Choice that no regulatory changes should be made absent statutory authority.

Ultimately, Congress should take action to ensure that the most vulnerable members of the workforce, including those with significant intellectual and developmental disabilities, are not abandoned by an ill-advised wholesale elimination of the 14(c) program. There is no doubt that the 14(c) program could be enhanced and improved, and The Coalition for the Preservation of Employment Choice remains ready to engage in efforts to do so. At the same time, Congress should commit to supporting commensurate wage work centers and recognizing their important role in ensuring meaningful employment for individuals with disabilities.

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