



DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 525

RIN 1235-AA14

Employment of Workers with Disabilities under Section 14(c) of the Fair Labor Standards Act; Withdrawal

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Department of Labor (Department) is withdrawing its notice of proposed rulemaking (NPRM) published on December 4, 2024 (89 FR 96466), which proposed to amend 29 CFR part 525 to phase out the issuance of subminimum wage certificates under section 14(c) of the Fair Labor Standards Act (FLSA). With this action, the Department is formally discontinuing the rulemaking process and removing the proposal from further consideration.

DATES: The proposed rule published on December 4, 2024 (89 FR 96466), is withdrawn as of [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: The docket for this withdrawn proposed rule is available at <https://www.regulations.gov/docket/WHD-2024-0001>.

FOR FURTHER INFORMATION CONTACT: Daniel Navarrete, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division (WHD), U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693-0406 (this is not a toll-free number). Alternative formats are available upon request by calling 1-866-487-9243. If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

I. Background

The FLSA generally requires that employees be paid at least the Federal minimum wage, currently \$7.25 per hour, for every hour worked and at least one and one-half times their regular rate of pay for each hour worked over 40 in a single workweek.¹

Since its enactment in 1938, section 14 of the FLSA has required the Department to provide for the issuance of certificates permitting employers to pay workers at wage rates below the federal minimum wage when the worker's disability impairs his or her earning or productive capacity. Specifically, section 14(c) states that the Department, "to the extent necessary to prevent curtailment of opportunities for employment, *shall* by regulation or order provide for the employment, under special certificates, of [qualifying] individuals. . . at wages which are lower than the minimum wage."²

The Department's Wage and Hour Division (WHD) is responsible for administering the section 14(c) certificate program and enforcing its requirements.

II. Summary of the Notice of Proposed Rulemaking

On December 4, 2024, the Department published a notice of proposed rulemaking (NPRM) in the *Federal Register* (89 FR 96466), in which it reviewed a number of legal and policy developments that have expanded employment opportunities and protections for individuals with disabilities since Congress first enacted the subminimum wage provision in 1938 and since the Department last substantively revised its section 14(c) regulations in 1989.

Based on this review, the Department preliminarily concluded that subminimum wages are no longer necessary to prevent the curtailment of employment opportunities for individuals with disabilities. This preliminary conclusion largely rested on its evaluation of legal and policy

¹ 29 U.S.C. 206(a), 207(a).

² 29 U.S.C. 214(c)(1) (emphasis added).

developments, including the enactment of state laws phasing out comparable subminimum wage provisions and the declining use of section 14(c) certificates.

Based on this preliminary conclusion, the proposed rule would have amended 29 CFR part 525 to cease issuance of new section 14(c) certificates to employers submitting an initial application on or after the effective date of a final rule, and to permit existing section 14(c) certificate holders—assuming all legal requirements were met—to continue to operate under section 14(c) certificate authority for up to 3 years after the effective date of a final rule.

III. Summary of Comments

The Department received over 17,000 comment submissions, including more than 11,000 unique comments, in response to the NPRM. Commenters represented a broad array of stakeholders, including individuals with disabilities and their family members, disability rights advocates, Members of Congress, service providers, section 14(c) certificate holders, their employees who work with individuals with disabilities, and others. The Department appreciates the wide range of comments from a variety of stakeholders and notes that the unique perspectives provided underscore the broad array of interest in this issue. Comments may be viewed on the regulations.gov website, docket ID WHD-2024-0001.

Some comments expressed general support for or opposition to the proposed rule. Others raised more specific legal and policy concerns. Several commenters addressed the Department’s authority under section 14(c) of the FLSA. That provision states that “[t]he Secretary, to the extent necessary to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment, under special certificates, of individuals ... whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury” at subminimum wage rates.³ Some commenters agreed with the Department’s preliminary conclusion that section 14(c) certificates are no longer necessary and that the FLSA provides authority for the Department to determine when that is the case. However, others—including the Chairman and

³ 29 U.S.C. 214(c)(1).

several Members of the U.S. House of Representatives Committee on Education and Workforce—asserted that “DOL does not have the statutory authority to stop issuing 14(c) certificates.”⁴

Commenters also expressed opposition to the Department’s proposal to phase out the issuance of section 14(c) certificates on consequential grounds, focusing on: (1) that the proposed rule could lead to the closure or downsizing of community rehabilitation programs (CRPs), which hold the vast majority of section 14(c) certificates and provide many services to individuals with disabilities beyond employment, (2) that some individuals with disabilities are not able to work in competitive integrated employment (CIE) and would face unemployment or reduced employment opportunities without the option of working under a section 14(c) certificate, and (3) that workers with disabilities should be able to choose between subminimum wage employment and CIE.

Commenters supporting the Department’s proposal focused on, among other things: (1) that all workers with disabilities have a right to be paid at least the Federal minimum wage, (2) that the payment of subminimum wages is an unfair, antiquated, and discriminatory pay practice, and (3) that section 14(c) certificates are no longer necessary for individuals with disabilities to successfully obtain employment at or above the full Federal minimum wage, as demonstrated by several states that have already moved away from the payment of subminimum wages.

⁴ Letter from Hon. Tim Walberg, Hon. Virginia Foxx, Hon. Glenn Thompson, and Hon. Glenn Grothman, Chairman and members of the House Committee on Education and Workforce, to Acting Secretary Julie Su, U.S. Department of Labor, *RIN 1235-AA14, Employment of Workers with Disabilities Under Section 14(c) of the Fair Labor Standards Act* (Jan. 17, 2025), <https://www.regulations.gov/comment/WHD-2024-0001-16506>.

IV. Rationale for Withdrawal

The Department has carefully considered the wide range of views, information, analysis, and proposed alternatives submitted in response to the NPRM. In light of the record and for the reasons set forth below, the Department has decided to withdraw the NPRM.

The Department takes seriously the concerns expressed by Members of Congress and others that it lacks statutory authority to unilaterally and permanently terminate the issuance of section 14(c) certificates. Section 14 of the FLSA includes both permissive and mandatory provisions. For example, section 14(d) provides that the Secretary of Labor “*may* by regulation or order” exempt certain student workers from FLSA wage-and-hour requirements. By contrast, section 14(c) states that the Secretary “*shall* by regulation or order provide for the employment, under special certificates, of individuals ... at wages which are ... lower than the minimum wage” when the individual’s disability impairs their earning or productive capacity. Where, as here, “a statute distinguishes between ‘may’ and ‘shall,’ it is generally clear that ‘shall’ imposes a mandatory duty.” *Kingdomware Tech., Inc. v. United States*, 579 U.S. 162, 172 (2016) (citation omitted). Thus, section 14(c) imposes a mandatory duty on the Department to provide for the issuance of subminimum wage certificates “to the extent necessary to prevent curtailment of opportunities for employment.”

Further, although some states have ended subminimum wage programs, they have done so through state legislation consistent with their respective constitutional frameworks, and the existence of such state laws do not bear on the Department’s statutory obligations under section 14(c). *See* 89 FR at 96489 (listing state legislation). The fact that some States ended their state-law subminimum wage provisions does not necessarily mean such provisions are no longer needed to prevent curtailment of employment opportunities. It may simply mean that those state legislatures made policy tradeoffs between the minimum wage and employment opportunities. Congress may also make that policy tradeoff with respect to certain disabled persons and eliminate the 14(c) program.

Notwithstanding the Department’s lack of statutory authority to repeal a congressionally mandated program, the NPRM preliminarily concluded that section 14(c) certificates “are no longer necessary” to prevent curtailment of employment opportunities. *Id.* at 96467. This conclusion essentially presumes that no employment opportunity for qualifying individuals with disabilities is curtailed by the federal minimum wage.

While the Department cited a substantial decline in the use of section 14(c) certificates—from approximately 424,000 workers in 2001 to approximately 40,579 in 2024—this decline does not establish that no current need remains. *See id.* at 96473. To the contrary, the continued existence of tens of thousands of workers utilizing the section 14(c) program suggests a nonzero population for whom section 14(c) remains necessary. That inference is bolstered by comments asserting that many individuals with significant disabilities would face unemployment, underemployment, or loss of ancillary services if 14(c) options were eliminated.

Finally, commenters on all sides emphasized the importance of ensuring that sufficient funding, resources, and support services exist to avoid disruptions in employment and the discontinuation of services from CRPs that could occur as a result of a transition away from subminimum wages, as well as to enhance community integration for individuals with disabilities.

In light of these concerns—most notably about the lack of legal authority to tear down what Congress has mandated—the Department concludes that it is most appropriate to withdraw the proposed rule from consideration. Accordingly, the Department is withdrawing the NPRM published on December 4, 2024.

V. Conclusion

By withdrawing the proposed rule, the Department is formally concluding this rulemaking proceeding. If the Department determines in the future that revisions to 29 CFR part 525 are warranted, it will initiate a new rulemaking by publishing a notice of proposed rulemaking in the *Federal Register*.

Accordingly, the NPRM published in the *Federal Register* on December 4, 2024, at 89 FR 96466 is withdrawn.

Donald Harrison,
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Wage and Hour Division.

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