

**REPORT OF THE DEPARTMENT FOR AGING
AND REHABILITATIVE SERVICES AND
DEPARTMENT OF BEHAVIORAL HEALTH AND
DEVELOPMENTAL SERVICES**

**Subminimum Wage
Employment of Individuals
with Disabilities
(Chapter 782, 2023)**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 4

**COMMONWEALTH OF VIRGINIA
RICHMOND
2024**



SUBMINIMUM WAGE EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES

Report to the

**Governor of the Commonwealth of Virginia
Chair of the House Labor and Commerce Committee
Chair of the Senate Commerce and Labor Committee**

**Virginia Department for Aging
and Rehabilitative Services**

**Commonwealth of Virginia
Richmond
May 1, 2024**



COMMONWEALTH OF VIRGINIA
DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

KATHRYN A. HAYFIELD
Commissioner

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May 1, 2024

TO: The Honorable Glenn A. Youngkin,
Governor of the Commonwealth of Virginia

The Honorable Jeion A. Ward
Chair, House Labor and Commerce Committee

The Honorable R. Creigh Deeds
Chair, Senate Commerce and Labor Committee

FROM: Kathryn Hayfield
Commissioner, Department for Aging and Rehabilitative Services

SUBJECT: Report on Subminimum Wage Employment

As Commissioner of the Virginia Department for Aging and Rehabilitative Services (DARS), I am pleased to present this report on the status of individuals with disabilities employed in subminimum wage employment in response to Chapter 782 of the 2023 Virginia Acts of Assembly.

If you have any questions regarding the report, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Kathryn A. Hayfield".

Kathryn A. Hayfield
Commissioner

Executive Summary

Chapter 782 of the 2023 Virginia Acts of Assembly amended the Code of Virginia as relates to the exclusion of individuals with disabilities from coverage under the Virginia Minimum Wage Act. Chapter 782 further directed that:

[T]he Department for Aging and Rehabilitative Services and the Department of Behavioral Health and Developmental Services shall submit a report by May 1, 2024, to the Governor and the General Assembly on the number of individuals with disabilities employed in subminimum wage employment and the movement of individuals from subminimum wage employment to competitive integrated employment.

The following report highlights the current status of individuals with disabilities employed in subminimum wage employment in the Commonwealth of Virginia. Based on data available as of March 1, 2024 from the U.S. Department of Labor, there are currently five remaining employers in Virginia who are legally permitted to pay subminimum wage to individuals with disabilities (also known as “14(c) employers”) and they employ 129 people pursuant to these certificates.

Background

Section 14(c) of the federal Fair Labor Standards Act (FLSA) authorizes employers, after receiving a certificate from the Wage and Hour Division of the U.S. Department of Labor, to pay subminimum wages - wages less than the federal minimum wage - to workers who have disabilities. Because the FLSA allows states to establish higher wage requirements, state law may prohibit the payment of wages less than the state minimum wage to workers with disabilities.

Chapter 782 of the 2023 Virginia Acts of Assembly provides that individuals with disabilities can only continue to be paid at subminimum wage pursuant to the FLSA (i.e., excluded from the Virginia Minimum Wage Act) if those individuals were paid subminimum wage prior to July 1, 2023 by an employer that was authorized to pay a subminimum wage prior to July 1, 2023. In addition, as of July 1, 2030, no individual with disabilities will be excluded from coverage under the Virginia Minimum Wage Act, essentially eliminating the payment of subminimum wages to individuals with disabilities in the Commonwealth.

Current Status

Prior to 2023, the Department for Aging and Rehabilitative Services (DARS) had begun a significant initiative to support individuals with disabilities in competitive, integrated employment and reduce, if not completely eliminate, the number of individuals with disabilities in subminimum wage employment in Virginia. In October 2022, DARS was one of 14 state vocational rehabilitation agencies awarded a five-year multi-million dollar grant from the U.S. Department of Education to develop and implement a project (nationally known as the Disability Innovation Fund; Subminimum Wage to Competitive Integrated Employment Project)-- the aim of which is to help individuals with disabilities engaged in subminimum wage employment transition to competitive integrated employment and also to assist youth with disabilities at risk of entering subminimum wage employment when they transition from school to the workforce.

As of January 2023, the U.S. Department of Labor indicated that 10 employers in VA held a 14(c) certificate with approximately 325-340 individuals employed at subminimum wage. As a result of the phasing out of 14(c) waivers pursuant to Chapter 782 of the 2023 Virginia Acts of Assembly, a number of employers opted to not renew their 14(c) certificates prior to the 2030 deadline. Of the employers opting not to renew their certificates, some had already ceased using the certificate, others increased individual wages to the state minimum wage, and others transitioned individuals to alternative services such as other employment options or day services.

The U.S. Department of Labor reports that as of March 1, 2024, five employers in the Commonwealth maintain a 14(c) certificate, employing 129 individuals in subminimum wage employment:

Employer	Location	Workers Paid Subminimum Wages
Dickenson County Adult Development Program	Clintwood, VA	7
Lynchburg Sheltered Industries, Inc	Lynchburg, VA	30
Mount Rogers Industrial & Development Center	Atkins, VA	61
Shen-Paco Industries, Inc.	Luray, VA	24
Sugar Plum, Inc.	Virginia Beach, VA	7

Mount Rogers Community Services employs 47% of these individuals and is actively partnering with DARS on the grant project. DARS plans to engage with the other four certificate holders later in the grant period.

The Department of Behavioral Health and Developmental Services (DBHDS) also recognizes the importance of employment in the lives of individuals with disabilities. DBHDS has undertaken efforts to support individuals with disabilities in having increased access to integrated community-based employment as the first and priority service option. According to DBHDS' December 2023 Semi-Annual Employment Data Report, 48 individuals transitioned out of subminimum wage employment during calendar year 2023. Four of these individuals transitioned to Competitive Integrated Employment; 23 individuals transitioned to day support or

community engagement services funded through Medicaid Waiver; and, 21 individuals transitioned out of all reported services.

Conclusion

Recent data shows a decline in the use of 14(c) certificates and a transition to competitive integrated employment for individuals with disabilities, although it is difficult to ascertain the full and specific impact of Chapter 782 of the 2023 Virginia Acts of Assembly at this point. In advance of the anticipated end of subminimum wage employment for individuals with disabilities in Virginia, DARS' multi-year project will continue to develop sustainable services and supports to allow individuals with disabilities the opportunity to engage in employment in the general workforce that matches their knowledge, skills, abilities and is compensated at customary wages for the positions.

