

Disabled Individuals Could Lose Employment If 14C Certification Is Phased Out

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Tommy C., a participant at Lighthouse Vocational Services in New Holland, carefully places the colored pieces in math kits which will be used in schools. (Lighthouse Vocational Services)

By Diane Boone and The Lancaster Patriot Staff

According to data from the U.S. Census Bureau, there are more than 40.7 million people living with disabilities throughout the nation — a number that is expected to continue increasing over time. Many of these disabilities do not prevent individuals from participating in the competitive workforce that the U.S. economy runs on, but there are physical and intellectual disabilities that make employment a herculean challenge for others. According to disability employment statistics published by the U.S. Department of Labor, in 2021 the labor force participation rate of individuals without disabilities was 67.1%, compared to a mere 21.3% of individuals with disabilities. Of that 21.3%, a significant number of those with more pronounced disabilities work

for commensurate wages in positions, programs and facilities made possible through Section 14C of the federal Fair Labor Standards Act — but 14C has come under fire in recent years and could be wiped from the law.

After the federal minimum wage was established as law through the Fair Labor Standards Act in 1938, Congress amended the act in 1986 to include Section 14C, a provision for individuals with disabilities to earn less than federal or state minimum wage. This was not to exploit these individuals, but rather to give them an expanded range of options for employment if they could not maintain a regular output of productivity for the businesses that would hire them.

The more severe the disability and the lower the function an individual has, the less work they can do in a set amount of time compared to the work someone without a disability can do in that time. This lower output would put them at a disadvantage in a job market where they must compete with people who can produce a higher output of work and do more skilled labor for the same wage. Since employers must consider efficiency and cost-effectiveness to keep their businesses running, simple economics would discourage an employer from hiring a person with more pronounced disabilities.

Section 14C addressed this obstacle by permitting commensurate wages, allowing individuals to work at their own pace and without the pressure of having to reach the standards that other minimum wage workers are held to. This legal provision has worked to benefit an enormous amount of people, too, since tens of thousands of people with the most significant disabilities are working for 14C certificate holders instead of staying at home.

14C also has made it possible for organizations to be formed specifically to provide work for people who cannot adapt to the competitive work setting or who have no access to the limited range of businesses that can offer tasks and work environments that are suitable and safe for lower-functioning individuals. After all, there are many types of businesses that cannot provide employment to people with severe disabilities because of the dangers of the work environment or the demands of the job. While some individuals with physical or intellectual disabilities can integrate into the traditional workforce through more intensive training or with other types of assistance, having additional options has proven useful to the disabled community.

One of the organizations that has been created through the years to cater to the needs of people with disabilities is New Holland-based Lighthouse Vocational Services. Lighthouse has designed a facility to give individuals with intellectual disabilities a space that is safe for them and tailored to help them do work at their individual paces. Not all Lighthouse programs take place in the facility — small teams go out to work in local businesses along with a supervisor, individuals volunteer at nonprofits to serve their communities, and some people use Lighthouse's training and resources to get independent jobs — but the people who choose to work in the facility have access to specialized support as they perform a variety of useful tasks, like assembling packaging that local businesses depend on.

However, the 14C solution is not considered acceptable by a growing number of policymakers. There is a movement underway to do away with 14C and subminimum wages by the end of 2022 and to shift focus exclusively to integrating individuals with disabilities into the competitive

workforce. A leading force in this movement is the Association of People Supporting Employment First (APSE), a national nonprofit organization that aims to achieve full, integrated employment for all people with disabilities, accomplished through education, advocacy and policy change that promote “Employment First.”

The Office of Disability Employment Policy within the U.S. Department of Labor has defined “Employment First” as “a national systems-change framework centered on the premise that all individuals, including those individuals with the most significant disabilities, are capable of full participation in Competitive Integrated Employment (CIE) and community life.” To further the goal of Employment First, the department urges taxpayer-funded systems “to align policies, regulatory guidance, and reimbursement structures to commit to CIE as the priority option with respect to the use of publicly-financed day and employment services for youth and adults with significant disabilities.”

So far, 10 states have passed legislation that has eliminated 14C or is phasing it out within the next few years. These states — Alaska, California, Colorado, Delaware, Hawaii, Maine, Maryland, New Hampshire, Oregon and Washington — are replacing 14C with Employment First-style legislation. Other states have introduced similar legislation but have not passed it yet, or they have limited subminimum wage work, such as how Texas and Illinois no longer allow commensurate wages in connection with state use contracts. Some other states, like Vermont and North Carolina, have not addressed 14C or subminimum wages through legislation, but their Health and Human Services departments will no longer support facility-based or subminimum-wage employment.

In Pennsylvania, the General Assembly passed the Employment First Act in 2018, which declares, “It shall be the policy of the Commonwealth that competitive integrated employment shall be the preferred outcome for all individuals with a disability eligible to work under Federal or State law, regardless of severity of disability and assistance required, and work-based learning experiences for all youth with a disability in collaboration with the Department of Labor and Industry. Employment services and opportunities must be offered to all individuals with a disability receiving publicly funded services, regardless of whether they live in their own home or in a residential setting.”

Although Pennsylvania has not yet eliminated 14C, there have been clear indications that the state intends to make that move, either directly or by making it impossible for organizations to make sustainable 14C-based programs. Organizations catering to the needs of individuals with disabilities are being put under pressure to conform or shut down, and Lighthouse told The Lancaster Patriot that new facilities have already been capped to serve no more than 25 individuals per day, which will effectively halt any efforts to

create workshops and other environments that give these individuals supportive, safe places to work.

According to APSE, the reason to move people from these work settings to integrated employment in the competitive workforce is because people with disabilities should have complete social and economic inclusion and because facilities that are geared exclusively toward the disabled create segregation.

“While the sub-minimum wage may have historically been a valid and effective strategy for enhancing employment opportunities for people with disabilities,” APSE declared in an official statement, “the evolution in disability rights law, modernization of the business marketplace, and advances in available community employment support, makes the 14(c) provision under the Fair Labor and Standards Act no longer necessary or acceptable.”

The organization further claims, “Earning sub-minimum wage in a facility-based program is in conflict with the concept of self-determination and informed choice, with the individual having little control over how they spend their day, use their knowledge, skills and abilities, and how much they earn. Community employment provides opportunities to exercise self-determination and choice through economic empowerment, the ability to choose from a broad array of possible job and career options, and the opportunity to use skills and abilities in a way that the individual chooses and that best meets their specific career and other goals.”

APSE calls for the phase out of subminimum wage and 14C certificates to be done carefully to avoid unintended consequences, but the organization has made it clear that the goal is to make competitive integrated employment the only option for full integration and inclusion in society.

Pam Wise, the manager of quality assurance, compliance and innovations at Lighthouse Vocational Services, told The Lancaster Patriot that Lighthouse firmly believes in supporting individuals so they can get jobs in the mainstream market — after all, the organization is currently helping almost 40 people with disabilities both find and maintain the jobs they want. However, “employment no matter what” is not an appropriate position to take, she said, since black-and-white solutions do not take into consideration the unique circumstances of individuals. For instance, there are people who, if they were forced into the mainstream workforce, would require constant supervision from a trained professional because of physical, mental or emotional limitations or behavioral issues.

“They might need systematic instruction, they might need someone to be with them, but they could work at a job that is specifically ‘carved out for

them,” Wise said. “For those with the most severe disabilities, you’re paying a one-to-one job coach to be with them consistently nonstop for the rest of their life so that they can work. But that’s what they need in the CIE job.” Coaching and similar services are already provided in facilities, which are able to provide those services more easily and to more people than businesses that are not geared to accommodate people with disabilities — but Employment First does not make allowances for that kind of employment and seeks to do away with facilities.

Brian French, the director of programs at Lighthouse, explained, “Another thing that they don’t seem to acknowledge is that for one-to-one support, supportive employment, the current rate in Pennsylvania is \$17.91 for 15 minutes. For support at a place like here at Lighthouse, it’s \$4 and something for every 15 minutes. So, the state can’t adequately fund services now, yet they’re proposing a model that would be much, much more expensive. They won’t adequately fund what we have now, but they’re saying ‘let’s push everybody out into the community and raise the cost by four or five times the current rate,’ without accounting for how you always need staff. Instead of one staff serving six, you’d have one staff serving one, so you’d have an exponential increase in the number of staff you need, and we’re facing a labor shortage in this country right now that can’t meet those needs anyway.”

Wise added that regardless of how good inclusion and employment in the community may sound, individuals with disabilities deserve to make their own choices. “By taking away 14C and forcing work in the community, they’ve eliminated choice,” she said. This goes against a fundamental element of the Employment First movement, which is that people with disabilities should be able to choose where they want to work. In an effort to get rid of segregation, the movement would instead restrict freedom of choice.

“I don’t see our programs as segregated,” Wise said, “I see it as they get to be with their peers. And yes, they can go into the community and integrate with people in the community as well. But if it’s their choice to be with peers who understand them better, who they enjoy being with — and I’m not saying it should just be that, but it should be a choice that they have to do that if they want to do that.”

The way 14C is implemented is not without flaws, but any effort to get rid of work settings that were created to meet the needs of people with disabilities and to instead force these individuals to compete with people without disabilities does not just reduce the possibility of segregation — it also would force a one-size-fits-all solution on people who had previously been able to make their own choices, form their own communities, and find purpose in

work instead of staying at home if they could not tolerate the competitive workforce.

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My son, Matt would not succeed in CIE. That is true of most persons with severe intellectual and developmental disabilities. My son loves his 14c work center. And, knowledgeable parents and guardians know what our sons and daughters will be left to do... watch TV or take part in "day programs" that focus on the most profoundly disabled. My son uses a large percentage of his earnings to go to summer camp... So that also will be gone. APSE and The ARC are pushing to punish these folks. Shame on them and the Federal level Senators and Congress-persons who, out of ignorance have already co-sponsored bill to eliminate Sheltered Workshops/Vocational Centers. The state of Maine eliminated the work centers and completely failed to get their folks into competitive employment.