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ISSUE BRIEF: Transformation to Competitive Employment Act
(H.R. 873/S. 260)

Legislative Request

Please cosponsor the bipartisan Transformation to Competitive Employment Act (H.R. 873 in the House and S. 260 in the Senate) to promote equal employment opportunities for people with disabilities by discontinuing the issuance of new Special Wage Certificates that allow employers to pay workers with disabilities subminimum wages.

- **House**: Christina Ingram with Rep. Bobby Scott at christina.ingram@mail.house.gov or 202-225-5031, or Kristin Flukey with Rep. McMorris Rodgers (R-WA) at kristin.flukey@mail.house.gov or 202-225-2006.

- **Senate**: Michael Gamel-McCormick with Sen. Bob Casey (D-PA) at michael.gamel-mccormick@aging.senate.gov or 202-224-4193.

Background and Summary

The Transformation to Competitive Employment Act is legislation designed to strengthen and enhance the disability employment service delivery systems throughout the states. The goal of the bill is to increase disability employment through expanding the infrastructure for providing services for competitive integrated employment and integrated services, while simultaneously phasing out Special Wage Certificates (SWCs) under Section 14(c) of the Fair Labor Standards Act.

The bill requires employers to discontinue the use of the subminimum wage and provides competitive grants to states and employers to transition and employ people with disabilities in competitive integrated employment with wraparound integrated services. The bill ensures individuals with disabilities employed under 14(c) certificates, including those with the most significant disabilities, are provided the supports and services to find dignity in work at a fair wage. The bill includes a six-year phase-out of 14(c) certificates and does not allow any new certificates from the day of enactment of the Act.

The bill creates two grant programs supporting competitive integrated employment. One will help states transition the business models of 14(c) certificate holders. The second will help current 14(c) certificate holders located in states that do not apply for the state grants to transition their business models. In addition to the two grant programs, the bill creates a technical assistance center to support all entities phasing out 14(c) to disseminate best practices and lessons learned on the transition from subminimum wage to competitive employment.

NDSS strongly supports this legislation because it will help pave the way for equality in the workplace for people with Down syndrome and other disabilities, many of who work in settings that fail to
prepare them for integrated employment in the mainstream economy. By phasing out the special wage certificates, this legislation will give people with disabilities access to the work and training environments that will allow them to acquire meaningful skills and better employment opportunities. The phase-out period includes a systematic approach to expand capacity for competitive integrated employment, particularly for people transitioning out of sheltered workshops.

**Key Messages**

- **Section 14(c) of the Fair Labor Standards Act limits employment opportunities for people with disabilities.** Passed in 1938, Section 14(c) authorizes employers to pay workers with disabilities subminimum wages while they are trained to perform mundane tasks that do not build capacity or transfer into skills necessary to transition into other employment options. Thus, after entering these programs, people with disabilities remain in subsidized employment. This practice, therefore, reinforces the stigmatic misconception that people with disabilities are less productive and creates an artificial barrier to future employment opportunities.

- **The current law does not incentivize employers to hire people with disabilities.** Despite the misconception that Section 14(c) incentivizes employers to hire people with disabilities, according to the Rehabilitation Research and Training Center on Disability Statistics and Demographics, in 2015 the employment gap between people aged eighteen to sixty-four with disabilities who were employed (34.9 percent) and people without disabilities who were employed (76.0 percent), was 41.1 percentage points.

- **Section 14(c) program lacks transparency and provides little protection for workers with disabilities.** The 14(c) program requires minimal data collection and analysis of the 14(c) certificate holders, the employment resources provided to workers paid subminimum wages, and employment outcomes achieved. This has led to the arbitrary calculation of wages without holding these employers accountable.

**Answers to Questions about the Transition to Competitive Employment Act**

1. **How will the legislation impact people who are too disabled to earn the minimum wage?**

   Many people with significant disabilities are already employed in competitive, integrated settings. Many individuals who may not be able to read, write, speak, or walk, can perform meaningful work with proper accommodations. All Section 14(c) does is reinforce the misconception that people with disabilities are less productive and creates an artificial barrier to future employment opportunities.

2. **Doesn’t paying people with disabilities subminimum wages prepare them for competitive integrated employment?**

   The minimum wage exemption does little to help people with disabilities obtain employment. It does the opposite. Data cited by the National Federation for the Blind (NFB) shows that less than five percent of the 400,000 workers with disabilities in segregated subminimum wage workshops will transition into competitive integrated work.
3. Who opposes the phase-out of Section 14(c) Special Wage Certificates?

Only Section 14(c)-certificate-holding entities that refuse to use contemporary strategies to employ people with disabilities oppose the phase-out of the SWCs. Virtually all national consumer disability organizations (those that are primarily run by people with disabilities) support repeal Section 14(c) of the FLSA. Organizations that provide rehabilitation services to disabled persons, as well as employers of people with disabilities, also support this initiative (see https://nfb.org/images/nfb/documents/word/opposition_list_section_14c_20150114.doc).

4. What about the concerns that ending the subminimum wage will have unintended consequences for individuals with disabilities who prefer that option?

The legislation includes several capacity-building components to support people transitioning out of sheltered workshops. It provides technical assistance and funding to help states and 14(c) certificate holders to develop the infrastructure for more integrated and innovative approaches to disability employment. The need for capacity-building efforts to accompany a 14(c) phase-out is emphasized in the report to Congress from the Labor Department’s Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities.

Resources