



United States General Accounting Office
Washington, DC 20548

The Honorable Major R. Owens
Ranking Minority Member
The Honorable Cass Ballenger
Subcommittee on Workforce Protections
Committee on Education and the Workforce
House of Representatives

In order to prevent the curtailment of employment opportunities for individuals with disabilities, section 14(c) of the Fair Labor Standards Act (FLSA) allows employers to pay individuals less than the minimum wage if they have a physical or mental disability that impairs their earning or productive capacity. Currently, more than 5,600 employers pay special minimum wages to about 424,000 workers. The Department of Labor is responsible for the oversight of the provisions of section 14(c). Labor's Wage and Hour Division (WHD) of the Employment Standards Administration has responsibility for administering the special minimum wage program. Employers must obtain a certificate from WHD in order to pay workers with disabilities less than the federal minimum wage. WHD's responsibilities for administering the program include reviewing applications filed by employers for new 14(c) certificates and renewals, issuing the certificates, providing guidance and training to its own staff and employers, monitoring and enforcing compliance by employers, and ensuring that workers are paid the correct wages.

Some advocates for workers with disabilities believe that the special minimum wage provisions are necessary because they provide employment opportunities for many of these individuals. However, others have concerns about the appropriateness of paying these workers less than the minimum wage, including whether the provisions encourage individuals with disabilities to work indefinitely in settings primarily with other workers with disabilities rather than obtain jobs in the community.¹ In particular, legislative proposals have been made that would eliminate the special minimum wage provisions of the act for individuals with visual impairments. Although these proposals have drawn attention to the provisions of section 14(c), little is known about workers paid special minimum wages, their employers, or the Department of Labor's oversight

¹A job "in the community" refers to a job in which an individual works primarily with other workers who do not have disabilities, rather than in a setting in which most workers have disabilities.

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of the provisions. To provide the Congress with information it can use to evaluate these proposals, you asked us to (1) describe the characteristics of employers that employ individuals with disabilities at less than the minimum wage under the provisions of section 14(c), (2) describe the characteristics of workers with disabilities who earn less than the minimum wage, and (3) assess Labor's management of the special minimum wage program.

To obtain this information, we surveyed a random sample of work centers² and businesses nationwide that, according to Labor records, were authorized to employ workers with disabilities at special minimum wages during calendar year 2000; visited eight work sites where workers with disabilities are paid special minimum wages: Georgia, Illinois, Texas, and Virginia (one site each); and California and New York (two sites each). The sites were selected on the basis of their geographic location, the predominant impairment of the facilities' workers, and the number of workers paid special minimum wages in order to select sites that were either typical of those in the program or to meet specific selection criteria, such as including one facility that employed primarily workers with visual impairments.⁴ In addition, we talked with researchers, disability advocacy groups, employer groups, employers, 14(c) workers, and parents or guardians of 14(c) workers; interviewed Labor officials; and reviewed agency documents, databases, and individual case files.

We limited the scope of our study to work centers and businesses. Although schools, hospitals, and other facilities that provide residential care also employ workers with disabilities at special minimum wages, these entities are not typical of 14(c) employers in general and represent a small proportion of all 14(c) employers (2 percent are schools and 5 percent are hospitals or other residential care facilities). (See app. I for a

²In this report, the term "work center" is defined as a facility established to provide employment opportunities for individuals with disabilities. These facilities, formerly known as "sheltered workshops," are also often referred to as "community rehabilitation programs."

in this report, the term "business" is defined as a for-profit commercial business establishment—such as a fast food restaurant or a grocery store—or a nonprofit entity—such as a university or government agency—that employs mainly workers without disabilities. Most businesses that employ 14(c) workers are for-profit commercial business establishments.

⁴See app. I for additional information on the selection criteria for the sites.

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detailed description of our scope and methodology.) We conducted our work from August 2000 through July 2001 in accordance with generally accepted government auditing standards.

Results in Brief

There are more than 5,600 employers, nationwide, that pay special minimum wages to workers with disabilities; about 84 percent are work centers established to provide employment opportunities and support services to individuals with disabilities. Businesses comprise about 9 percent of these employers; the remaining 7 percent are hospitals or other residential care facilities and schools. On average, work centers employ a total of about 86 workers at special minimum wage rates. Work centers provide jobs most often in service-oriented work, such as grounds maintenance and light assembly work done primarily by hand and carried out under contracts with government agencies or private companies. In addition, almost all work centers provide a range of support services designed to enable 14(c) workers to obtain and perform their jobs, such as close supervision and transportation services. Many work centers also provide support services that may benefit 14(c) workers outside the workplace, such as speech therapy and psychological counseling. The types and levels of support services that work centers are able to provide to 14(c) workers, however, depend in part upon the funding available to them from state and county agencies that, together with production contracts, provide the major sources of funding for work centers. According to some of the work center managers who responded to our survey and managers at the sites we visited, without the provisions of section 14(c), work centers would have to obtain additional funds in order to continue their current level of operations. For all of the work centers we visited, we estimate that the increase in their payroll costs would be substantial if they were to employ all of their current 14(c) workers at the minimum wage.

On the basis of our survey, we estimate that 74 percent of the workers paid special minimum wages by work centers have mental retardation or another developmental disability as their primary impairment, and 46 percent have multiple disabilities. From the data reported by employers on the productivity of their 14(c) workers, we estimate that 70 percent of the workers are less than half as productive as workers without disabilities

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performing the same jobs. Because their productivity rates are so low, these workers receive a very low hourly wage rate; more than half of all 14(c) workers earns \$2.50 an hour or less. Eighty-six percent of 14(c) workers work part-time. Last year, about 13 percent of all 14(c) workers in work centers left the center; about 5 percent of the workers left to take a job in the community earning either special minimum wages or at least the minimum wage. Another 4 percent of the workers remained at the work center but progressed from jobs in which they earned less than the minimum wage to work at or above the minimum wage. More than half of all 14(c) workers employed by work centers had worked there for 5 years or longer, some workers at the sites we visited had been employed there for over 20 years. Most 14(c) workers are from 25 to 54 years of age. Although we were not able to determine how many 14(c) workers nationwide receive federal disability benefits or the Medicare and Medicaid coverage that goes along with these benefits, we were told by work center managers that many 14(c) workers at the sites we visited receive some type of cash disability payments and are covered by Medicaid, Medicare, or both. In addition to their income from work, 14(c) workers receive nonmonetary benefits from being in a work environment, including training in how to manage their finances and perform other activities of daily living.

Labor has not effectively managed the special minimum wage program to ensure that 14(c) workers receive the correct wages because, according to WHD officials, the agency placed a low priority on the program in past years. Instead, Labor devoted attention to other enforcement programs such as child labor and the garment industry. In fiscal year 2000, Labor began assigning additional resources to the program, increasing its enforcement efforts, and providing more training and guidance to its own staff and 14(c) employers. However, Labor lacks the data it needs to manage the program and determine what resources are needed to ensure compliance by employers. The data Labor has on the number of 14(c) workers and their employers and on the results of its reviews of employers' 14(c) certificate applications and investigations of employers are not accurate. Labor does not compile data on the resources it devotes to the program or the extent to which employers are complying with the provisions of section 14(c), including whether 14(c) workers are underpaid. Labor also has not done all it can to ensure that employers

'Labor has not, in most cases, verified the accuracy of employers' assessments of 14(c) workers' productivity levels on which their special minimum wages are based.

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comply with the law. It does not systematically conduct self-initiated investigations of employers, including verifying employers' assessments of 14(c) workers' productivity levels on which their wages are based. In addition, Labor has not followed up with employers who fail to reply to renewal notices for their 14(c) certificates. Moreover, Labor has provided little training to its staff on the requirements of the special minimum wage program to enable them to give employers accurate and consistent information and little guidance to employers on how to correctly compute special minimum wages.

To improve its management of the special minimum wage program, we are recommending that Labor collect and analyze the data it needs to properly manage the program and determine what resources to allocate to the program. To better ensure compliance with special minimum wage program requirements by employers, we are recommending that Labor systematically investigate 14(c) employers, follow up when employers do not respond to its notices that their 14(c) certificates are due for renewal, and train and provide guidance to Labor staff and 14(c) employers on program requirements. In its comments on a draft of this report, Labor noted that...

Background

Although estimates of the employment rate for individuals with disabilities vary, researchers and advocates agree that it is much lower than the employment rate for the U.S. workforce as a whole, particularly for individuals whose impairments are severe enough to affect their ability to work. The purpose of the provisions of section 14(c) of FLSA, as stated in the legislation, is to prevent the curtailment of employment opportunities for individuals with disabilities.⁶ An individual with a disability eligible to be paid special minimum wages is defined in the regulations as someone "whose earning or productive capacity is impaired by a physical or mental disability, including those relating to age or injury, for the work to be performed."⁷ Determining the impact of the legislation on the employment opportunities of individuals with disabilities severe enough to be eligible to be paid special minimum wages, including whether the purpose of the legislation to not curtail employment opportunities for these individuals is achieved, however, is difficult.

⁶29 U.S.C. 201, section 14(c).

⁷29 C.F.R. 525.3(d).

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