Still Segregated: The Subminimum Wage and Sheltered Workshops

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Abstract

This paper explores the laws and policies that have allowed employees with disabilities to be paid a subminimum wage for work that is often the equivalent of their non-disabled counterparts, and does not support self-determination or self-sufficiency. Sheltered workshops use these rules to exploit individuals with disabilities while reaping the financial benefits and perpetuating a life of poverty for their employees. Parents and caregivers fear exploitation and choose to place individuals with disabilities in these workshops under the assumption that a segregated setting means protection, without considering the desires or goals of the individual. This paper argues the inequality of segregated work settings at a subminimum wage rate.

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The Subminimum wage was introduced through the Fair Labor Standards Act of 1938 (FLSA), Section 14(c), during the same time that a national minimum wage rule went into effect. Section 14(c) allows for certification that authorizes an employer to pay less than minimum wage to an individual “whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury…” with the purpose of “prevent[ing] curtailment of opportunities for employment” (Fair Labor and Standards Act of 1938). There was fear when the FLSA was introduced that the new minimum wage would increase the cost of business so dramatically that employing individuals unable to produce at the necessary rate would be out of the question. Section 14(c) was included to ensure people with disabilities would still be seen as employable. Although this act appeared to be well intentioned in 1938, it has developed into an exploitative employment practice of segregating individuals with disabilities in sheltered workshops, while employers reap the financial benefits.
 Sheltered Workshops (also known as work centers) are organizations authorized to employ individuals with disabilities at a subminimum wage to prepare for gainful work in the general economy (Social Security Administration, 2017). These centers are expected to provide work experience and other services such as physical and vocational rehabilitation, and basic work and life skills. These jobs are located in a segregated setting where there is little to no interaction between disabled and nondisabled people. Employees are assigned repetitive, often assembly-line, tasks that do not offer personal growth or skill development, nor are they job responsibilities that the individual finds fulfilling. Most employees are taught skills that only apply to the specific task assigned at the workshop and those skills cannot be transferred into competitive employment. Nearly 84% of all 14(c) certificate holders are sheltered workshops and 95% of workers receiving a subminimum wage under this certificate are employed through these sheltered workshops (Special Minimum Wage Program, 2001).
 Parents of people with disabilities commonly believe that sheltered workshops should be valued as a community service; a safe and secure place their child can socialize, feel productive, and earn some spending money. Sheltered workshops are used as an adult daycare service, or respite care, when children age out of school and need somewhere to spend their days while their parents work. Caretakers with this mentality are not concerned about the person with a disability living a self-determined life or learning skills to live independently; they are fearful of their disabled child being alone or exploited and it often consumes the decision making process.
 The fears are the deciding factors for choosing to place a child in a sheltered workshop setting. Placing trust in the opinion “segregation equals safety” can be destructive and cause more harm than good by well-meaning caretakers. Some parents even go as far as placing their children in institutions where they live and work in a completely segregated environment. There is always a higher risk of exploitation in isolated settings, increasingly so for individuals with disabilities. Being employed in a segregated environment allows potential abusers to target their victims with ease, hide their abuse, take advantage of an individual’s disability that will allow abuse to go unreported (i.e., nonverbal victims), as well as limit the victim’s contact with people they could report the abuse to. A notable example of a sheltered workshop exploiting disabled employees is the story of Henry’s Turkey Service and *The ‘Boys’ in the Bunkhouse* (Barry, 2014). This case is referenced regularly in regards to the dangers of sheltered workshops:
 Henry’s Turkey Service employed dozens of men with developmental disabilities in Atalissa, Iowa where they lived and worked for more than 30 years, being paid a subminimum wage. They earned about $65 a month after their employer/caregiver factored in cost of feeding and housing the men. Their housing was an old bunkhouse on the grounds of the farm, which the employer owned outright. It was dilapidated with no heat and infested with cockroaches. They worked the same job and same long hours as their nondisabled counterparts, yet they were paid significantly less and not offered any skills training to move into competitive integrated employment. They were also subject to physical and verbal abuse. The men were finally let go from their segregated employment after Henry’s Turkey Service felt they were no longer able to do their jobs, but only after they had trained their replacements.
They were sent to nursing homes or back to their family members capable of providing care. The men had no savings, no retirement, and were laden with health problems due to neglect. (Barry, 2014).
 All of these unfortunate events could have been avoided had the men not been segregated. The business, Henry’s Turkey Farm, saved money by employing the men under a 14(c) certificate and expecting them to complete the same work as their non-disabled co-workers. The men were not offered skills training, they were unaware that they could choose to leave or acquire different employment, and from all evidence, they were performing job functions at an equal rate as their peers. This experience is not exclusive to the men of Atilissa; this is a story that is told repeatedly by individuals working in Sheltered Workshops.
 14(c) certificate holders are expected to meet certain requirements to renew their certification. Section 511 of Workforce Innovation and Opportunities Act (WIOA) requires the certificate holders must inform employees of certain training opportunities available, offer career counseling, and information and referral services annually (Workforce Innovation and Opportunities Act, 2014). Vocational Rehabilitation (VR) agencies as well as Department of Licensing (DOL) are permitted in WIOA to review compliance of the certificate holders. However, these agencies do not always have the capacity to review documentation for every employee being paid a subminimum wage by the certificate holders, allowing for noncompliance and possible exploitation of people with disabilities. For example, as of January of 2017, an internal report at The Department of Vocational Rehabilitation (DVR) claims that Washington has 1,738 people employed under a 14(c) and there is only one person that is responsible for ensuring they are all receiving the required counseling and resources.
 It has been confirmed through various research methods and congressional findings that people with disabilities, “…as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally” (42 U.S. C. § 12101). Allowing the segregation of people with disabilities supports the opinion that these individuals are substandard. Sheltered workshops perpetuate this rationale through their segregated environments and subminimum wages. The subminimum wage reinforces a life of poverty and dependency; it is impossible for an individual with a disability making less than the minimum wage (which is no longer considered a livable wage) to be self-sufficient. There is a greater probability of success and personal growth when employment is in an integrated setting at a competitive wage, employed in a position that the individual finds interesting.
 VR programs are available nationally and offer services to employ individuals with disabilities; their belief is everyone has the right to live independently and employment contributes to that right. VRs provide a wide variety of personalized, individual services to people with disabilities including counseling, technical assistance, training, job coaches, and more, to obtain and maintain employment.  Just like people without disabilities, a person’s skills, abilities, and interests are used to match someone to a position, and training is provided if needed.
 Allowing employers to pay less than minimum wage is a disservice to those who want to work and improve their quality of life. The message is clear: their time and their work is not worthy of the minimum pay that is afford to their non-disabled counterparts.
 While some states are pushing to phase out 14(c) programs and closing sheltered workshops altogether, this process is slow moving and is not being supported convincingly on the national level. For example, there is currently a bill in the House of Representative (HR 1377) that would ultimately repeal section 14(c) of the FLSA six years after the passing of the bill. Between the adoption of the bill and the end of 14(c) certification, it would create stricter penalties for not complying with the laws under WIOA. Unfortunately, this bill has made no progress since it was introduce in March of 2017 (Congress.gov, 2017). There are little to no ramifications for continuing to pay individuals a subminimum wage when a business does not comply with WIOA or the FLSA.
 Treating individuals with disabilities as if they are fragile and incapable of living a self-determined life is detrimental to everyone. People believe life is precious because they have a limited amount of time on Earth and they try to make it count; why is this experience not being afforded to individuals with disabilities? They deserve the same chance to live the life they choose, in the setting they choose, where they have the same access to a quality life. People with disabilities are productive members of society and should be treated as such; everyone has something to offer and should have the opportunity to do so. To ensure the rights and equity for people with disabilities, we need to eliminate the 14(c) certificate program allowing the payment of a subminimum wage and make the Fair Labor and Standards Act what the name indicates; *fair*.

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