



We have the legal right of way.

**Disability Rights Ohio**  
**Comments on Section 14(c) of the Fair Labor Standards Act**  
**U.S. Department of Labor Office of Disability Employment Policy**  
**National Online Dialogue**

**Use of Section 14(c) certificates and observed trends**

The application of 14(c) certificates can lead to unlawful and discriminatory practices.

Disability Rights Ohio is a non-profit with a mission to advocate for the human, civil and legal rights of people with disabilities in Ohio, and is governed by a Board of Directors primarily made up of people with disabilities and family members of people with disabilities. DRO is Ohio's Protection and Advocacy System (P&A) and Client Assistance Program (CAP.) In our work on behalf of clients with disabilities, we have observed number of problematic trends in the use of 14(c) certificates in Ohio, particularly in sheltered workshops.

While advocating for three clients who worked in a sheltered workshop, DRO discovered that the 14(c) certificate held by our clients' employer categorically identified all employees as having a diagnosis of "MR." Setting aside the use of this inappropriate and antiquated term, we were alarmed by such a broad and sweeping characterization of the employees covered by the certificate, especially since two of our clients did not have *any* diagnosis of an intellectual disability. In their review, the Wage and Hour Division of the DOL later found that none of the clients we represented could be paid subminimum wage because the 14(c) employee could not demonstrate that our clients were "disabled for the work performed." Indeed, our clients were often times *more* productive than the "standard setter"—the baseline set by the employer of a theoretical person without a disability that is used to compute a sub-minimum "piece-rate" wage.

The findings by the DOL's Administrative Law Judge (ALJ) illustrate the flaws with using a production-based standard to evaluate whether a person with a disability should be paid at least the minimum wage. Employees perform at varying rates for a variety of reasons. As the ALJ found, production standards might not be met for other reasons than disability—he found it was just as likely that their productivity could be negatively impacted by boredom with a highly repetitive task, or because "they lacked a substantial economic impetus to perform at a higher level."

In addition to problems with over-application of certificates leading to unfair wages for people with disabilities, many employers with 14(c) certificates have only limited work options, many of which may not be compatible to that individual's abilities.

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Just like the rest of us, people with disabilities have varying abilities and when given meaningful opportunities to explore employment that fits their abilities outside 14(c) system—when they are no longer bored, unchallenged, and lacking “substantial economic impetus”—they thrive. Many people, including parents, loved ones, and even former 14(c) employers, are happily surprised at such outcomes. This is illustrated well in the documentary film, “Bottom Dollars.” <https://rootedinrights.org/video/bottom-dollars>

### **Experiences transitioning from the use of Section 14(c) certificates**

Individuals, states and providers are successfully transitioning away from a 14(c) model.

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DRO applauds Ohio for establishing an Employment First policy and for making recent investments in pilot programs to help employment providers transition from a segregated, 14(c) model to a competitive, integrated employment model that provides individualized supports to individuals with disabilities. Ohio’s Employment First policy starts from the presumption that all individuals can work in integrated, competitive employment, and provides a roadmap for helping individuals and providers identify abilities, interests and needs to make this happen. <https://ohioemploymentfirst.org>. In addition, Congress passed WIOA (Workforce Innovation and Opportunity Act) in July of 2014. Section 511 specifically limits entry into a 14(c) segregated employer for youth with disabilities without first providing pre-employment transition and vocational rehabilitation services. Further, all individuals making subminimum wage at a 14(c) employer must be provided career counseling annually.

Many individuals and employment providers have successfully transitioned to integrated, competitive employment that no longer relies upon 14(c) and subminimum wage, but instead pays all individual fair wages. The documentary film “Bottom Dollars” produced by the organization Rooted in Rights tells the story of many individuals’ experiences in sheltered workshops, as contrasted with their later employment in jobs that were matched with their abilities. <https://rootedinrights.org/video/bottom-dollars>

Some individuals may need significant supports but this is being done very successfully already, so we know it is possible—we just need to expand it to make sure everyone, including people with disabilities, has the opportunity to work in an area that interests them for a fair wage.

## **Vision for the future of work and workplaces; the landscape over the next five to ten years**

The future is here—the Fair Labor Standard Act just needs to catch up with it.

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The 14(c) provision of the Fair Labor Standards Act has been around since the 1930's. It is premised on a number of antiquated and out of date assumptions, including a misapprehension that many people with disabilities are unable to keep pace in the workplace with others. Things have changed a great deal since the passage of 14(c). With the passage of the Rehabilitation Act of 1972, the Americans with Disabilities Act, and more recently, WIOA, Congress recognized that people with disabilities not only *could* work in integrated employment, but that they had a *right* to do so, with accommodations that could enable them to do so. Thus, the very nature of 14(c) is at odds with the civil rights protections that all people with disabilities enjoy today. Professor Sam Bagenstos of the University of Michigan Law School addresses the conflict between 14c and the Americans with Disabilities Act in this piece:

[https://nfb.org/images/nfb/documents/word/14c\\_report\\_sam\\_bagenstos.doc](https://nfb.org/images/nfb/documents/word/14c_report_sam_bagenstos.doc)

We recognize that barriers to work for people with disabilities still exist, but they are external barriers imposed by society not an intrinsic part of who people with disabilities are or can be. Despite the passage of the ADA, there are still barriers to work including: lack of accommodations; lack of training and access to assistive technology; lack of effective communication; low expectations; and lack of transition services from schools. The whole purpose of the ADA is to remove barriers, and this includes barriers to work at a job one chooses and for fair wages. We need to focus our efforts going forward on removing these barriers and expanding opportunities for people with disabilities to engage in work for fair pay, when they wish to do so.