



# Subminimum Wage at a Glance

The National Down Syndrome Society (NDSS) fully supports and actively advocates for wage equity for people with disabilities. As the leading human rights organization for all individuals with Down syndrome, NDSS has long been at the forefront of the movement to phase out subminimum wage practices at the federal, state, and local levels by collaborating with policymakers, other disability organizations, and grassroots advocates.

## BACKGROUND

The Fair Labor Standards Act (FLSA) of 1938 establishes minimum wage among other employment standards affecting employees in the private sector and in federal, state, and local governments. However, Section 14 (c), a provision of FLSA, enables organizations to apply for a certificate that allows them to **pay workers with disabilities a wage lower than the federal minimum wage**. This provision is often referred to as the “Subminimum Wage Law” or “Commensurate Wage Law.” The U.S. Department of Labor (DOL) reviews Section 14(c) applications and is responsible for approving or denying these certificates. For more information about Section 14(c), reference the U.S. Department of Labor Wage and Hour Division’s Fact Sheet #39: [The Employment of Workers with Disabilities at Subminimum Wages](#)

## IMPACT ON WORKERS WITH DISABILITIES

Census data, based on the 2018 American Community Survey (ACS), estimated that there were 39,674,679 people with disabilities in the United States, making up 12.6 percent of the total estimated U.S. population.<sup>i</sup> The 2018 ACS also found that only 35.9 percent of persons with disabilities were employed, as compared to 76.6 percent of the total population.<sup>ii</sup> Further, unemployment and underemployment correlated with higher poverty rates for people with disabilities, among other impacts.<sup>iii</sup>

It is difficult to quantify how many workers with disabilities are being paid a subminimum wage, or exactly what that wage is, due to significant gaps in data and reporting. Additional research and data are needed to accurately assess the scope of this inequity, especially where data on the average wage these workers receive is not collected.

According to the Department of Labor, approximately 1,200 employers currently have, or have applied for, a 14(c) certificate. However, nearly 45 percent of the certificates listed are pending, meaning these certificates are in the process of review and the Department of Labor does not report the number of workers with disabilities currently working for those employers. Estimates currently suggest that between 40,000 and 100,000 workers with disabilities are being paid these low wages. One report from the U.S. Commission on Civil Rights in 2019 found average wages for individuals with disabilities to be \$3.34 an hour,<sup>iv</sup> and the average number of hours worked was 16 hours per week.<sup>v</sup> This means that the average person with a disability working at a 14(c) certificate holding entity earned just \$53.44 per week, or \$213.76 per month.<sup>vi</sup>

## FEDERAL POLICY

There have been several iterations of federal policy to prohibit new 14(c) certificates from being issued and to phase out subminimum wage practices. As of the 117th Congress, the most recent federal policy response is the Transformation to Competitive Integrated Employment Act, introduced in both the House and Senate. Unique to the bill is the considerable funding proposed to invest in competitive integrated employment for individuals with disabilities.

Bipartisan momentum has continued to grow around phasing out subminimum wage, with both 2020 party platforms committing to eliminate 14(c) certificates.<sup>vii</sup> In the 2021 appropriations omnibus, a provision was included to create the Disability Innovation Fund (DIF) at the Rehabilitative Services Administration at the Department of Education. The DIF uses funds returned from state Vocational Rehabilitation agencies to fund competitive grants focused on reducing the use of subminimum wages.

In 2022, the Department of Education announced that \$167 million would be awarded to 18 states for demonstration projects focused on advancing economic security for Americans with disabilities. This funding is a step toward developing programs, support, and infrastructure for more integrated employment opportunities.

## STATE POLICY

Passing laws related to wage equity for people with disabilities has been more successful at the state level than at the federal level. States and local advocacy groups have started efforts to phase out subminimum wage practices in favor of more competitive integrated employment opportunities. Some states have adopted Employment First policies, which means that the first option for individuals with disabilities should be competitive integrated employment within their community. Other states have implemented plans to phase out subminimum wages, while others have passed executive orders. Each state's approach is based on its capacity, collaboration, and funding to ensure employers and workers with disabilities are supported throughout these transitions. Phase outs are a coordinated effort between community rehabilitation providers, the stakeholder community, and government.

There are currently 14(c) certificate holders in 42 states.<sup>viii</sup> Two states (North Carolina and Texas) are in the process of phasing out subminimum wage practices, although they currently still have operating 14(c) certificates.<sup>ix</sup> Thirteen states have passed legislation prohibiting the payment of subminimum wages altogether:

Alaska  
California  
Colorado  
Delaware

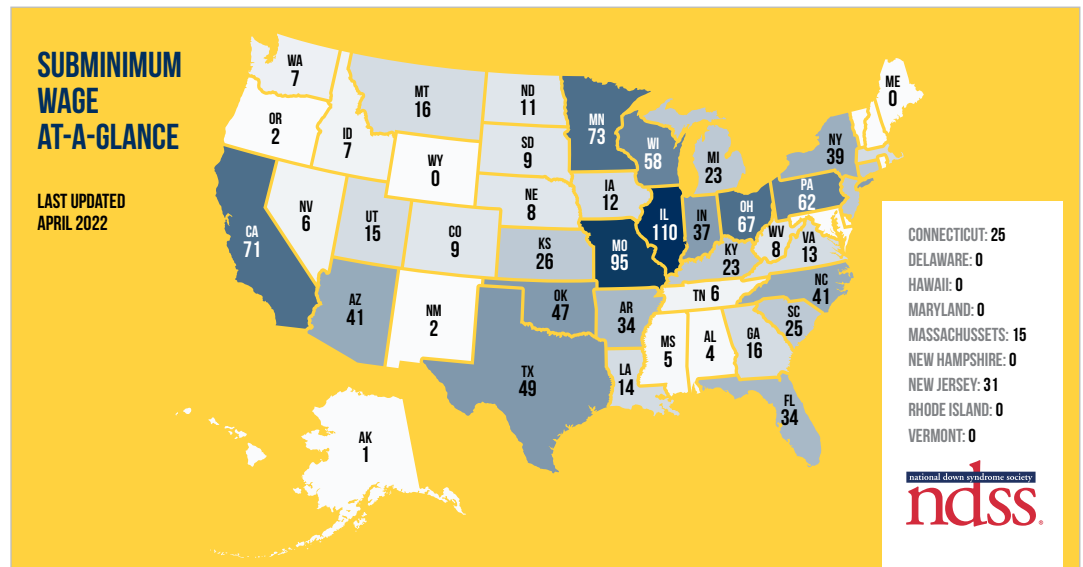
Hawaii  
Maine  
Maryland  
New Hampshire

Oregon  
Rhode Island  
South Carolina  
Tennessee  
Washington

## CONCLUSION

Through its programs, NDSS promotes access to competitive integrated employment for all people with Down syndrome who seek it while offering resources and information regarding other options such as vocational training and self-employment. NDSS will continue to advocate on this critical civil rights issue until people with Down syndrome and other disabilities have obtained wage equity.

This map shows the number of active and pending Section 14(c) certificates by state.



For more information, visit: [www.ndss.org/employment-program](http://www.ndss.org/employment-program)

<sup>viii</sup>U.S. Census Bureau, American Community Survey (2018), Disability Characteristics, Table S1810, <https://data.census.gov/cedsci/table?q=S1810&tid=ACST1Y2018.S1810>.

<sup>ix</sup>University of New Hampshire, Institute on Disability, 2017 Disability Statistics Annual Report, p. 2, [https://disabilitycompendium.org/sites/default/files/user-uploads/2017\\_AnnualReport\\_2017\\_FINAL.pdf](https://disabilitycompendium.org/sites/default/files/user-uploads/2017_AnnualReport_2017_FINAL.pdf)

<sup>x</sup>Ibid.

<sup>xi</sup>U.S. Commission on Civil Rights, "Subminimum Wages: Impacts on the Civil Rights of People with Disabilities," report, September 2020, <https://www.usccr.gov/files/2020/2020-09-17-Subminimum-Wages-Report.pdf>

<sup>xii</sup>Butterworth Testimony, Subminimum Wage Briefing, pp. 94-95.

<sup>xiii</sup>Ibid. U.S. Commission on Civil Rights.

<sup>xiv</sup>Republican National Convention, "Republican Party Platform," Adopted for 2020; [https://prod-cdn-static.gop.com/docs/Resolution\\_Platform\\_2020.pdf](https://prod-cdn-static.gop.com/docs/Resolution_Platform_2020.pdf) (p.38; note the reference to the TIME Act); Democratic National Convention, "Democratic Party Platform," 2020; <https://democrats.org/where-we-stand/party-platform/> (p.43 of PDF)

<sup>xv</sup>U.S. Department of Labor, "14(c) Certificate Holders," Updated April 1, 2022, <https://www.dol.gov/agencies/whd/workers-with-disabilities/section-14c/certificate-holders>

<sup>xvi</sup>Association of People Supporting Employment First (APSE), 2022 State Legislative Watch, <https://apse.org/state-legislation/> (last accessed March 19, 2022).