



City of Seattle

Edward Murray, Mayor

Seattle Commission for People with Disabilities

Honorable Ed Murray, Mayor of Seattle
Council President Bruce Harrell, District 2
Councilmember Lisa Herbold, District 1
Councilmember Kshama Sawant, District 3
Councilmember Rob Johnson, District 4
Councilmember Deborah Juarez, District 5
Councilmember Mike O'Brien, District 6
Councilmember Sally Bagshaw, District 7
Councilmember Tim Burgess, District 8
Councilmember Lorena González, District 9
600 Fourth Avenue
Seattle, WA 98104

CC: Dylan Orr, Director
Seattle Office of Labor Standards
810 3rd Ave
Suite 375
Seattle, WA 98104

Dear Mr. Mayor and Members of the Seattle City Council,

The Seattle Commission for People with Disabilities unanimously urges you and the City to uphold Seattle's commitment to equal rights and protections for people with disabilities, and end the exemptions to pay workers with disabilities subminimum wages.

The Disability Commission engaged in an extensive four-month review of the practice in Seattle, in statute, policy, and actuality. We have also engaged with CM Lisa Herbold's office and with staff from the Seattle Office of Labor Standards, the King County Developmental Disabilities Division, and Washington Department of Labor & Industries.

Background:

Federal law allows employers to apply for exemption from the federal minimum wage (currently \$7.25/hr) under section 14(c) of the Fair Labor Standards Act of 1938. Hundreds of thousands of disabled workers around the country are paid widely variable wages, many under a dollar an hour and as little as 0-1 cent an hour. In Seattle there is one employer of subminimum wages, the Northwest Center, which employs 128 workers at subminimum wage, including an enclave



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at the Ballard Locks. The lowest-paid worker under this program in Seattle makes 36 cents an hour.

In recent years, the number of both subminimum workers and exempt employers has decreased dramatically. In 1996, the state of Vermont passed a law banning both new entrants and state funds into subminimum wage and sheltered work¹. They then focused on transitioning workers into supported employment. By 2002 Vermont converted its last sheltered workshop to supported employment and moved its last subminimum wage worker to employment at or above minimum wage.

(¹ Sheltered work is segregated work performed by disabled workers, either in a workshop or an all-disabled unit such as an enclave. There are non-disabled supervisors but rarely non-disabled coworkers. This may or may not be accompanied by subminimum wage--some workers are paid subminimum wage in integrated environments, and some sheltered workshops pay equal or more to minimum wage. While most disability organizations and most Commissioners oppose segregated work, our comments here focus on subminimum wage).

In 2015, New Hampshire became the first state to explicitly ban special wage certificates for disabled workers, with the support of its 3 subminimum wage employers. In 2016, Maryland became the second state to ban special wage certificates, but so far no jurisdictions on the west coast have followed suit. However, both Rhode Island and Oregon have been subject to consent decrees, wherein they agreed that their separation of workers violated the Olmstead Ruling, and have taken steps to move workers into competitive, integrated employment at at least minimum wage.

Federally sheltered work is usually classified as pre-vocational work (that is, work designed to prepare a disabled worker for 'real' employment) and group-supported employment (work performed by workers all doing the same task, for example, shredding paper), as well as some other examples not found in Seattle. CMS, the Centers for Medicare and Medicaid Services, made a ruling that all pre-vocational work in the country must be phased out in 5 years, by March of 2019.

Every state, including Washington, submitted a plan to be approved by CMS-- additionally in Washington each county has a compliance plan. King County Developmental Disability Division has been working with the Northwest Center, as well as another employer in Kent, to ensure all remaining employees are no longer enrolled in subminimum, pre-vocational employment. In Seattle this is 34 workers--94 of the Northwest Center's workers are employed under programs like group-supported employment.



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Beyond the federal minimum wage, Washington state and Seattle both have separate minimum wages and a process for exemption. Under Seattle's minimum wage, an employer can apply for exemption from the city's minimum wage only after receiving an exemption from the state: the wage awarded is the same percentage of the city's minimum wage as the percentage of the state minimum wage awarded by L&I. For example, a worker L&I authorizes to be paid 75% of the state minimum wage will be paid 75% of the applicable Seattle minimum wage.

The Seattle Office of Labor Standards has awarded 6 exemptions, of which two are active, one for Ballard First Lutheran Church and one for Town & Country Market (dba Ballard Market). Each employer employs one worker at \$11.01/hr (they would normally be employed at \$13/hr). The Northwest Center has an exemption from neither the city nor the state, and the Office of Labor Standards is currently conducting an investigation.

Process:

Shaun Bickley, Chair of the Disability Commission's Employment Committee, presented this background information at the March 16, 2017 Commission meeting. From that point the Commission began contacting both community stakeholders and state, county, and city employees. We received a presentation from Karla Lynch at the King County Developmental Disabilities Division on the county's plan and process for phasing out pre-vocational employment at the May 18 Commission meeting and engaged in dialogue on the current law and ordinance.

On June 15, the Disability Commission received public comment from the following individuals and organizations in favor of ending the exemption for subminimum wage:

Shawn Latham, Chair, Allies in Advocacy
Ramona Hattendorf, Director of Advocacy, the Arc of King County
Ivanova Smith, Activist-Advocate, AtWork!
Disability Rights Washington
Marcy Carpenter, President, National Federation of the Blind of Washington
Tiras Smith, President, People First of Washington
Eric Matthes, Chair, Self-Advocates in Leadership

This is the largest amount of public comment the Disability Commission has ever received on a topic. In addition, we reached out to the workers and their families employed under the city exemptions. Both workers and their families declined to



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comment in a public manner. We also reached out to Ballard First Lutheran Church, Ballard Market, and the Northwest Center, all of whom declined to comment, attend, or make any public statement on the ordinance or topic of subminimum wage.

We discussed research from the National Council on Disability and others that subminimum wage is harmful to disabled workers. We also shared the positions of national organizations run by workers and people with disabilities that unanimously oppose subminimum wage, including but not limited to:

ADAPT

American Association of People with Disabilities
Association of People Supporting Employment First
Autism Society of America
Autistic Self-Advocacy Network
Change to Win
Japanese American Citizens League
National Association of the Deaf
National Council on Independent Living
National Disability Institute
National Disability Rights Network
National Federation of the Blind
National Youth Leadership Network
Self-Advocates Becoming Empowered
Service Employees International Union
TASH

As might be evident, subminimum wage is overwhelmingly opposed by workers with disabilities and the evidence against subminimum wage as a valid practice is substantial. To share from the Board of APSE:

Individuals don't need sub-minimum wage for employment success: The underlying rationale for the existence of sub-minimum wage has been that it creates employment opportunities for individuals with disabilities, which would not otherwise be available. Yet the evidence to the contrary in recent years is quite clear: that with proper planning, the right job match, the right supports, and right funding incentives, that even individuals with the most significant disabilities can work successfully in the community at minimum wage or higher.

Service providers don't need sub-minimum wage for employment success: Over the past 20 years, numerous facility-based



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programs utilizing 14(c) certificates have been converted to a service model that supports individuals with a full range of disabilities in integrated community employment. The evidence is clear that sheltered workshops and similar programs have the ability to change their method of doing business to one that is in synch with our national disability policy of full integration and inclusion of people with disabilities into mainstream society.

States don't need sub-minimum wage for employment success:

Outcome data show massive variability from state-to-state in terms of employment outcomes for people with disabilities. For example, in 2007 the integrated employment outcomes for state Intellectual/Developmental Disability agencies varied from over 60% to less than 4%. It is clear from this data that within the context of a solid values base, a network of dedicated stakeholders, and clarity about the system's goals, states can move away from reliance on sub-minimum wage and sheltered workshops.

Bad job matches are the real issue: For every individual, there are jobs and tasks we are good at and those we are ill-suited for. People with disabilities are no different. The work that individuals are required to perform at sub-minimum wage is nothing more than simply a bad match for their skills, abilities, and interests - and in fact the sub-minimum regulations reinforce this. Per DOL, in order for an individual with a disability to be paid sub-minimum wage, the individual's disability must impair their capacity to earn wages or productivity for the specific work being performed (not every job). Furthermore, a blanket assumption of sub-minimum wage for all types of work is not permitted, and the regulations specifically note that there may be other types of work or other employment settings where the individual is entitled to the minimum wage.

Productivity rate is not a fair basis for wages: Sub-minimum wage is based on the concept that production rate is the sole or primary criteria on which a business bases compensation and values a worker. This is a simplistic notion, not at all based on the realities of operating a business and managing employees, particularly in the 21st century economy. Individuals are valued as employees for a wide range of abilities, gifts and talents: their customer service skills, their ability to get along with co-workers, their reliability, the quality of work, etc. The argument that the value of an employee should be solely based on a "production rate" is an outdated concept.



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The productivity standard is discriminatory towards people with disabilities: People with disabilities are among the few groups whose pay is based strictly on a productivity rate. It is discriminatory that individuals with disabilities are subjected to such a standard, while most workers are not.

Use of sub-minimum wage conflicts with self-determination and choice: Earning sub-minimum wage in a facility-based program is in conflict with the concept of self-determination and choice, with the individual having little control over how they spend their day, use their talents, gifts and abilities, and how much they earn. In contrast, community employment provides tremendous opportunities to exercise self-determination and choice - through economic empowerment, the ability to choose from among a broad array of possible job and career options, and the opportunity to use skills and abilities in a way that the individual chooses and that best meets their specific needs.

People with disabilities want to work in the community: Studies have shown that the vast majority individuals with disabilities in sheltered workshops would prefer to work in the community, instead of spending their days in facility-based work programs, regardless of the level of their disability.

Sub-minimum wage is at odds with national disability policy: The existence and use of sub-minimum wage is a reflection of viewing people with significant disabilities as incapable of being fully integrated into the general labor force, a view that is at odds with the national disability policies that have developed over the past 40 years. A multitude of legislative and policy developments (particularly the Americans with Disabilities Act and IDEA), have made it very clear that the public policies of the United States should be based on viewing disability as a natural part of human experience that in no way diminishes a person's right to fully participate in all aspects of life. It is not acceptable to use public resources in a way that is in conflict with our national disability policy.

Sub-minimum wage is being used to support a more costly service delivery model: Research indicates that over time, supported employment is cost efficient - for every \$1 of costs taxpayers and workers invest into supported employment, more than \$1 is returned in the form of monetary benefits. A study of all 231,000 individual supported employment cases closed by public Vocational Rehabilitation between 2002 and 2007 found that the average supported employee generated a



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net monthly benefit to taxpayers of \$251 per individual, and a benefit-cost ratio of 1.46. Further, supported employees were cost-efficient regardless of their primary disability or presence of secondary conditions.

Additionally, studies indicate that supported employment is significantly less expensive than sheltered workshops. Sub-minimum wage is not only a bad deal for individuals with disabilities – it's a bad deal for taxpayers.

In addition to these points outlined by APSE, the Disability Commission has identified additional discrepancies with subminimum wage in Washington and in Seattle. Federal standards for granting special wage certificates require a demonstration that the individual's disability impacts productivity, usually with a time study. But L&I does not require a time study for individuals making at least 75% but less than 100% of Washington's minimum wage, and since the Office of Labor standards outsources determinations to L&I, neither does the Office of Labor Standards. This is a clear violation Seattle's nondiscrimination ordinances, since it fails to even make the pretense of an exemption made on the basis of productivity and instead allows lower pay to be made on the basis of a diagnosis. Indeed, one worker, employed at Ballard First Lutheran Childcare, receives subminimum wages for child care, a form of labor not able to be measured in productivity.

Federal standards also require an employer to demonstrate that other employment opportunities for disabled workers are not available in the community, something I think would be a very hard sell in a thriving city like Seattle.

Lastly, even where these regulations exist they are not enforced, as evidenced by the Northwest Center operating without state and city exemptions (or a federal exemption even being granted in a metropolis like Seattle), or employers allowed to pick the wage they want to pay their workers and L&I granting it without any due process, as in the case of Ballard Market and Ballard First Lutheran. Workers with disabilities would be better served by being protected under the same labor laws as everyone else, and not labyrinthine regulations without enforcement.

Conclusion:

The Seattle Commission for People with Disabilities urges the Mayor and City Council to direct the Office of Labor Standards to stop issuing exemptions from the city's minimum wage, and to allow the current exemptions to expire. Both employees being paid legally under the city exemptions work part time--one works for 3 hours a week, placing a burden of \$5.97/week of additional wages on her employer. This is the perfect time to close this loophole, while it impacts as few people as possible, and set an example for the rest of the west coast.



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For additional questions or background information, please contact Shaun Bickley, Chair of the Commission's Employment Committee, at 512-667-0013 or ShaunLBickley@gmail.com.

Sincerely,

Cindi Laws, Co-Chair
Seattle Commission for People with Disabilities

Steve Lewis, Co-Chair
Seattle Commission for People with Disabilities

Shaun Bickley, Employment Chair
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