

Disability Rights Nebraska

Protection and Advocacy for People with Disabilities

14(c) Exception is Unfair

According to April 1, 2019 statistics by the U.S. Department of Labor, Nebraska has 17 organizations who pay 490 people a subminimum wage under the 14(c) exception in their Community Rehabilitation Programs (sheltered workshops), a private business, and the Patient Workers category. The 14(c) exception allows that when a person's disability impacts their productivity they are paid a proportional amount to what he or she can produce versus workers without disabilities. Some have questioned the accuracy of those productivity/performance tests and comparing outcomes (see video "Bottom Dollars, Chapter 2" from 3:37- 4:43, available at <https://youtu.be/YorFMbxouXQ>)

Additionally, even if a worker without a disability does not produce at his/her maximum potential, minimum wage laws still apply and that person still gets minimum wage; productivity tests and prorated pay do not apply to him/her (see video "Bottom Dollars, Chapter 2" from 2:30-3:36). As the 2018 National Council on Disability report "From the New Deal to the Real Deal: Joining the Industries of the Future", (available at <https://ncd.gov/publications/2018/new-deal-real-deal>) points out, often the organizations that employ people with disabilities under the subminimum wage exception have significant financial resources. It does not seem fair that these organizations are paying people with disabilities less than minimum wage. For example see page 66 of the report, discussing the Community Rehabilitation Programs (CRPs) countrywide: "In significant contrast, however, the largest CRPs that profit most significantly from federal, state, and local set-aside contracts and other funding sources do not appear at serious risk from being unable to afford minimum wages, yet they continue to pay subminimum wages. In fact, their revenues are proportioned in almost diametrical opposition to their need to pay these subminimum wages...IRS Form 990 tax documents reveal that the combined total annual revenue of the top 10 CRPs, by number of subminimum wage workers, is nearly \$523 million. The top employer on this list, Social Vocational Services, Inc., a sheltered workshop in California, has annual revenue of nearly \$105 million from recycling operations, and its CEO has an annual salary of over \$1.1 million yet it continues to pay 1,790 workers subminimum wages."

People with disabilities tend to live in poverty and employment can be a key tool to develop a way out of poverty. A job can be a source of independence and personal dignity. However, how are those goals achieved when employers are allowed explicitly by law to pay subminimum wages to people with disabilities because of their disability; or that persons without disabilities are guaranteed a minimum wage by law (despite their levels of production/performance) but workers with disabilities are not?

It is strongly suggested reading the 2018 report from the National Council on Disability noted above for a detailed analysis of the scope of the 14(c) certificate programs, the flaws of the 14(c)/sheltered workshop business model, and recommendations for policy reform.