



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES

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The Honorable John Carney
Governor

John A. McNeal
Director

February 28, 2019

The Honorable Christopher Coons
United State Senate
127A Russell Senate Office Building
Washington, D.C. 20510

RE: Raise the Wage Act S. 150 (January 16, 2019)

Dear Senator Coons:

Congress has introduced the Raise the Wage Act (S. 150) in the United States Senate. This legislation proposes raising the federal minimum wage to \$8.55 this year and increases it over the next five years until it reaches \$15.00 an hour in 2024. After 2024, this legislation would adjust the minimum wage each year to keep pace with growth in the typical worker's wages. Most relevant for people with disabilities and disability advocates, this legislation would phase out the allowance provided to employers to pay workers with disabilities subminimum wages. The Delaware State Council for Persons with Disabilities (SCPD) encourages you to become a co-sponsor and has the following observations on the proposed legislation.

The Fair Labor Standards Act allows employers to pay employees with disabilities "whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury" wages below the minimum wage by applying for special certificates.¹ The Raise the Wage Act gradually eliminates the subminimum wage by increasing wages for workers in employment establishments with a special certificate gradually to \$12.85 per hour five years after the passage of the act. As of the date of passage, no new certificates could be issued to any employer that had not already received a special certificate prior to the passage date. Six years after the Act would take effect, all certificates would expire and would have no legal effect.

Proponents of the special certificates created by the Fair Labor Standards Act argue that it offers workers with disabilities a foot in the door of the labor market and gives them the opportunity for

¹ 29 U.S.C. § 214(c)(1).

skill development, training, and an upward career trajectory. Supporters also fear that the elimination of the subminimum wage means that workers with disabilities will likely receive no wages and will face obstacles in the general labor market.

In reality, the subminimum wage stigmatizes and discriminates against workers with disabilities by devaluing their work and eliminating basic labor protections afforded to other individuals and leaves workers with disabilities vulnerable to abuse. The special certificate policy exposes workers with disabilities to exploitation and seclusion by creating “sheltered workshops, which employ people with intellectual and developmental disabilities to perform manual labor while paying employees as low as less than one dollar per hour.”² Addressing the argument that the elimination of sheltered workshops will cause harm to workers with disabilities, statutes and case law exist to prohibit employer discrimination and require reasonable accommodations in the workplace.³

In 2016, the Department of Labor’s Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities recommended phasing out the separate subminimum wage.⁴ A 2012 report from the National Council on Disability also supported gradually phasing out the use of special certificates under the Fair Labor Standards Act.⁵ While passage of the Raise the Wage Act is preferable to maintaining the status quo, SCPD questions the lengthy implementation process and supports providing a livable wage to workers with disabilities as quickly as possible.

Thank you for your consideration and please contact SCPD if you have any questions regarding our observations on the proposed legislation.

Sincerely,



J. Todd Webb, Chairperson
State Council for Persons with Disabilities

² Lydia DePillis, *Disabled People are Allowed to Work for Pennies Per Hour – but Maybe not for Much Longer*, *Wash. Post* (Feb. 12, 2016), https://www.washingtonpost.com/news/wonk/wp/2016/02/12/disabled-people-are-allowed-to-work-for-pennies-per-hour-but-maybe-not-for-much-longer/?utm_term=.a0562f1c6226.

³ Americans with Disabilities Act, 42 U.S.C. § 12111-12112(b); Rehabilitation Act of 1973, 29 U.S.C. § 794(a); *Olmstead v. L.C.*, 527 U.S. 581, 597-98 (1999).

⁴ Department of Labor, Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities Final Report; available at: https://www.dol.gov/odep/topics/pdf/ACICIEID_Final_Report_9-8-16.pdf.

⁵ National Council on Disability Report on Subminimum Wage and Supported Employment; available at: <https://ncd.gov/publications/2012/August232012/>.

cc: Ms. Laura Waterland, Esq.
Developmental Disabilities Council
Governor's Advisory Council for Exceptional Citizens

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