



ENDING THE SUBMINIMUM WAGE IN MINNESOTA

EXECUTIVE SUMMARY
SEPTEMBER 2021



Minnesota Disability Law Center

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EXECUTIVE SUMMARY

The Minnesota Disability Law Center (MDLC) is releasing the executive summary of our forthcoming report about subminimum wages in Minnesota. The full report will be released in late 2021.

Decades ago, Minnesota led the effort to provide people who have disabilities meaningful opportunities to work and contribute to their community. Where Minnesota was once at the forefront, we are now lagging behind -- clinging to an outdated model that pays workers who have disabilities subminimum wages. We must do better. Minnesota should end the use of subminimum wages using a phase-out approach, and focus resources and services to help people who have disabilities find and maintain competitive, integrated employment.

Nonprofit Community Rehabilitation Providers (CRPs) were created decades ago with an important goal: to provide employment and job training to people who have disabilities. CRPs were established around Minnesota, funded largely with Medicaid Home and Community-Based Waiver money. CRPs connected with businesses to find work for people who have disabilities. For some people who have disabilities, this meant working at local businesses that pay minimum wage or higher. However, many people who have disabilities work for the CRP earning a subminimum wage, which is less than federal or state minimum wage. Often the subminimum wage work does not prepare them for competitive, integrated employment because the jobs are disconnected from the skills needed for jobs in the community. While working for subminimum wage was intended to be a temporary training wage,¹ the result has been that many people who have disabilities work for subminimum wages throughout their entire careers.

ABOUT US

The Minnesota Disability Law Center (MDLC), a division of Mid-Minnesota Legal Aid, is Minnesota's Protection and Advocacy system for people with disabilities



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There are currently about seventy-five CRPs in Minnesota that are authorized by the federal Department of Labor to pay people who have disabilities subminimum wages, and these CRPs employ about 5,800 people who have disabilities.² The federal Fair Labor Standards Act, passed in 1938, allows employers to request to pay people who have disabilities subminimum wages, which are less than the federal or state minimum wage.³ Federal regulations set out how employers can calculate what a person who has a disability can earn.⁴ Many Minnesotans who have disabilities earn a piece rate subminimum wage, meaning they earn a set amount per item they produce.⁵

Through the Minnesota Disability Law Center's (MDLC) review of about half of Minnesota CRPs' applications to pay subminimum wages, called 14(c) certificates, MDLC found that people who have disabilities earn a very low wage, work limited hours per week, and choose between a limited range of types of work.⁶ MDLC's analysis showed that subminimum wage workers worked for a very limited number of hours per week, typically working less than eight hours per week. MDLC also learned that subminimum wage workers earn substantially less than Minnesota's minimum wage, earning an average of less than \$4.00 per hour at CRP main locations and less than \$6.00 per hour at off-site locations. Some people earning subminimum wages earned as little as seven cents per hour. Additionally, most subminimum wage work is available in a limited number of job categories, including light assembly, recycling, cleaning, and food service, regardless of the person's preference or career goals.

Minnesota lags far behind the rest of the nation with regard to our support of competitive, integrated employment options for people with disabilities. In Minnesota, 11% of people who have intellectual and developmental disabilities and are receiving state day or employment services are receiving integrated employment services,⁷ whereas nationally, 21% of these individuals are employed in integrated employment services.⁸

Other states are much farther along in supporting people who have disabilities to work and receive services in integrated employment settings, and some have eliminated subminimum wage altogether. As of June 2021, the following states do not have subminimum wage employment: Alaska, Maine, Maryland, New Hampshire, Rhode Island, Vermont.⁹ Other states, including Colorado, Delaware, Hawaii, Oregon, and Washington, have set an end date for subminimum wage in their state.¹⁰



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MDLC reviewed the experience of five states (Oregon, Maryland, Maine, Rhode Island and Vermont) that phased out subminimum wage through legislation, executive action or litigation. These states have successfully phased out subminimum wages, allowing people to earn at least minimum wage, while working in careers of their choice and in more integrated settings.

Minnesota should phase out the use of subminimum wages and can learn valuable lessons from these trailblazing states. First, the key to making the transition smoother is thoughtful planning with adequate time and the input of key stakeholders, particularly people who have disabilities who have worked in subminimum wage jobs and competitive, integrated employment. Second, part of a phase out should include changes in Medicaid Home and Community-Based Waiver Employment Services to ensure the service system fully supports and funds the individualized process of supporting a person to find competitive, integrated employment based on their interests and strengths. Third, to measure outcomes of phasing out subminimum wages, the state should design and implement data collection to track each person's progress away from subminimum wage work and towards competitive, integrated employment. Fourth, the state should take steps to ensure people have transportation to get to and from work, particularly in rural areas and in areas without public transportation. Fifth, youth who have disabilities aged fourteen to twenty-four need more help and seamless collaboration amongst service providers to ensure that they leave school with a concrete plan and resources for future education, training, or employment.

Minnesota must, and has the chance to do better. Minnesota's Olmstead Plan,¹¹ our Employment First policy,¹² federal law,¹³ and court rulings¹⁴ envision and protect the rights of people who have disabilities to work in competitive, integrated employment. While some people who have disabilities have founds competitive, integrated employment, too many are working in subminimum wage employment. Moreover, while many other states have shifted away from the dominant model of subminimum wage work at a CRP, Minnesota has not.

MDLC applauds the Minnesota Legislature for passing legislation in 2021 to create a taskforce to plan for phasing out subminimum wages in Minnesota. In addition to thoughtful planning, the Legislature should act to phase out subminimum wages.¹⁵

In late 2021, MDLC will issue a report with more detail about our findings above and our policy recommendations. Some of our policy recommendations are listed below.



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POLICY RECOMMENDATIONS

- 1) Phase out the payment of subminimum wages in Minnesota
- 2) Modify Medicaid Home and Community-Based Services Waiver Employment Services to ensure the service system fully supports and funds the individualized process of supporting a person to find competitive, integrated employment based on their interests and strengths
- 3) Design and implement data collection to ensure that we are tracking each person's progress away from subminimum wage work and towards competitive, integrated employment
- 4) Help people find and fund transportation to get to and from work, particularly in rural areas and in areas without public transportation
- 5) Support and demand seamless collaboration amongst service providers to ensure youth who have disabilities aged fourteen to twenty-four leave school with a concrete plan, resources, and contacts for future education, training, or employment
- 6) Support people finding and maintaining competitive, integrated employment with increased coordination between the Minnesota Department of Human Services, the Department of Employment and Economic Development, and the Department of Education
- 7) Support employment service providers transitioning towards helping people find competitive, integrated employment
- 8) Ensure access to benefits planning to ensure competitive, integrated employment
- 9) Provide high quality, integrated programming for people who choose not to work
- 10) Stop using Medicaid Home and Community-Based Services Waiver funding for waiver services paying subminimum wages



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WORKS CITED

- 1) See Subminimum Wages: Impacts on the Civil Rights of People with Disabilities, *U.S. COMMISSION ON CIVIL RIGHTS* (September 17, 2020), <https://www.usccr.gov/files/2020/2020-09-17-Subminimum-Wages-Report.pdf>.
- 2) See U.S. Department of Labor, Wage and Hour Division, 14(C) Certificate Holders (June 9, 2021) available at <https://www.dol.gov/agencies/whd/workers-with-disabilities/section-14c/certificate-holders>
- 3) Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 214(c) c. 676, § 14, 52 Stat. 1060; see also, U.S. Dep't of Labor Wage and Hour Division, 14(c) Certificate Holders, <https://www.dol.gov/agencies/whd/workers-withdisabilities/section-14c/certificate-holders> (last accessed May 21, 2020).
- 4) 29 C.F.R. §§ 525.9(a)(3), 525.12(h)(1); See also 29 U.S.C. § 214(c)(1)(C); 29 C.F.R. § 525.12(c). More information will be provided in MDLC's forthcoming report analyzing Minnesota CRP's 14(c) certificate applications.
- 5) More information will be provided in MDLC's forthcoming report analyzing Minnesota CRP's 14(c) certificate applications.
- 6) MDLC requested the 14(c) applications from the Department of Labor in 2019 and many of the applications covered periods in 2017 and 2018.
- 7) See Data and Resources to Inspire a Vision of Employment, *Minnesota Snapshot* (June 14, 2021), available http://www.drivedisabilityemployment.org/minnesota#quicktabs-states_big_screen=1.
- 8) Id.
- 9) See Trends and Current Status of 14(c), *ASSOCIATION OF PEOPLE SUPPORTING EMPLOYMENT FIRST* (July 1, 2021), <https://apse.org/wp-content/uploads/2021/07/APSE-14c-Update-REV-0721.pdf>.
- 10) Id.
- 11) Minnesota Olmstead Implementation Office, The Minnesota Olmstead Plan (Accessed on September 16, 2021), Available at: <https://mn.gov/olmstead/mn-olmstead-plan/about-mn-olmstead-plan/>
- 12) Minnesota Department of Human Services, Minnesota Employment First Policy (Accessed on September 16, 2021), Available at <https://mn.gov/dhs/partners-and-providers/news-initiatives-reports-workgroups/long-term-services-and-supports/employment-first/employment-first-policy>.
- 13) Workforce Innovation and Opportunity Act, 29 U.S.C. § 3101.
- 14) See *Lane v. Kitzhaber*, 283 F.R.D. 587 (D. Or. 2012)
- 15) Competitive employment means work for which someone earns minimum wage or higher. Integrated employment means work that is in the community, alongside people who have and who do not have disabilities.
- 16) Health and Human Services Omnibus Bill, Minnesota Session Laws 2021, First Special Session, Chapter 7, Article 17, Section 14 (2021).



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