

Ending the Subminimum Wage in Minnesota

A Report from
The Minnesota
Disability Law
Center

October 2022



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EXECUTIVE SUMMARY

Introduction

Decades ago, Minnesota led the effort to provide people with disabilities meaningful opportunities to work in their communities. Where Minnesota was once at the forefront of these efforts, the state now lags behind. Today, far too many Minnesotans with disabilities are in segregated work settings earning subminimum wages – sometimes as low as seven cents per hour.¹ Among the 40 states included in the July 2022 US DOL list of 14(c) certificate holders, Minnesota ranked third for number of people with disabilities being paid subminimum wages—behind only PA and CA, which have much larger populations.² Nationwide, 12% of people with disabilities worked in subminimum wage settings in 2018, while 44% of Minnesotans with disabilities earned subminimum wages.³ In 2018, Minnesota spent \$239,012,000 on sheltered work funding and ten times less — \$20,943,000 — on employment services supporting community jobs.⁴ It's time for Minnesota to do better.

The Minnesota Legislature has a historic opportunity to end the outdated, discriminatory practice of paying people who have disabilities less than minimum wage.⁵ Minnesota should phase out the practice of allowing employers to pay subminimum wages to people with disabilities. Instead, Minnesota should focus its resources and services on helping people with disabilities find and maintain community jobs.⁶

What is the subminimum wage?

Section 14(c) of the federal Fair Labor Standards Act (FLSA) allows employers to pay workers with disabilities a subminimum wage, or less than the state or federal minimum wage.⁷ In order to pay a subminimum wage, employers must apply for a 14(c) certificate from the United States Department of Labor (DOL).⁸ In Minnesota, 73 employers are authorized to pay their workers a subminimum wage.⁹

Most people with disabilities who earn subminimum wages work at nonprofit Community Rehabilitation Providers (CRPs). CRPs were created decades ago with the goal of providing employment, job training, and services to people with a range of disabilities in order to offer support and training to people with disabilities as they find a job in the community.¹⁰ These programs were never intended to provide long-term employment with subminimum wages to people with disabilities.¹¹ However, many workers remain at CRPs their entire working life, earning subminimum wages in segregated settings.¹²

EXECUTIVE SUMMARY

Why should we end the use of the subminimum wage?

In Minnesota, 22% of people who have disabilities live in poverty.¹³ Paying people with disabilities less than minimum wage contributes significantly to this poverty. The average subminimum wage worker with disabilities earns less than \$4.00 per hour, substantially less than Minnesota's minimum wage for large and small employers, \$10.33 and \$8.42, respectively.¹⁴ Some people earning subminimum wages earned as little as seven cents per hour.¹⁵ Not only do these workers earn a low wage, but the number of hours they can work is also often limited. Most subminimum wage workers in Minnesota work fewer than eight hours per week.

Further, many employers who pay their workers a subminimum wage do so in segregated settings, where workers with disabilities only work alongside other people with disabilities and not in the general community. Of the employers authorized to pay a subminimum wage, 97% are CRPs, often referred to as sheltered workshops, which mainly employ people with disabilities and typically include repetitive jobs such as light assembly, card packing, or shredding paper.¹⁶

There is growing consensus from self-advocates, federal government agencies, and state governments that the subminimum wage model of employment is outdated and discriminatory. In 2020, the United States Commission on Civil Rights published a report revealing that subminimum wage work is rife with abuse and recommended that Congress phase out the practice.¹⁷ By the date of publication, several jurisdictions have outlawed the payment of subminimum wages – including Alaska, Hawaii, Maine, Maryland, New Hampshire, Rhode Island, Vermont, Tennessee and the District of Columbia.¹⁸ In these states, the overall employment outcomes for workers with disabilities improved or stayed the same after phasing out subminimum wages. Other jurisdictions will phase out the payment of subminimum wages in the coming years – including California, Colorado, Delaware, Oregon, and Washington. Minnesota should do the same.¹⁹

Some
Minnesotans
With Disabilities
Earn as Little as
**7 Cents
Per Hour**
at Subminimum
Wage
Employers

EXECUTIVE SUMMARY

Minnesota should phase out the subminimum wage with a thoughtful plan

The Minnesota Disability Law Center (MDLC) urges the Minnesota Legislature to phase out the payment of subminimum wages to people with disabilities over a five-year period. This systems change must be implemented thoughtfully, to ensure that the unique needs of all Minnesotans with disabilities are met. First, people with disabilities must be leaders in the planning to phase out subminimum wages.²⁰ People with disabilities, including those who have earned subminimum wages and those who have worked in community jobs, must remain at the head of the table as this systems change is implemented.



Second, Minnesota legislators should ensure that Minnesota's transition is fortified by sufficient funding to provide employment supports for community jobs. Minnesota was recently awarded a \$13 million federal grant to transition away from subminimum wage employment, and this is a good start.²¹ But Minnesota must provide more funding for community jobs – right now funding for sheltered employment remains ten times higher than funding for community jobs.²²

Finally, Minnesota should look to the example of other states that have successfully transitioned away from subminimum wage work towards a model that supports people in community jobs. These states emphasized a person-first approach that was well funded and phased out the payment of subminimum wages over time. Minnesota should follow suit.

To reach these goals, the Minnesota Legislature should enact the following policy recommendations:

POLICY RECOMMENDATIONS

1

Pass legislation to **phase out the payment of subminimum wages** in Minnesota by a specific date with funding to implement the phase out.

2

Modify Medicaid Home and Community-Based Services (HCBS) Waiver Employment Services to ensure that **people receiving waiver employment services are not earning subminimum wages** as a part of their employment support service.

3

Provide sufficient **financial resources, policy guidance and technical assistance** to employment service providers transitioning toward helping people find community jobs.

4

Ensure access to benefits planning to encourage community job placement.

5

Fund transportation projects and help people find transportation to travel to and from work, particularly in rural areas and in areas without public transportation.

6

Design and implement data collection plans to ensure that we are tracking each person's progress away from subminimum wage work and toward community jobs.

7

Modify Medicaid Home and Community-Based Services (HCBS) Waiver Employment Services to ensure the service system fully supports and **funds the individualized process of supporting a person to find a community job** based on their interests and strengths.

8

Support and demand seamless collaboration amongst special education providers and DEED's vocational rehabilitation program to ensure youth with disabilities aged fourteen to twenty-four leave school with a concrete transition plan, resources, and contacts for future education, training, or employment.

9

Expand the information, options, and education provided by DHS, DEED, and MDE to empower people with disabilities to learn, through person-centered practices, about available support that can assist in finding a community job.

10

Provide high quality, integrated day programming for people with disabilities who choose not to work.

GLOSSARY



ACKNOWLEDGEMENTS

This report is the result of collaboration between current and former Minnesota Disability Law Center staff, including, but not limited to, Kristina Petronko, Jonah Giese, Dalaine Remes, Anne Robertson, Sarah Watts, Bud Rosenfield, and Susan Fleurant, as well as law clerks Kendall Prior, Malinn Toy, and Delé Nwabuzor.

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GLOSSARY

RELEVANT DEFINITIONS

Community Job – Commonly referred to as Competitive Integrated Employment (CIE), a Community Job refers to an employment arrangement where a person with disabilities is employed in an integrated setting alongside workers without disabilities and is being paid at least a minimum wage. The MDLC prefers the term Community Job over Competitive Integrated Employment for two reasons: 1) the plain language of “Community Job” ensures the accessibility of this report; and 2) it clarifies that these employment arrangements are not necessarily “competitive” in the literal sense. That is, in some cases, these jobs are acquired through non-competitive interview and hiring processes that are designed to promote the hiring of people with disabilities.

Sheltered Workshop – Sheltered workshop is a colloquial term used to describe a segregated work setting that employs people with disabilities. Sheltered workshops predominantly pay subminimum wages. These facilities are referred to as workshops as a nod to the fact that most, if not all, offer very limited work options, and mainly employ individuals for rote, menial tasks like shredding, light assembly, and cleaning.

Segregated Setting – A segregated setting is an employment setting where people with disabilities do not, for the most part, work alongside people without disabilities. Sheltered workshops are often segregated settings.

Subminimum Wage – A subminimum wage is a wage paid to people with disabilities below the federally-mandated minimum wage. These low wages are authorized under Section 14(c) of the Fair Labor Standards Act, which specifies that employers can pay workers with disabilities a subminimum wage provided that the United States Department of Labor approves a 14(c) certificate for the employer.

GLOSSARY

RELEVANT DEFINITIONS

SMW Employer - A subminimum wage employer is a business or nonprofit entity that holds a 14(c) certificate, employs people with disabilities, and pays its workers a subminimum wage.

LIST OF ACRONYMS

ADA - Americans with Disabilities Act

CIE - Competitive Integrated Employment

CMS - Centers for Medicare and Medicaid Services

CRP - Community Rehabilitation Program

DOL - United States Department of Labor

HCBS - Medicaid Home and Community-Based Services

I/DD - Intellectual and Developmental Disabilities

MDLC - Minnesota Disability Law Center

SMW - Subminimum Wage

INTRODUCTION

The subminimum wage for workers with disabilities was established in 1938 with the passage of the Fair Labor Standards Act (FLSA).²³ Under Section 14(c) of the FLSA, the United States Department of Labor (DOL) is authorized to issue certificates to employers who wish to pay workers with disabilities a subminimum wage below the federal minimum wage.²⁴ An individual's disabilities must affect their ability to perform the particular employment task(s) offered by the employer. The subminimum wage is typically based on a percentage of the standard, or "prevailing," wage for the type of employment in a geographic area, calculated by comparing a worker with disabilities' productivity to the productivity of a non-disabled worker performing the same work task.²⁵

Although Congress initially passed the law to support people with disabilities, the DOL has investigated subminimum wage employers and found significant abuse.²⁶ Most, but not all, employers who pay subminimum wages operate as sheltered workshops, where workers with disabilities are segregated from individuals without disabilities.²⁷ Data collected by the Minnesota Disability Law Center (MDLC) show that the average subminimum wage for workers with disabilities in Minnesota was less than \$4.00 per hour in 2019.²⁸ According to a 2020 report by the United States Commission on Civil Rights (USCCR), the program is "antiquated," and its continued operation runs afoul of applicable civil rights law.²⁹

Given these circumstances, many states have begun to end the payment of subminimum wages to workers with disabilities.³⁰ In Minnesota, the Legislature created the Task Force on Eliminating Subminimum Wages to examine the payment of subminimum wages to people with disabilities and recommend a plan to phase out the practice statewide.³¹ The Minnesota Disability Law Center urges the Minnesota Legislature to phase out the use of subminimum wages to ensure that all workers with disabilities are paid at least minimum wage.

This report examines the history of subminimum wage and sheltered work in Minnesota, the current state of subminimum wage work in Minnesota, and the experiences of other states that have eliminated subminimum wages for people with disabilities. Finally, it concludes by listing the Minnesota Disability Law Center's recommendations for phasing out the use of subminimum wage in Minnesota.

HISTORY OF SUBMINIMUM WAGE IN MINNESOTA



Minnesota began providing comprehensive rehabilitation services to people with disabilities in 1919.³² In 1920, Minnesota established the first state vocational rehabilitation agency for people with disabilities, designed to operate alongside the existing state rehabilitation agency for visually impaired persons.³³ Initially, operating on a sparse budget, the agency primarily offered job placement support and some basic rehabilitation services. These services aimed to integrate people with disabilities into community jobs, rather than segregate workers with disabilities from workers without disabilities. Initially, the agency did not support rehabilitation service facilities, commonly referred to as sheltered workshops.³⁴

Employment of people with disabilities changed with the passage of the FLSA in 1938. As part of the sweeping economic reforms of the New Deal, Congress enacted a federal minimum wage, designed to increase the standard of living for workers.³⁵

However, section 14(c) of the FLSA authorized the payment of subminimum wages to people with disabilities.³⁶ After passage of the FLSA, thousands of public and private entities nationwide established rehabilitation facilities which employed people with disabilities in settings segregated from the non-disabled workforce.³⁷ In Minnesota, several sheltered workshops emerged.³⁸

In the 1950s, federal legislation funded the expansion of vocational rehabilitation programming. Spurred on by federal funds and the FLSA, Minnesota's vocational rehabilitation agency began supporting rehabilitation facilities, including sheltered workshops and vocational centers. Sheltered workshops were designed to support long-term sheltered employment. By contrast, vocational centers housed short-term, transitional programs. Vocational center programs "analyzed the vocational strengths and

HISTORY OF SUBMINIMUM WAGE IN MINNESOTA

weaknesses of handicapped persons and designed individual plans to prepare them for competitive employment.”³⁹ Initially, most state support for rehabilitation facilities was funneled toward vocational centers.⁴⁰ By 1954, only six sheltered workshops were in operation.⁴¹

In Minnesota, the number of sheltered workshops increased in the late 1960s. In 1965, the Minnesota Legislature passed the Long-Term Sheltered Work Act; the Act allocated additional state funding to facilities operating as sheltered workshops. The Act also authorized local jurisdictions to pay for sheltered workshops using general funds, tax levies, or other revenue. According to a 1984 report by the Minnesota Office of the Legislative Auditor, “the availability of state funds helped to increase the number of sheltered workshops in Minnesota to 29 by 1973.”⁴² The number of people working in sheltered workshops ballooned by over 500 percent, from only 700 persons with disabilities in 1965, to 4,300 persons with disabilities by 1980.⁴³

Following the expansion of sheltered workshops in the 1970s, disability rights advocates began scrutinizing their discriminatory premise and substandard business practices. In 1981, sheltered workshop employees in Minnetonka, Minnesota unsuccessfully attempted to unionize and sought to end the use of the subminimum wage in segregated settings.⁴⁴ In 1984, the Office of the Legislative Auditor authored an evaluation of sheltered workshops.⁴⁵ The report highlighted that the average sheltered worker with disabilities earned \$1.66 per hour, and worked for only 20 hours per week.⁴⁶ Further, the workshops were not meeting their stated goal to ‘rehabilitate’ workers; in 1983, only 83 out of 3,000 sheltered workers (or, about 2.8 percent) were placed in community jobs. Other reports issued during this period emphasized that sheltered workshops denied people with disabilities dignity, respect, and equal access to opportunities.⁴⁷

Despite criticism of sheltered workshops, they continued to expand. Some of the expansion was driven by Minnesota policy drafted in response to litigation. In the Consent Decree issued in *Welsch v. Levine*, the federal court case that mandated the deinstitutionalization of state mental health institutions, Minnesota funded an additional 600 openings for workers with disabilities in sheltered workshops.⁴⁸ By 1990, the Minnesota Department of Public Administration reported that 5,687 people with

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disabilities were served in sheltered settings.⁴⁹ This growth was accompanied by an increase in funding, from both state (from \$6.1 million per year in 1986 to \$6.7 million per year in 1990) and county (from \$1.8 million per year in 1986 to \$4.5 million in 1990) funding sources.

The Minnesota Legislature has generally relied on task forces and pilot projects to study, though not directly address, the issue of subminimum wage employment. In 2004, the Minnesota Legislature funded a pilot project which supported integrated, minimum wage employment for people with disabilities in an industrial setting.⁵⁰ This model, while overwhelmingly successful, was not expanded beyond the scope of the initial project in Thief River Falls, MN. Minnesota adopted an “Employment First” policy in 2014, committing to providing integrated employment opportunities for persons with disabilities.⁵¹ The central tenet of Employment First policies is that people with disabilities should first be provided opportunities for community employment before being offered other supports and services. In 2016, the Legislature appropriated funds to develop pilot projects to transition workers with disabilities out of sheltered workshops and into community jobs.⁵² Early reports from this project have been positive, but due its limited scope, more must be done to reach all workers earning subminimum wages.⁵³

Today, according to state agencies, approximately 4,500 to 6,000 Minnesotans earn a subminimum wage.⁵⁴ As of July 2022, there are 73 employers authorized to pay a subminimum wage; many of these employers operate as sheltered workshops.⁵⁵ In 2021, the Minnesota Legislature established the Task Force on Eliminating Subminimum Wages.⁵⁶ The Task Force was convened to provide recommendations to the Legislature for a transition away from subminimum wage, in the event that the Legislature or the federal government eliminates the practice. In September 2022, Minnesota’s Vocational Rehabilitation Services was awarded a \$13 million federal grant to decrease the use of subminimum wages and increase access to community jobs.⁵⁷ As of the date of publication, neither the state legislature nor Congress has passed legislation to phase out subminimum wages.

MINNESOTA CONTEXT

Most employers paying subminimum wages in Minnesota are Community Rehabilitation Providers (CRPs), typically nonprofit organizations that receive federal and state funding to provide services to people with disabilities. Of the 73 total subminimum wage employers in Minnesota, 69 are authorized to pay subminimum wages, and 4 employers have pending 14(c) certificates.⁵⁸

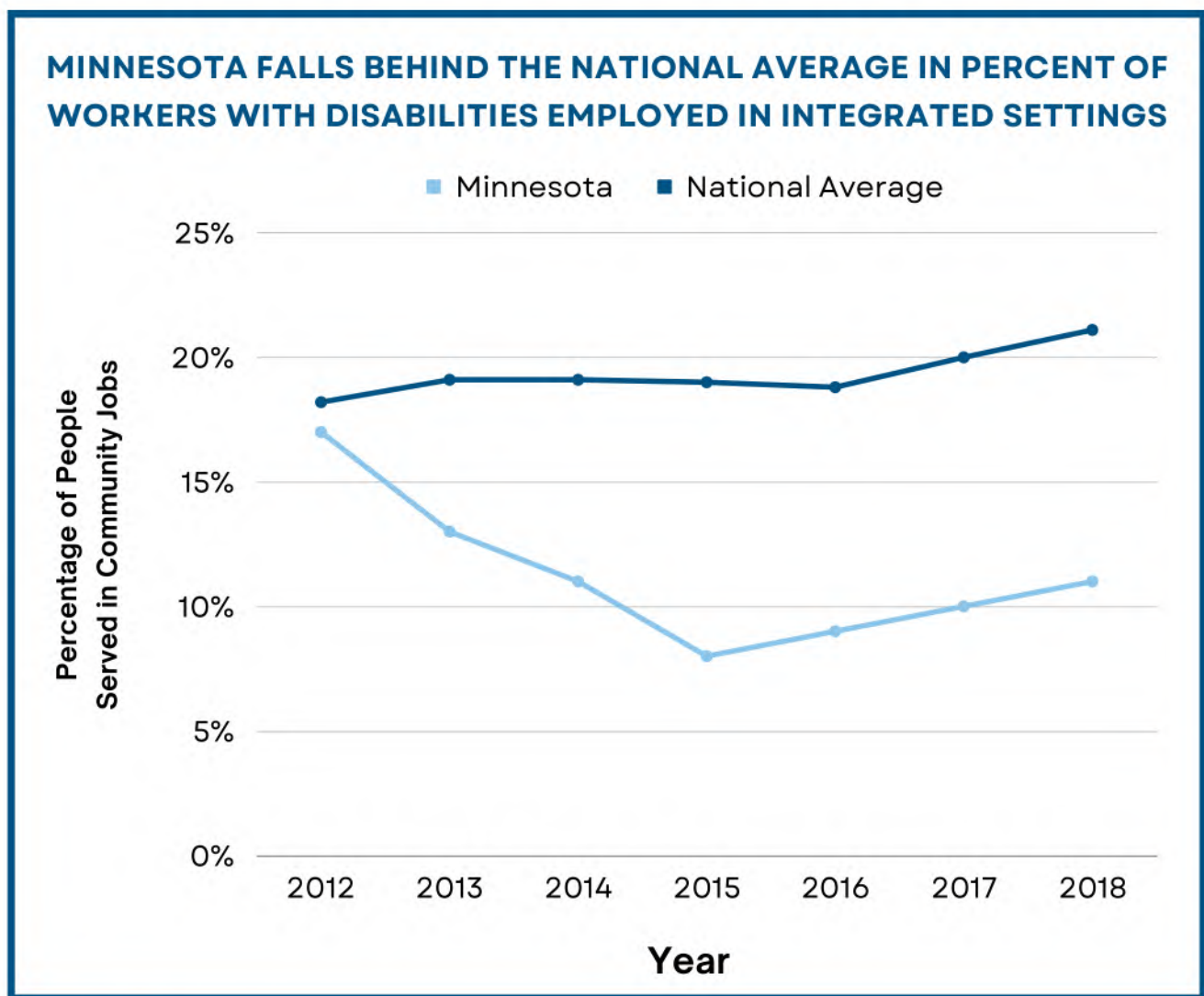
According to data released by the DOL, 3,744 individuals in Minnesota are paid a subminimum wage.⁵⁹ State agencies estimate that between 4,500 to 6,000 individuals earn a subminimum wage.⁶⁰ The DOL calculates the number of individuals earning subminimum wages based on the number of individuals employed at a subminimum wage reported by an employer at the time it renews its 14(c) certificate. However, the DOL calculation may be unreliable.⁶¹ Nevertheless, the DOL individual count serves as the standard reference for employment of people with disabilities,⁶² and this report will refer to the number as an adequate, if imperfect, representation of the number of people employed by subminimum wage employers in Minnesota.

From 2016 to 2022, the number of employers nationwide paying subminimum wage declined from 2,570 to 1,133.⁶³ The number of Minnesota employers authorized to pay subminimum wages also decreased.⁶⁴ Nationwide, the number of individuals earning subminimum wages has decreased over the same period. Yet, Minnesota continues to have a higher percentage of people with disabilities earning subminimum wages compared to other states.⁶⁵ From 2016 to 2018, the percentage of Minnesotans with disabilities working in subminimum wage employment decreased from 51.8% to 44%.⁶⁶ Nationally, however, only 12% of people with disabilities worked in subminimum wage settings in 2018.⁶⁷ Minnesota must do more to reduce the payment of subminimum wages to people with disabilities, as other states have done.



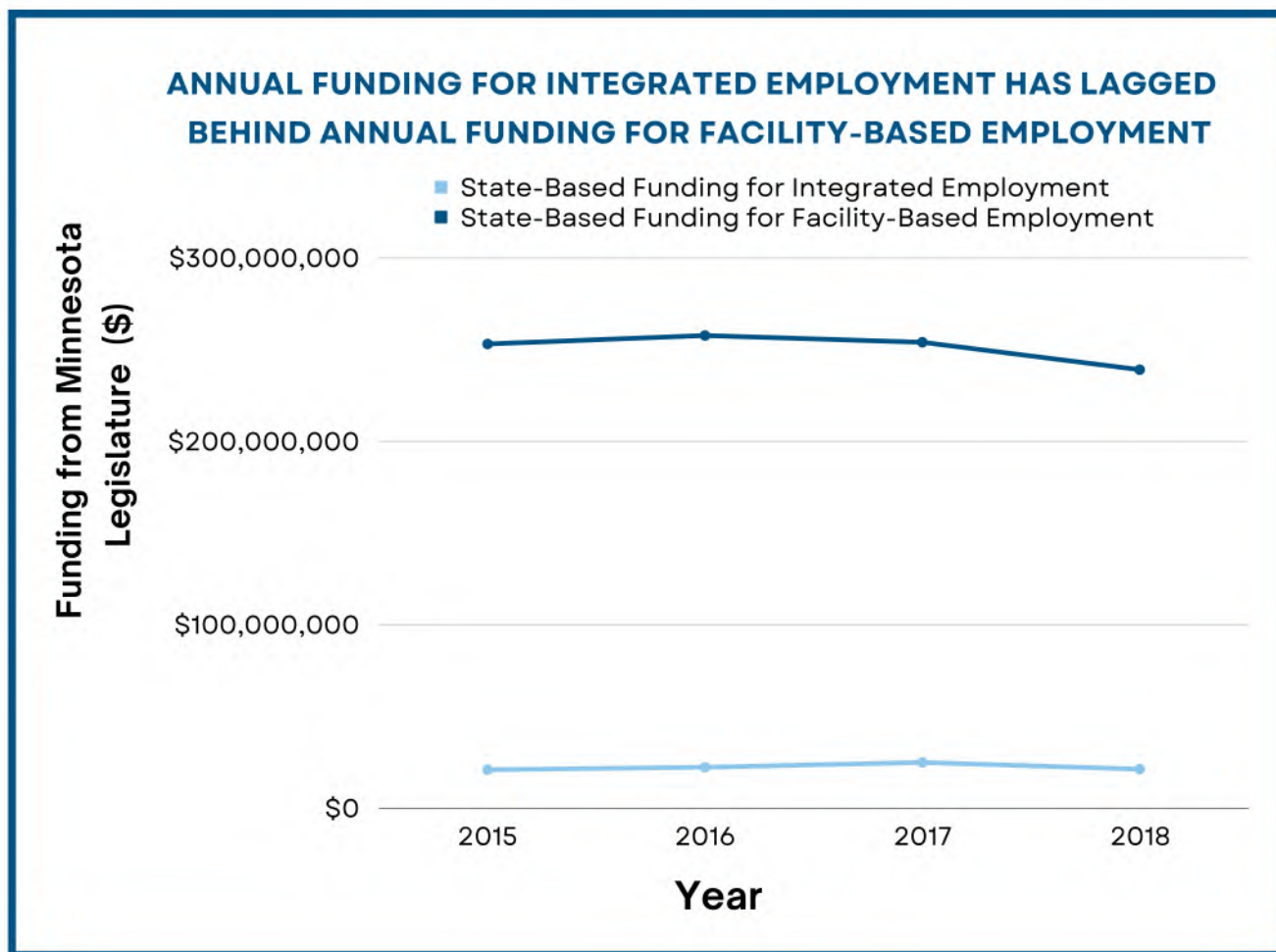
MINNESOTA CONTEXT

Minnesota also lags behind other states in the percentage of people with disabilities working in community jobs alongside people who do not have disabilities. Nationally, 21.1% of people with disabilities worked in an integrated setting in 2018.⁶⁸ In Minnesota, this percentage was 11% in 2018.⁶⁹ While Minnesota has increased the number of people working in community jobs, from 8,908 individuals in 2016 to 11,692 individuals in 2018, the state must do more to match the progress that other states have made. The following graph illustrates stark differences in the percentage of people with disabilities employed in community jobs in Minnesota compared to the national average.



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These employment dynamics are undergirded by a lack of funding: in Minnesota, only 5.1% of all disability-related funding funds employment services supporting community jobs; nationwide, that percentage is 11.6%.⁷⁰ In 2018, Minnesota spent \$239,012,000 on sheltered work funding.⁷¹ By comparison, Minnesota spent ten times less – \$20,943,000 – on employment services supporting community jobs.⁷² The disparities in funding between the community job model and the facility-based (or, subminimum wage) employment model are shown in the following graph:



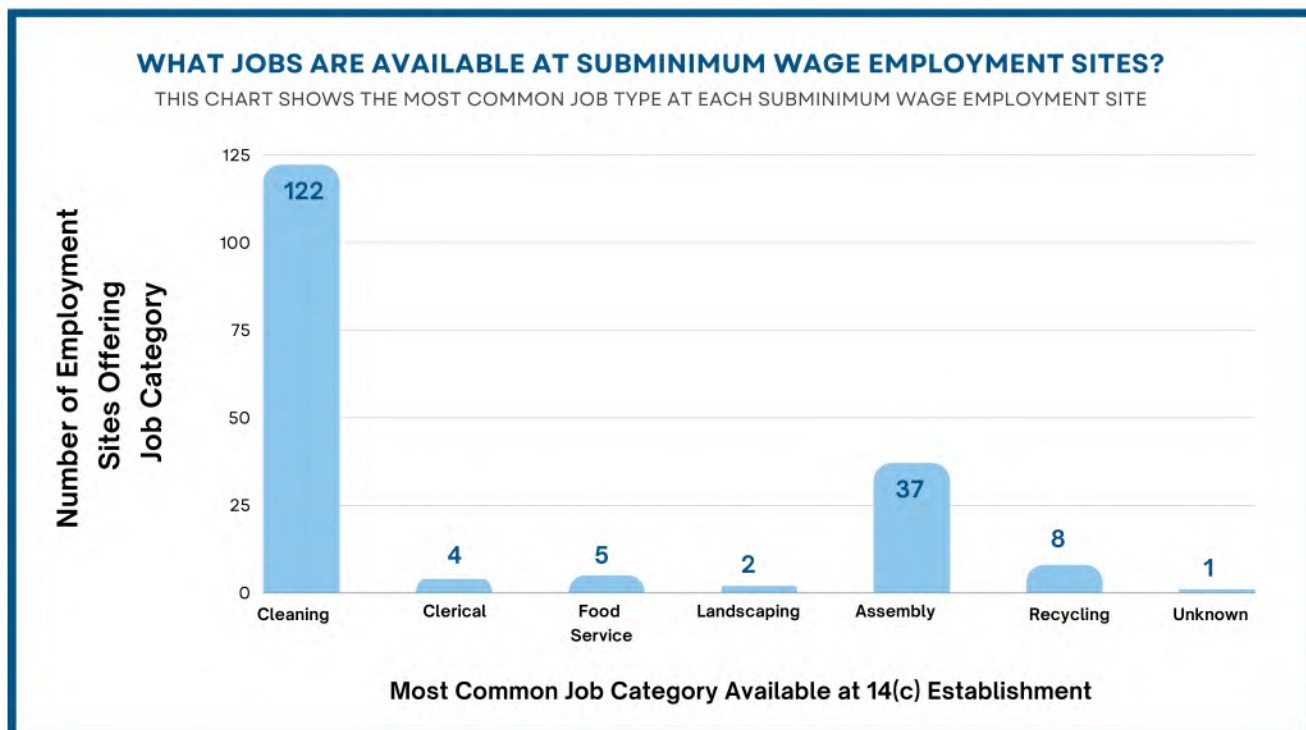
Minnesota policymakers should reassess the state’s funding priorities and adequately support competitive integrated employment opportunities for people with disabilities.

MINNESOTA CONTEXT

Minnesota Subminimum Wage Employer Data

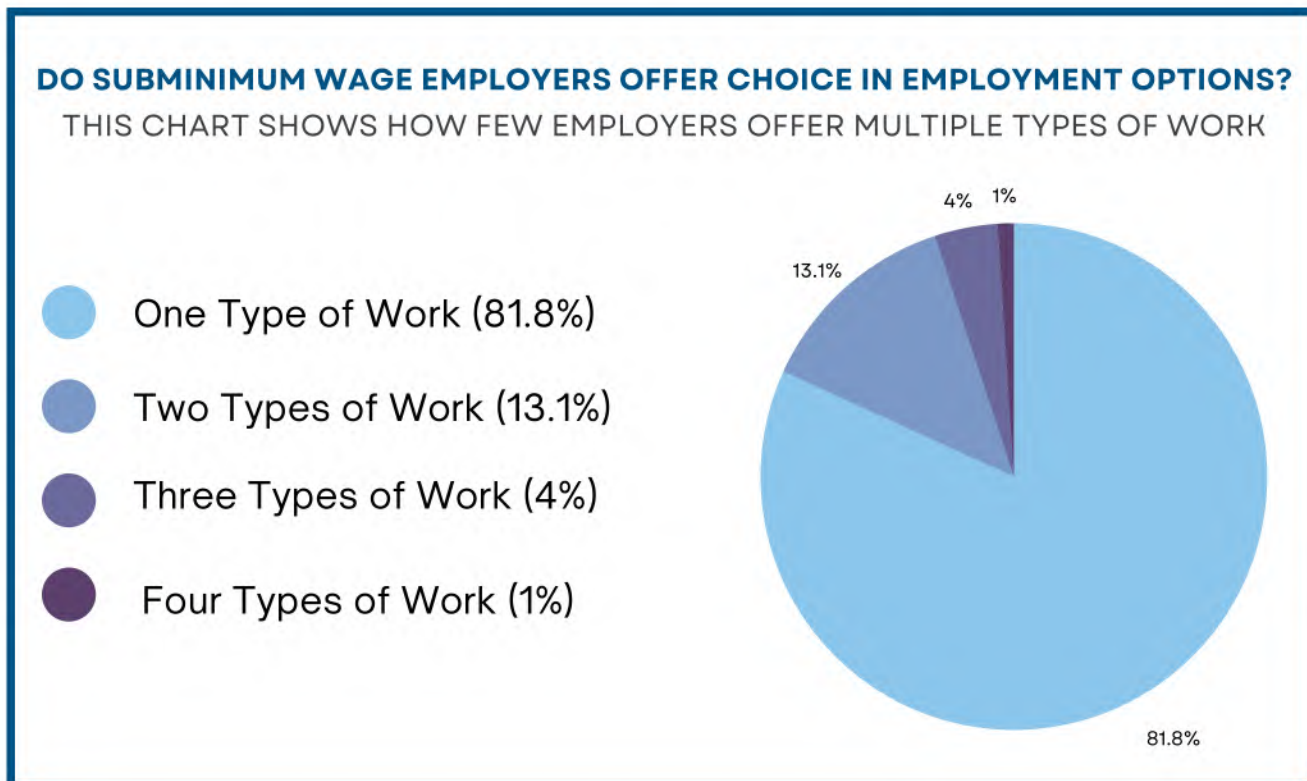
The MDLC filed a Freedom of Information Act (FOIA) request with the DOL's Wage and Hour Division, the federal agency which authorizes employers paying subminimum wages. The DOL provided the MDLC with the CRPs' applications that accounted for approximately half of the subminimum wage employers in Minnesota; these applications included employers in the Twin Cities metropolitan area and in Greater Minnesota. The MDLC used the information in the applications to identify trends in subminimum wage employment across Minnesota.

The data from the DOL provides information on both the wages paid to workers and the type of work made available by subminimum wage employers. The data set includes information about employment at employer CRPs' main office locations as well as branch and off-site locations. Of the 179 employment sites surveyed, the vast majority offer work involving cleaning, light assembly, or recycling. Landscaping, food service, and clerical jobs were available at only a handful of off-site work locations.⁷³



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While some employers offer a wide variety of employment tasks, the vast majority offer only one type of work.⁷⁴ Eighty-one percent of facilities surveyed offer only one type of work, often in cleaning, light assembly, or recycling. The following chart illustrates the lack of choice for workers with disabilities in these settings:⁷⁵



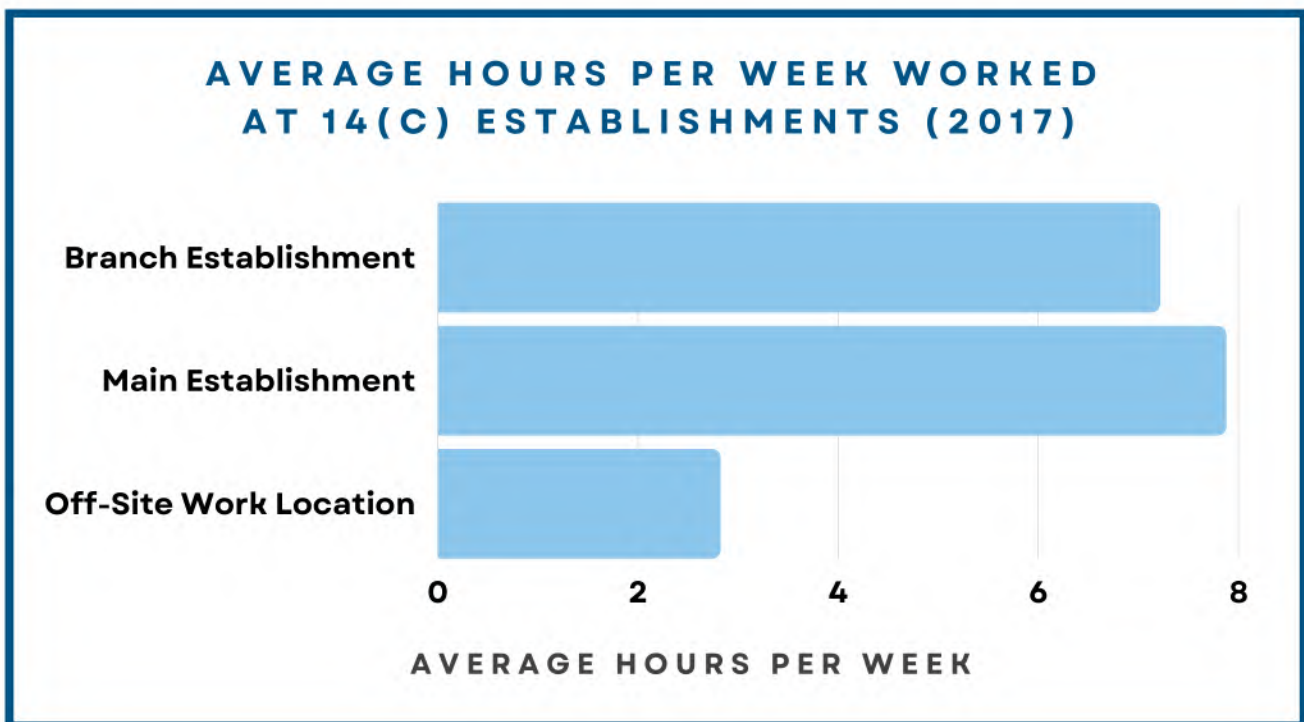
Moreover, a lack of alternatives limits workers' opportunities for acquiring new job skills that could be leveraged to find community jobs. If Minnesota wants to ensure that its service systems are person-centered, the state must ensure that people with disabilities have choices in their employment settings.

Hours Worked at Subminimum Wage Employers

The MDLC's analysis shows that few subminimum wage employers offer full-time employment to workers with disabilities. Rather, most employers offer work opportunities

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totaling fewer than 10 hours a week. The greatest number of hours worked was at subminimum wage employers' "main establishments," where access to people without disabilities is limited. The average hours worked at off-site work locations was fewer than three hours per week. The low number of hours worked indicates the limitations of the current practice of CRPs employing people with disabilities to work for community employers. The system needs to change and adapt to allow workers with disabilities to work more hours and gain more skills.

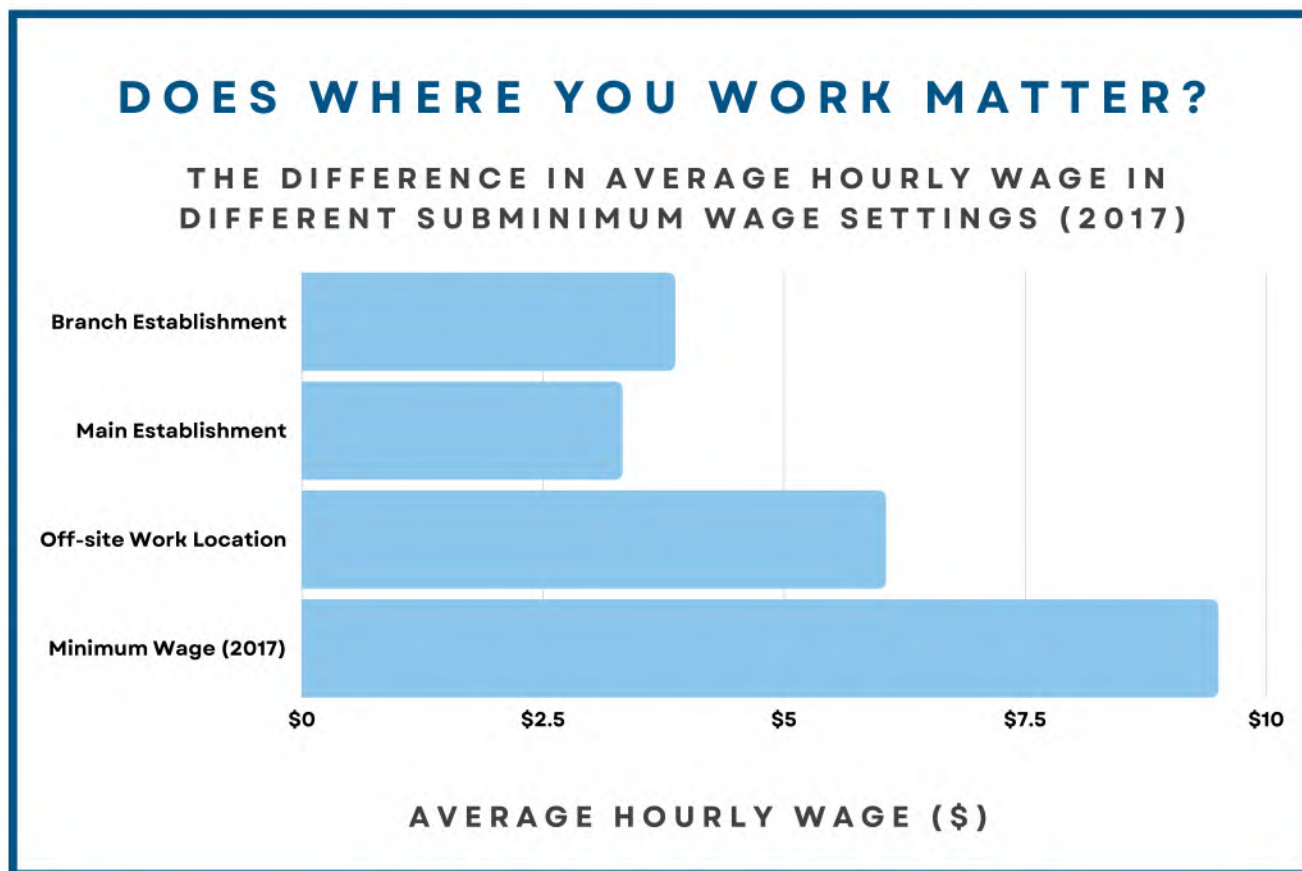


Wages at Subminimum Wage Employers

The subminimum wages paid to workers with disabilities vary widely based on several factors, including the type of facility, the types of work offered at the facility, and workers' disabilities and support needs.

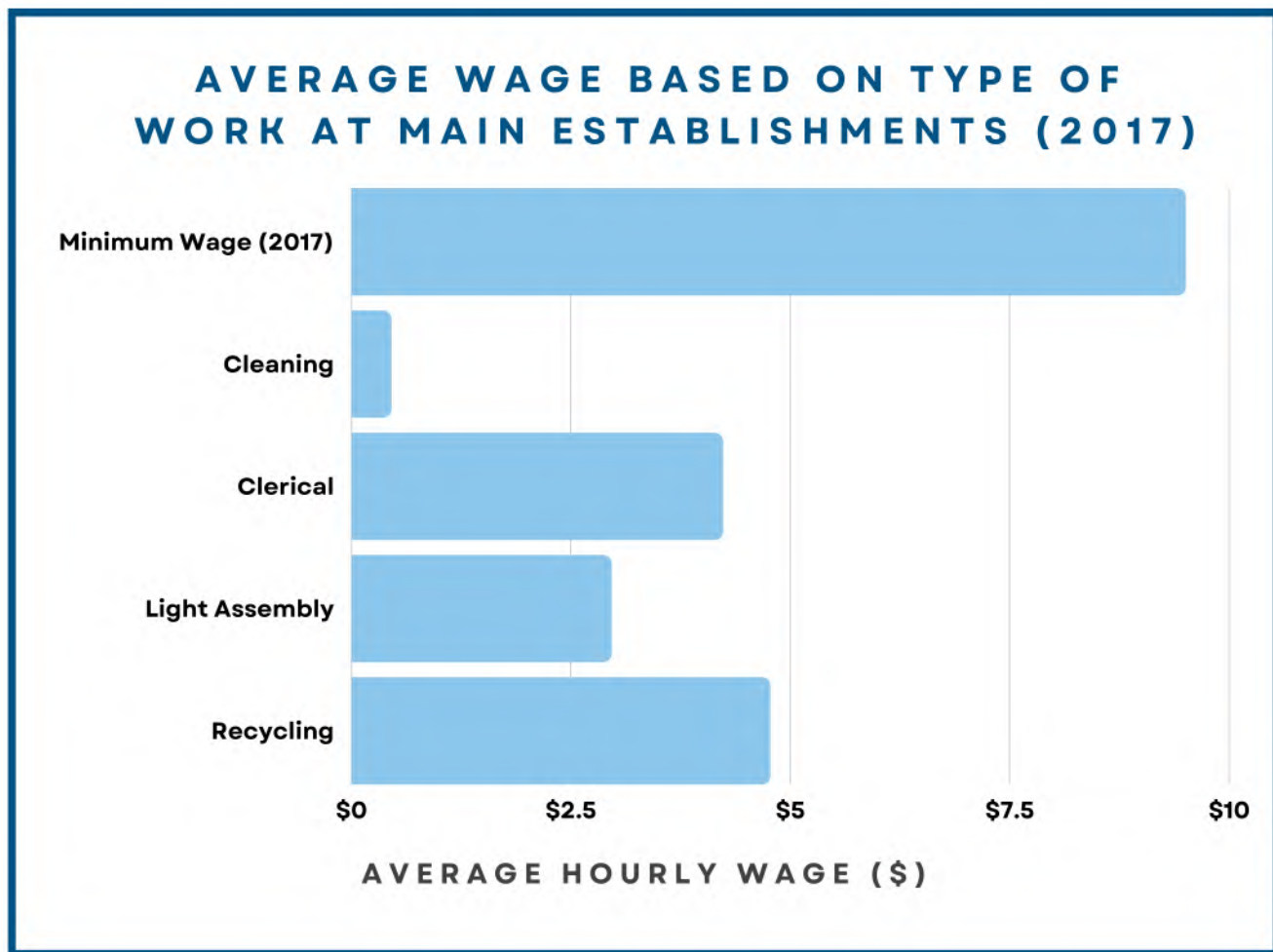
MINNESOTA CONTEXT

To demonstrate the inferior wages paid to people with disabilities, the MDLC compared the average subminimum wage to the state minimum wage.⁷⁶ In 2017, (the year of data provided by the DOL Wage and Hour Division), the minimum wage in Minnesota, for employers with an average sales volume of \$500,000 or more, was \$9.50 per hour.⁷⁷ On average, workers who worked off-site earned more than workers who worked at an employer's main location. This discrepancy may be a result of various factors, including, but not limited to: self-selection bias (the individuals authorized to work at off-site locations tend to be workers with fewer support needs); and the type of employment offered at off-site locations (more likely to be cleaning or food service rather than recycling or assembly).



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Finally, when average wages are broken down by both type of work and type of facility, distinct trends emerge. At main locations, recycling and clerical tasks offered the highest relative wages.⁷⁸



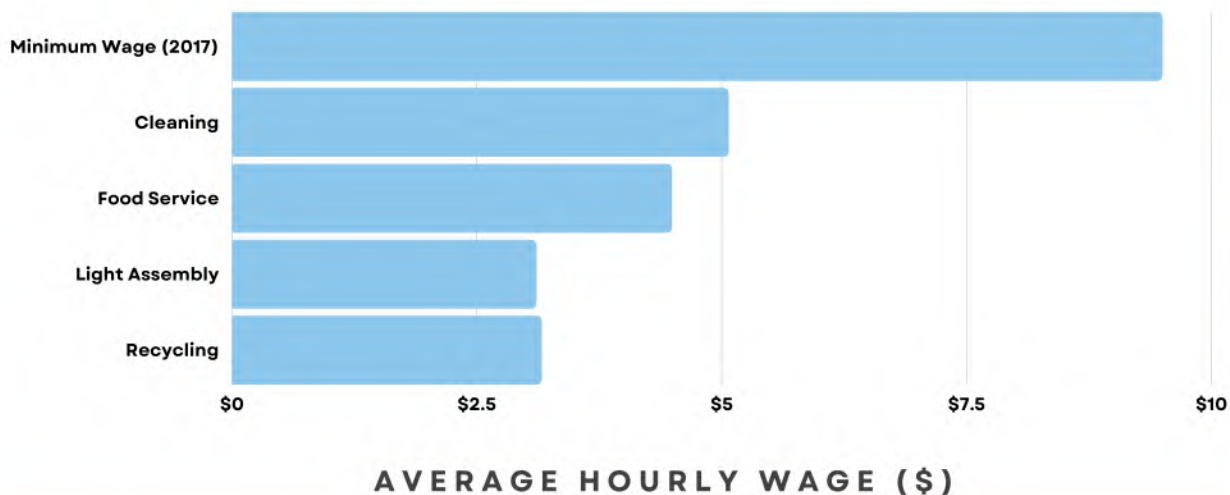
At off-site work locations, recycling and cleaning offered the highest average wages for workers.⁷⁹ At branch locations, cleaning and food service offered the highest relative wages.

MINNESOTA CONTEXT

AVERAGE WAGE BASED ON TYPE OF WORK AT OFF-SITE LOCATION (2017)



AVERAGE WAGE BASED ON TYPE OF WORK AT BRANCH ESTABLISHMENTS (2017)



MINNESOTA CONTEXT

Though the sample sizes for some types of work at certain types of facilities are small, the trends point toward the conclusion that subminimum wages paid to workers with disabilities are far below wages paid to workers without disabilities.

Taken together, these data paint a troubling picture: thousands of Minnesotans are being paid subminimum wages in segregated conditions that fail to offer choice of work task. To implement a person-centered employment service system, the state must address the failure to pay persons with disabilities a minimum wage and the failure to offer persons with disabilities meaningful choice in the type of work they do.

WHAT CAN WE LEARN FROM OTHER STATES?

Other states have more robust supports for people with disabilities who work and receive services in community jobs. Some jurisdictions have eliminated subminimum wage employment altogether. Alaska, Hawaii, Maine, Maryland, New Hampshire, Rhode Island, Vermont, Tennessee, and the District of Columbia do not have subminimum wage employment.⁸⁰ Other states, including California, Colorado, Delaware, Oregon, and Washington, have set an end date for subminimum wage employment in their state.⁸¹ Illinois and Texas prohibit the payment of subminimum wages in contracts with the state.⁸²

To learn from the experiences of other states that have transitioned away from subminimum wage, the MDLC studied five states: Oregon, Maine, Rhode Island, Vermont, and Maryland.

Oregon

The phase out of subminimum wage in Oregon began in 2012 with *Lane v. Brown*, the first class-action lawsuit in the nation to challenge a state-funded and administered employment service system, including sheltered workshops, as a violation of the Americans with Disabilities Act's (ADA) integration mandate.⁸³ Title II of the ADA requires public entities to provide services to individuals with disabilities in the most integrated settings that meet their needs.⁸⁴ As part of the transition process, in April 2013 and February 2015, Oregon's Governor issued executive orders directing the Oregon Department of Human Services to adopt an integrated employment plan with a focus on individuals with intellectual and developmental disabilities (I/DD).⁸⁵



WHAT CAN WE LEARN FROM OTHER STATES?

In December 2015, the United States Department of Justice reached a settlement agreement with the State of Oregon in *Lane v. Brown*. The terms of the settlement required Oregon to shift 1,115 people in sheltered workshops to jobs in the community with competitive wages by 2021; in addition, 7,000 people would receive employment services, including 4,900 youth exiting school.⁸⁶

Although *Lane* focused on integrated employment opportunities replacing sheltered workshops, the case had a direct impact on phasing out subminimum wages. Similar to Minnesota, most Oregon businesses paying subminimum wages under a 14(c) certificate are nonprofit organizations that provide Office of Developmental Disability Services-funded (ODDS) and Medicaid-funded employment services. Since 2014, many of these organizations have been transforming their services to support people in integrated community settings where individuals with disabilities earn competitive wages and benefits.⁸⁷ September 2020 marked the end of ODDS-funded sheltered workshop services in Oregon.⁸⁸

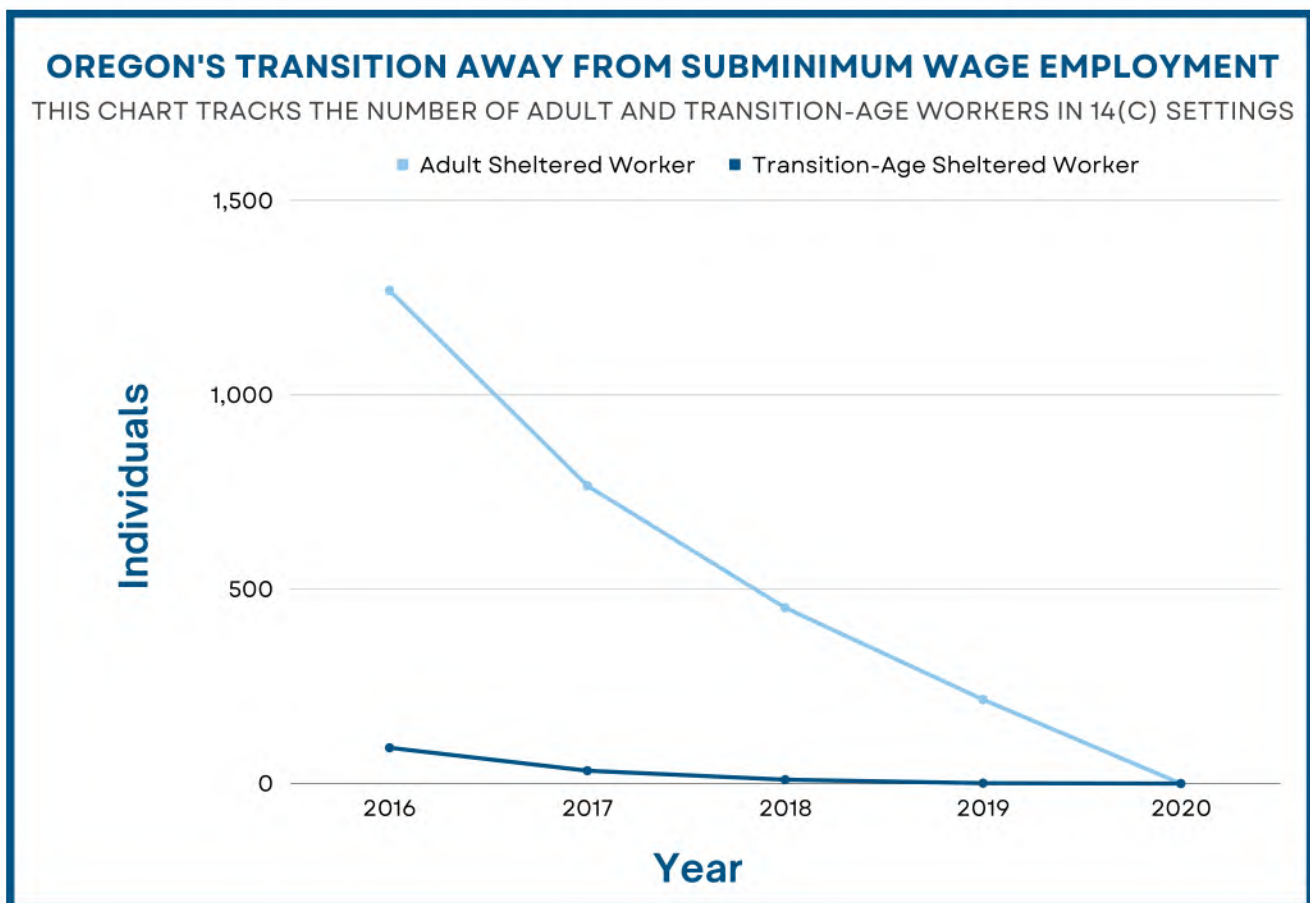
Additionally, Oregon Senate Bill 494 became law during the 2019 legislative session, which requires the State to phase out subminimum wage based on disability status.⁸⁹ The bill provides a scheduled timeline to increase wages through June 30, 2023; after that date, an employer must provide wages consistent with Oregon state minimum hourly wage.⁹⁰

Oregon's Department of Human Services collects data regarding the population affected by *Lane*, focusing on two specific sub-categories: Transition-age and Sheltered Workshop Class Members.⁹¹ Transition-age Individuals are people with I/DD ages 14 to 24 found eligible for ODDS services. Sheltered Workshop Class Members include all sheltered workshop workers who appeared in ODDS data tracking systems reports since March 2012.

Lane settlement data tracks individuals receiving job-related case management services from ODDS. The total ODDS population includes all individuals, not just those in the target populations (Transition-age or Sheltered Workshop Class Members). Some individuals are members of both the Transition-age group and the ODDS Sheltered Workshop Class.

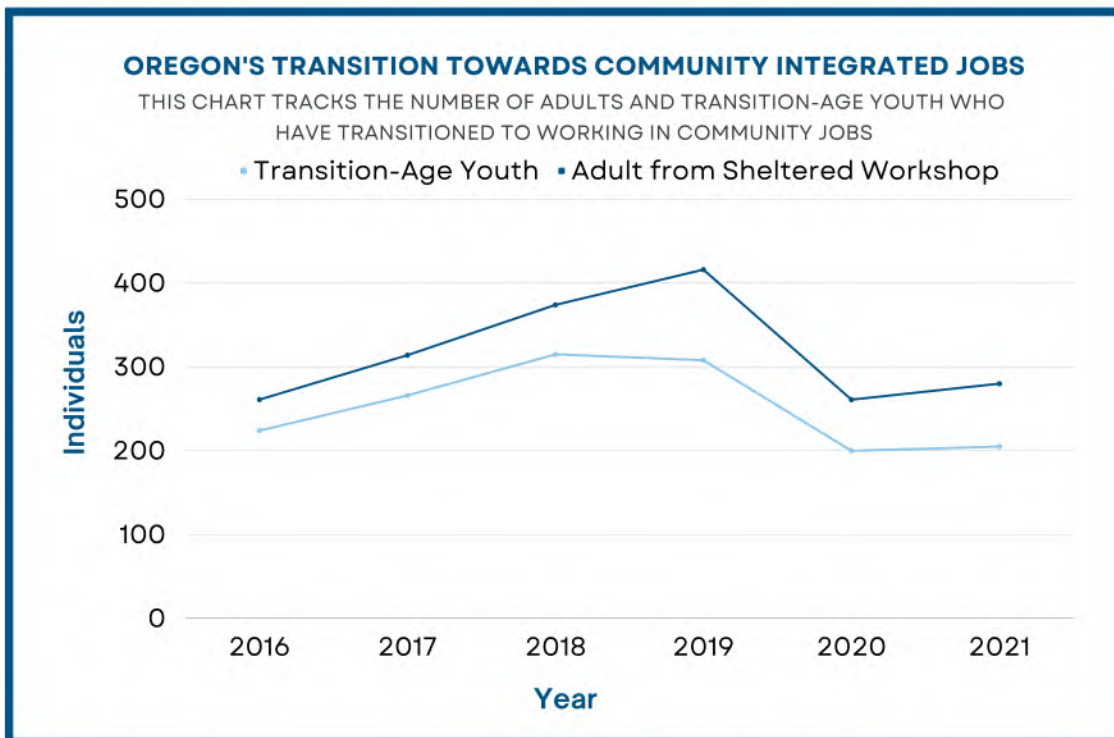
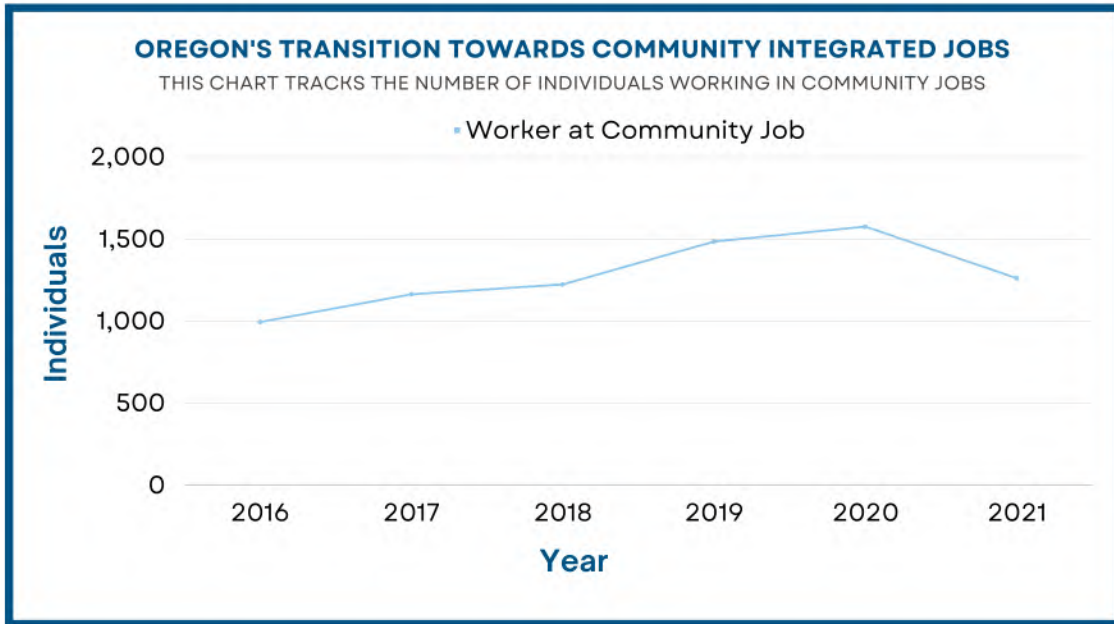
WHAT CAN WE LEARN FROM OTHER STATES?

The *Lane* settlement resulted in a steady decline in the use of sheltered work environments, particularly for the sub-category of individuals who started out in sheltered work.



The number of individuals involved in community jobs increased until the onset of the COVID-19 pandemic in March 2020.

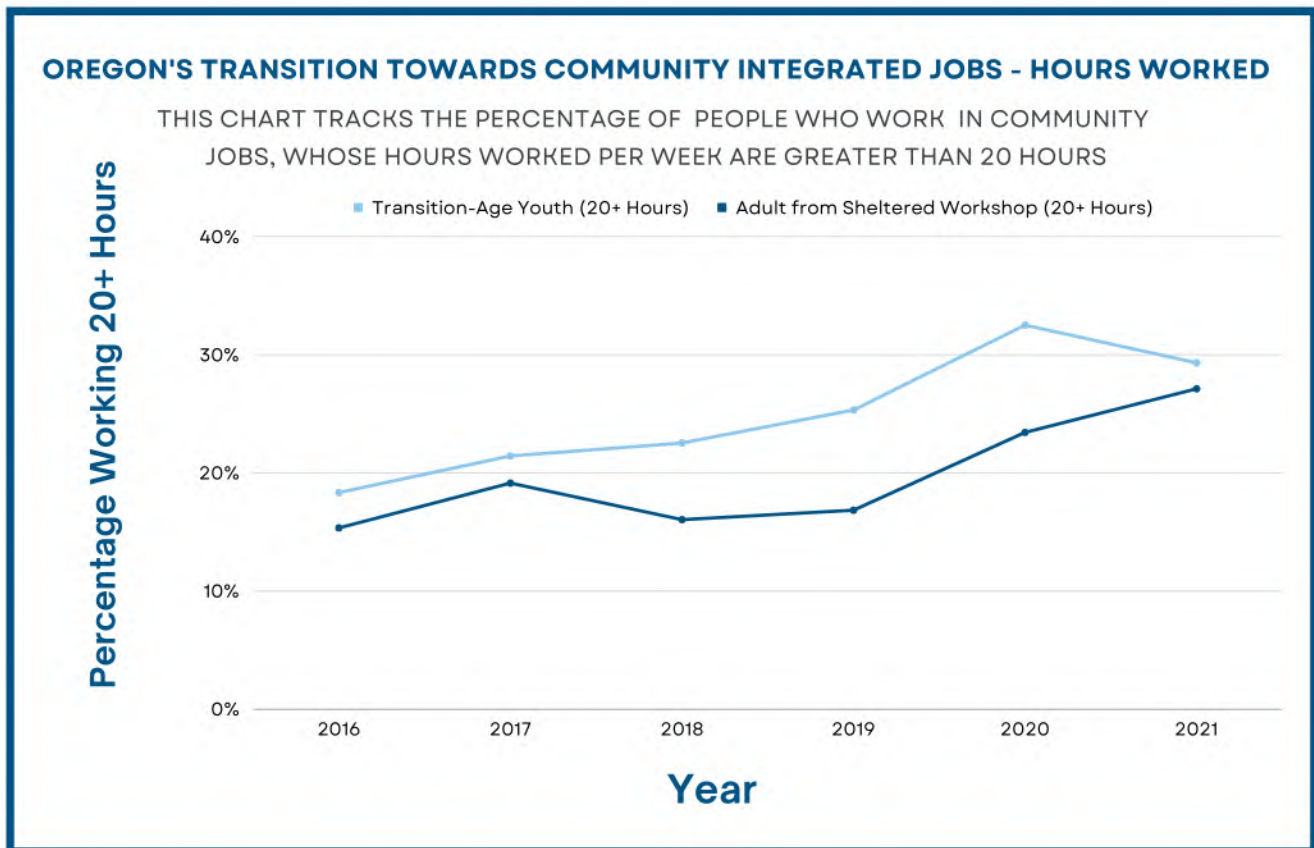
WHAT CAN WE LEARN FROM OTHER STATES?



WHAT CAN WE LEARN FROM OTHER STATES?

From September 2016 to September 2019, there was an overall increase in the ODDS population working twenty or more hours per week (data after September 2019 are impacted by the COVID-19 pandemic). There is a less significant increase in the two sub-categories: the class of transition-age individuals and the class of sheltered workers.

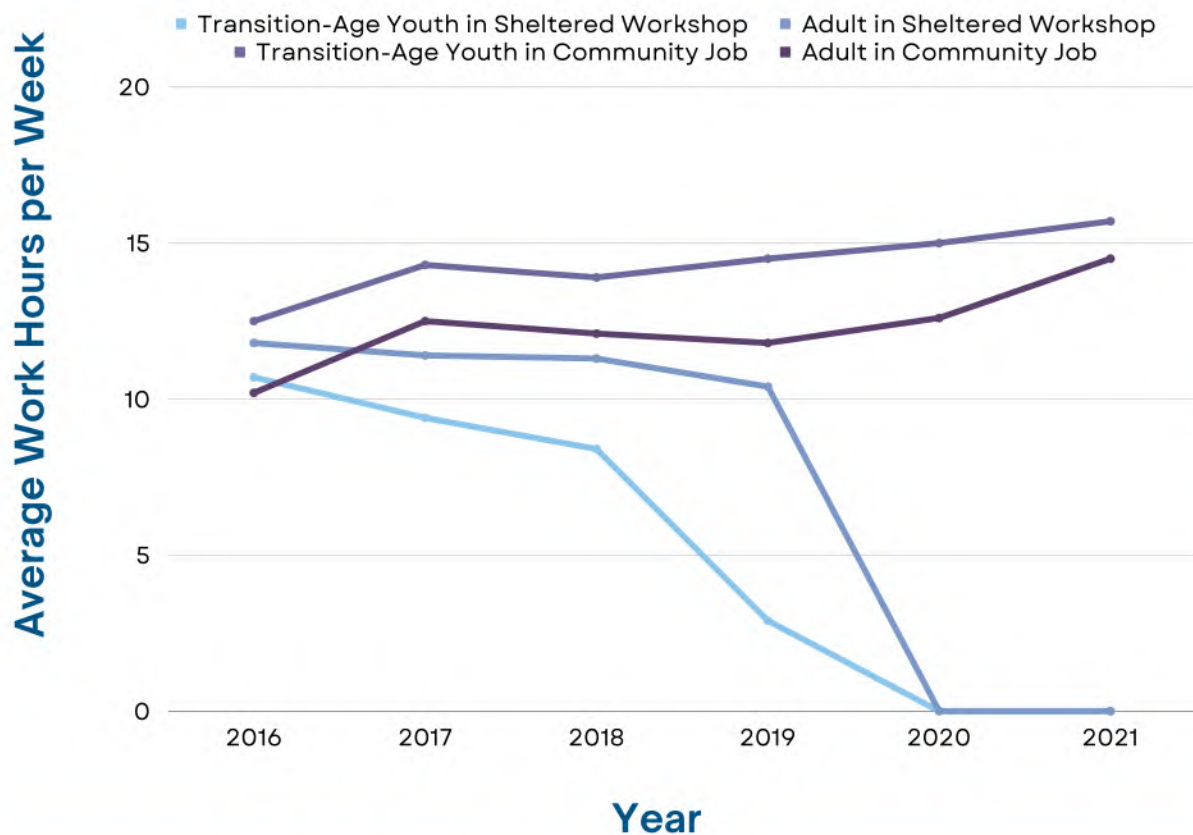
There has been a decline in the average number of hours worked in a sheltered setting for each sub-category. The average number of hours worked in community jobs (Competitive Integrated Employment (CIE)) has remained fairly steady, with the exception of the decrease due to COVID-19. The average number of hours worked in community jobs appears to have rebounded in September 2020, but additional data are needed to confirm this.



WHAT CAN WE LEARN FROM OTHER STATES?

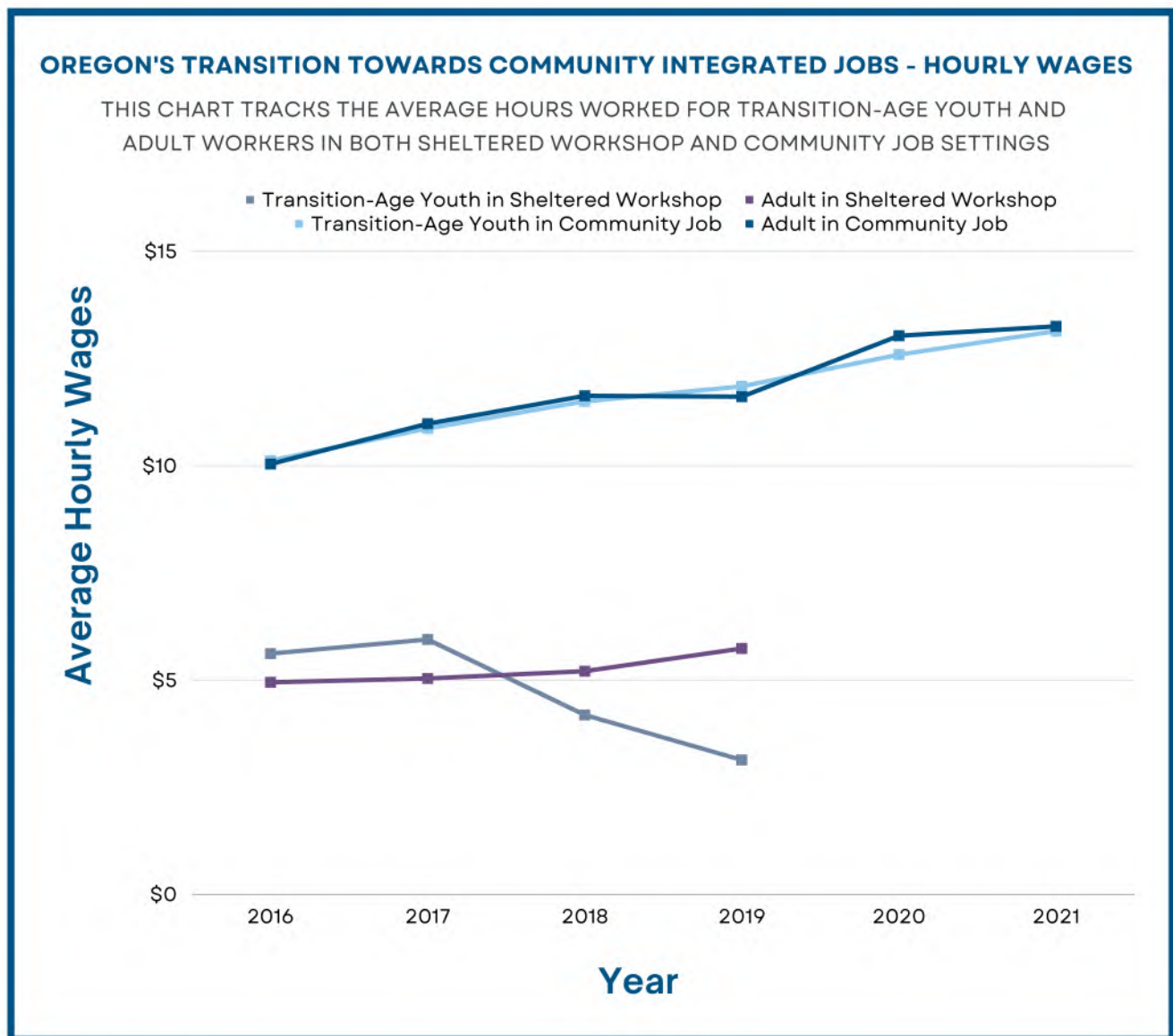
OREGON'S TRANSITION TOWARDS COMMUNITY INTEGRATED JOBS - HOURS WORKED

THIS CHART TRACKS THE AVERAGE HOURS WORKED FOR TRANSITION-AGE YOUTH AND ADULT WORKERS IN BOTH SHELTERED WORKSHOP AND COMMUNITY JOB SETTINGS



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Individuals involved in community jobs in Oregon have seen a gradual increase in their average wages. The average wage in sheltered work is included for comparison.



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The scope of the data collected and provided by the Oregon Department of Human Services in compliance with the *Lane v. Brown* settlement is limited to individuals with intellectual and developmental disabilities in the transition-age and sheltered work populations. The data do not include a distinct count match, nor does it track individuals as single points, longitudinally. As a result, when individuals leave sheltered-work environments, the Department of Human Services does not follow them to determine what services they continue to receive, if any.

Many people who were working thirty to forty hours a week in a sheltered workshop ended up in community-based employment with eight to twenty hours a week. Moreover, the desire to increase the number of individuals participating in community jobs meant employment service providers did not always have the time, resources, and incentives to create a quality, individualized plan for everyone. Individualized programming can lead to greater success. One such success story out of Oregon is Eric. His mother Jan provided a testimonial:⁹²

It took him a long time to get community employment. I had actually given up on it because he needs a lot of support [however,] he gets a lot of support from his program. I'm...over the nervousness of things that could happen...that might discourage him. Eric makes \$17 per hour and lives in his own apartment with support staff. I personally think that anybody can work that has an intellectual disability as long as they have the right supports. When I'm gone, he's going to have a nice life because of this job.

Changes to Oregon's financial reimbursement structure disincentivized sheltered workshop employment. The Department of Human Services barred new enrollment for transition-age and new entry individuals, allowing only the current cohort of workers to remain in sheltered settings. The state provided grants to incentivize sheltered workshops to change to day services, and modifications to Medicaid home and community-based services (HCBS) waivers aided in the transition.

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The employment providers that adapted and transitioned promptly have been more successful. Those that resisted and continued to provide sheltered employment services instead of providing day services or integrated employment supports have closed. Disability Rights Oregon highlighted the negative impact closures had on individuals still involved with those facilities – they were likely to lose out on services entirely.

Disability Rights Oregon further noted that reimbursement rate structures for providers have presented barriers to a smooth transition away from subminimum wage employment. For example, an employment provider may want to transition and provide better services, but the new rate system may not allow them to provide those services to individuals with higher support needs. To generate a lot of community jobs, it is often easiest to hire individuals with low support needs and offer low entry-level jobs. An individual who requires more accommodation may face more difficulties finding high-quality community employment. Development and job coaching services should be included within the rates offered, and the rate model must be sufficient to meet the number of hours an individual wants to work.

Disability Rights Oregon further suggests a collaborative approach among agencies, a rate structure that accommodates the various needs of individuals with disabilities, and individualized programming to find better job placements.

Oregon has made progress in phasing out sheltered workshops and subminimum wage. The data provided by the Department of Human Services, though limited to the scope of the *Lane v. Brown* settlement, show the decline in sheltered work, an increase in competitive integrated employment, a general increase in wages and average hours worked per week, and, in turn, the phasing out of the subminimum wage.

Maine

In the wake of *Olmstead v. L.C.*, in 2003, Maine created a workgroup intent on upholding the integration mandate of the ADA in employment settings.⁹⁵ *Olmstead* was a case brought under the ADA in which the Supreme Court held that people with disabilities

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have a right to live in the community rather than in segregated institutions.⁹⁴ Consisting of policymakers, state agency representatives, and advocates, the workgroup developed recommendations that would re-design the state's approach to the employment of people with disabilities.⁹⁵ The workgroup urged policymakers to support a transition away from segregated employment toward a model that encouraged community jobs.⁹⁶

By 2008, the Maine Department of Health and Human Services ended the funding of segregated work through the Home and Community-Based Waiver System.⁹⁷ At the same time, state agencies leveraged federal, state, and private grant funding to implement person-first, integrated employment programming.⁹⁸ Despite these changes, employers retained the ability to pay their workers a subminimum wage through the federal 14(c) certificate program.

In 2015, Maine State Senator Roger Katz proposed phasing out the subminimum wage, but the proposal stalled in committee.⁹⁹ A 2017 article in the Bangor Daily News reignited concern over the subminimum wage, reporting that at one subminimum wage employer, several employees with disabilities earned as little as \$2.14 an hour while executives earned upwards of \$500,000.¹⁰⁰ In 2020, Maine passed a law abolishing the payment of subminimum wages to workers with disabilities.¹⁰¹

When Maine legislators abolished the subminimum wage, there were no longer any employers authorized by the United States Department of Labor Wage and Hour Division to pay a subminimum wage in the state.¹⁰² Therefore, the legislation had little impact on the lived experiences of workers with disabilities. In 2013, 13 Maine employers were authorized to pay a subminimum wage.¹⁰³ In 2015, that number decreased to 5 employers.¹⁰⁴ By 2017, only one employer was authorized to pay its workers a subminimum wage.¹⁰⁵

As a result of changes instituted by Maine Department of Health and Human Services, the number of people served in facility-based employment settings decreased from 558 persons in 2001 to 0 persons in 2010.¹⁰⁶ The closure of facility-based employment settings, however, has not been matched by a commensurate increase in the number of

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individuals employed in integrated settings. In 2001, 1,386 individuals with disabilities worked in integrated settings;¹⁰⁷ in 2015, only 901 individuals with disabilities worked in integrated settings.¹⁰⁸ Any transition away from facility-based employment in Minnesota must be supported by adequate transition planning toward community employment.

Despite ending subminimum wage employment, Mainers with disabilities remain underemployed – only 35% of Mainers with a disability are employed, compared to 38% nationwide.¹⁰⁹ Moreover, even those Mainers with disabilities who are employed often work less than a full-time schedule. According to Maine’s Vocational Rehabilitation Agency, the average work week for individuals with intellectual and developmental disabilities was 13 hours, which pales in comparison to the average hours worked by individuals without a disability (averaging 29 hours per week).¹¹⁰

Maine’s Department of Health and Human Services has also reported that despite its efforts to desegregate settings that serve workers with disabilities, a paradigm of exclusion remains. In the Department’s most recent update to its Olmstead Roadmap Policy, it admits that more must be done to support integrated employment, transition-age youth, and the seamless collection of data across various departments.¹¹¹

Maryland

In 2014, the Arc of Maryland spearheaded an effort to study the effect of ending subminimum wages in the state.¹¹² While the initial effort stalled, eventually a statewide working group led by People on the Go, a group of advocates with I/DD, and other stakeholders proposed that Maryland should phase out 14(c) establishments.¹¹³ In 2016, these efforts culminated with the introduction of the Ken Capone Equal Employment Act in the Maryland Legislature.¹¹⁴

The Ken Capone Equal Employment Act was signed into law on October 1, 2016. The law initiated a four-year phase out of subminimum wages and mandated that the Maryland Department of Disabilities and the Developmental Disabilities Administration create an individual plan for each person with a disability to find community

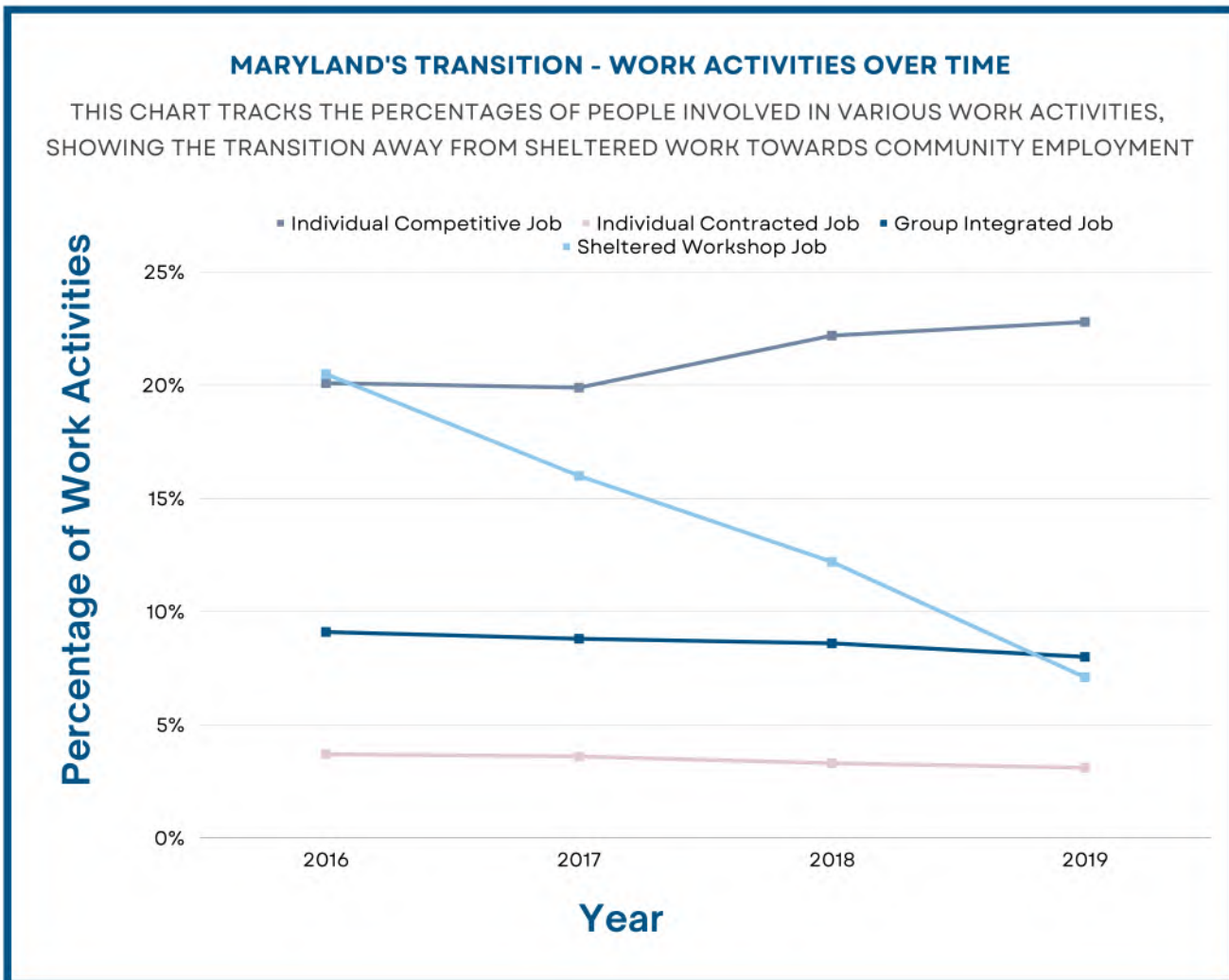
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employment.¹¹⁵ Moreover, the legislation directed state agencies to build capacity to support transition programs and mandated the “tracking of outcomes of individuals with disabilities” as they transitioned away from earning subminimum wages to community jobs. The transition programs emphasize the importance of a person-centered approach, focusing on the strengths, abilities, and desires of people with disabilities.¹¹⁶

Immediately, subminimum wage employers began to transition away from paying workers with disabilities the subminimum wage. While employers were not statutorily required to stop paying subminimum wages until October 1, 2020, some employers chose to not renew their 14(c) certificates when they expired, in anticipation of the program’s sunset.¹¹⁷ In January 2017, 41 establishments held valid 14(c) certificates.¹¹⁸ By the end of 2017, only 23 establishments chose to renew their 14(c) certificates. At the end of 2019, only four 14(c) establishments remained. Finally, on October 1, 2020, the Maryland Department of Disabilities announced that all establishments had ceased paying workers a subminimum wage under 14(c).

As 14(c) establishments closed, the Maryland Department of Disabilities carefully tracked individual and aggregate outcomes. Published data suggests that the legislation was an unequivocal success: not only has participation in community jobs increased markedly, but wages for all workers with disabilities have also improved. As individuals transitioned away from work in sheltered workshops, they sought employment in integrated community settings; from January 2016 to January 2021, the number of individuals working in community jobs increased from 2,356 individuals to 2,580 individuals.¹¹⁹ The following graph, initially published by the Kennedy Krieger Institute, illustrates this dynamic: upon passage of the Ken Capone Equal Employment Act, the percentage of individuals working exclusively in sheltered jobs decreased dramatically.

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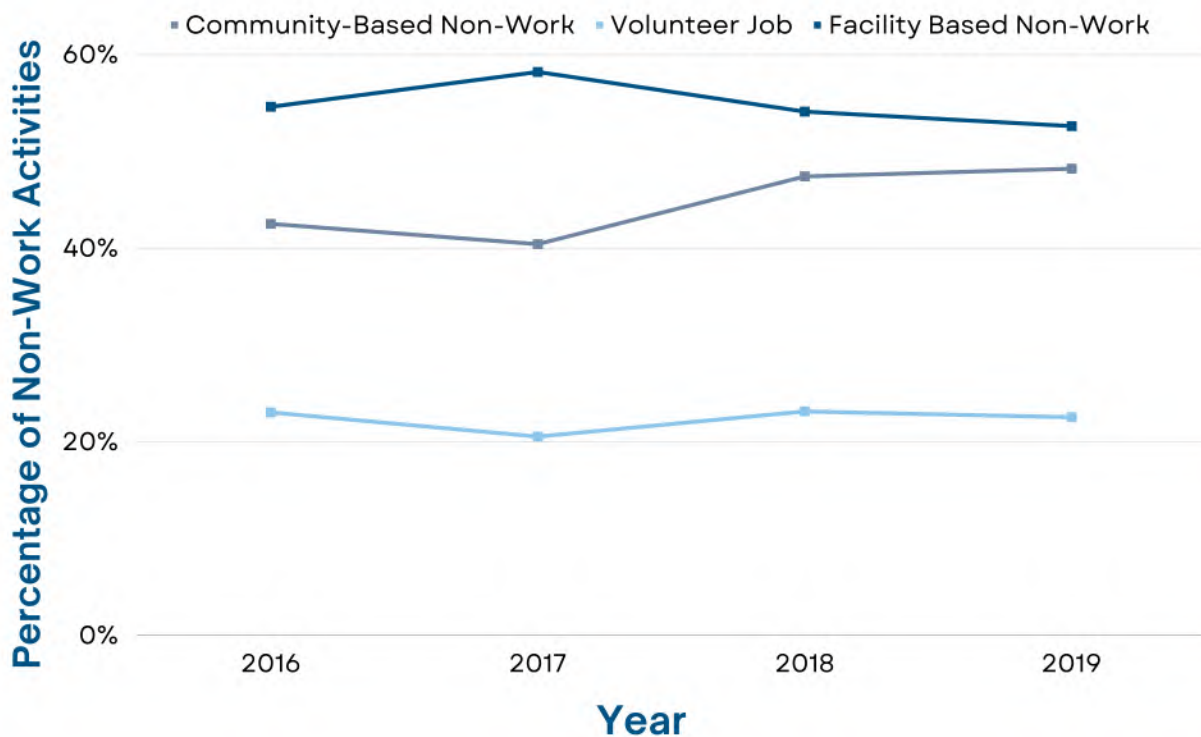
Notably, this shift was not marked by an increase in the amount of time individuals spent in segregated, non-work settings. Defenders of the subminimum wage often argue that the closure of 14(c) establishments would simply shift individuals with disabilities from

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segregated work activities to segregated non-work activities.¹²⁰ So far, this has not been the case in Maryland. Instead, the only meaningful change in non-work activities has been in community-based non-work.¹²¹

MARYLAND'S TRANSITION - NON-WORK ACTIVITIES OVER TIME

THIS CHART TRACKS THE PERCENTAGES OF PEOPLE INVOLVED IN VARIOUS NON-WORK ACTIVITIES, SHOWING THE TRANSITION AWAY FROM SHELTERED NON-WORK TOWARDS COMMUNITY NON-WORK



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Hourly wages for workers with disabilities have also improved since the implementation of the legislation. By October 2019, workers with disabilities in individual, community jobs earned a median wage of \$11.80 an hour; for those in individual, contracted jobs, the median wage was \$12.21 an hour; for those in group, integrated jobs, the median wage was \$10.80 an hour. Median average wages for October 2020 were not published as a result of the COVID-19 pandemic.¹²²

Finally, the employment rate for all workers with disabilities increased during this period, indicating that the individualized employment programming offered by the Maryland Department of Disabilities impacted all workers with disabilities, not simply those transitioning away from 14(c) establishments.¹²³

In 2020, as a result of the COVID-19 pandemic, and the consequent economic downturn, employment outcomes were not published by the Maryland Department of Disabilities.¹²⁴ However, there is reason to believe that workers with disabilities in Maryland were severely affected by the flagging economy.¹²⁵ Future reports from the Maryland Department of Disabilities will need to be scrutinized to ensure the prolonged positive impact of this legislation.

Despite the wealth of data collected by the State, there is one glaring omission from the sample: the Maryland Department of Disabilities did not collect any data accounting for hours worked (or spent, in non-work cases) in different settings. Hypothetically, then, a worker with disabilities could have transitioned away from a 40-hour work week in a sheltered workshop to a community job that offers them only a few hours of work per week. This outcome would pass muster under Maryland's standard of analysis, despite the decrease in meaningful, programmed hours. While this may meet an individual's employment needs, any system needs to offer meaningful opportunities and programs to account for a reduction in programmed employment hours. As other states look to model Maryland's reforms, they should collect more granular data to ensure that a new program truly meets the goal of offering meaningful, integrated employment options to workers with disabilities.

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Rhode Island¹²⁶

For decades, most individuals with I/DD in Rhode Island received employment and day services in segregated settings. In 2014, 80% of the people with I/DD receiving these services were placed in “segregated sheltered workshops or facility-based day programs.”¹²⁷

Given these statistics, the DOL began to investigate the abuses of subminimum wages in sheltered workshop settings. Initially, the investigations focused on the abuses of individual nonprofit employers paying subminimum wages, rather than structural problems.¹²⁸ In 2012, the DOL ordered service provider Training through Placement to pay \$300,000 in back wages to workers earning a subminimum wage.¹²⁹ Eventually, the DOL involved the Department of Justice (DOJ) to widen the scope of the investigations. On January 14, 2013, the DOJ formally initiated an investigation to determine if Rhode Island had violated Title II of the ADA and the holding of *Olmstead v. LC* (1999).

In 2013 and 2014, respectively, the State of Rhode Island entered into an Interim Settlement Agreement and Consent Decree with the DOJ.¹³⁰ Both agreements acknowledged that the State had violated the ADA by failing to serve individuals with I/DD in integrated settings and failing to place youth with I/DD in settings that were not at serious risk of segregation. The Consent Decree required Rhode Island to reform its employment, vocational, and day service programs in 10 years’ time to comply with the integration mandate of the ADA. Specifically, the State must work with three target populations – “Youth in Transition,¹³¹ Youth Exit,¹³² and the Sheltered Workshop Population”¹³³ – to transition away from segregated settings toward community integrated settings.

Under the Consent Decree, Rhode Island has until 2024 to ensure that its systems are in full compliance with the integration mandate of the ADA. As of the publication of this report, the total impact of this court-ordered transition is undetermined. However, early

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results indicate that while Rhode Island has made significant strides toward reforming their systems, these measures have fallen short of the benchmarks specified in the Consent Decree.¹³⁴

The Consent Decree mandated that Rhode Island track individuals longitudinally across time as they transition away from their current placements toward integrated services. Since 2014, 284 individuals in the Youth Exit population have acquired an integrated job; 260 individuals from the sheltered workshop population have acquired an integrated job; and 417 individuals from the day program population have acquired an integrated job. However, each count falls short of the benchmarks stipulated in the Consent Decree.¹³⁵

Despite the increase in the number of individuals employed in integrated settings, questions remain as to the quality of these placements. In particular, the number of work hours available in integrated settings has been scrutinized by the Court Monitor. The Consent Decree mandated that all individuals who receive a supported employment placement must work an average of 20 hours a week. Yet, according to a 2021 Court Monitor Report, “only 55% of the Consent Decree adult populations were participating in integrated community activities for an average of 9.48 hours per week,” and “only a small fraction of the Consent Decree populations are participating in combined integrated employment and community activities for more than 20 hours per week.”¹³⁶

Staffing shortages remain a persistent impediment to the implementation of the transition. Consultants from Approach Group, a private consultancy firm hired by the State of Rhode Island to analyze the totality of the state’s I/DD support system, found that 2,845 direct care staff were necessary to support the goals of the Consent Decree. The firm found that Rhode Island fell short of reaching that hiring target by 1,000 direct care staff people.¹³⁷ Even the State’s administration of the Consent Decree transition has been marred by staffing issues: the Consent Decree Coordinator role, an executive position designed to lead across multiple state agencies, has experienced high turnover, as six individuals have held the position since 2014. Recently, the court monitoring the transition ordered that immediate action be taken to hire more workers - in the form of wage hikes,

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incentive-based programs, and targeted training.¹³⁸

Finally, the most profound barrier to an effective transition is Rhode Island's failure to adequately fund the Consent Decree programs. The DOJ alleges that Rhode Island has systematically failed to even ask the Legislature for sufficient funding for the court mandated programs.¹³⁹ The State, despite the urging of the Court Monitor, has failed to raise wages for direct care staff, increase reimbursement rates for service providers, or adequately fund transportation and technology needs of individuals.¹⁴⁰

In 2021, the District Court monitoring the implementation of the Consent Decree requested preliminary hearings to determine whether Rhode Island was in contempt of the mandates of the Consent Decree. The DOJ threatened fines amounting to \$1.5 million per month for each month that the State remains out of compliance. In October 2021, U.S. District Court Chief Judge John McConnell Jr. mediated the contempt hearing between Rhode Island and the DOJ.¹⁴¹ The parties mutually agreed to seek corrective action and created an action plan to address the Consent Decree transition plan's deficiencies. The action plan provides corrective strategies for three main problem areas: 1) funding critically under-capitalized programs; 2) addressing staffing shortages; and 3) addressing transportation issues. Chief Judge McConnell commented that "it is not easy to move government," and that the corrective action plan marks a "monumental achievement."¹⁴²

Vermont

Vermont has long been a leader in providing meaningful, integrated employment opportunities for people with disabilities. In the 1980s, state agencies collaborated with researchers at the University of Vermont to build pilot programs that ushered people with disabilities away from sheltered work toward community jobs.¹⁴³ Accessing federal funding from the Rehabilitation Services Administration, the program was a remarkable success, expanding community employment infrastructure to every Vermont county.¹⁴⁴ Then, in 2000, the Vermont state intellectual and developmental disability service-provision agency – Vermont Developmental Disability Services – mandated that it would no longer fund new entrants into sheltered workshop populations.¹⁴⁵ In 2002,

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Developmental Disability Services altered the State System of Care Plan, indicating that it would phase out Medicaid funding for sheltered work in three years.¹⁴⁶

The phase-out not only closed traditional sheltered workshops with 14(c) certificates, but enclave models of employment as well. Notably, these policy changes took place outside of the state's legislative process. This was by design; according to Jennie Masterson, a Developmental Disability Services agency coordinator, "[Developmental Disability Services] didn't want to make it a big political process."¹⁴⁷ By 2003, the last sheltered workshop in Vermont had closed.¹⁴⁸

Due to Vermont's robust supported employment infrastructure and a thoughtful, phased approach, the transition away from sheltered work was overwhelmingly positive. According to a National Council of Disability Report published in 2012, 40% of people with disabilities in Vermont worked in integrated employment settings; the remainder spent their days in community-based, integrated non-work settings.¹⁴⁹ In 2019, the percentage of people with disabilities working in integrated settings rose to 49%, far outstripping the national average of 21.5%.¹⁵⁰ By way of comparison, in 2019, this percentage was 26% in Minnesota.¹⁵¹ Moreover, wages for workers with disabilities have also steadily increased since the end of sheltered work in Vermont. Average yearly wages for individuals with intellectual and developmental disabilities in Vermont were \$22,300 per year, increasing by over \$10,000, on average, in the last decade alone.¹⁵²

Anecdotal evidence also suggests that, over the long run, the transition has been looked upon favorably by workers and providers alike. In a case study of the final sheltered workshop that closed in Vermont, University of Vermont researcher Brian Dague reported that 80% of people had found competitive employment in the community; while the remainder found community-based, integrated non-work placements.¹⁵³ Despite participants noting an initial "fear of the unknown, an inability to visualize a future without sheltered employment, and the strong history of [sheltered work]," the overall process was characterized as a "new and fulfilling experience for participants."¹⁵⁴

While rates of supported community employment have increased, the number of hours

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worked per week by workers with disabilities in Vermont has remained relatively stagnant. In 2013, the average workweek was only 16 hours.¹⁵⁵

Moreover, Vermont was unsuccessful, throughout the transition process, in tracking individuals' process away from sheltered work and toward competitive integrated employment. While aggregate data are available, Vermont Developmental Disability Services has not published, to date, any information demonstrating the success of its individualized transition planning. In designing a thoughtful transition program, Minnesota should carefully track, on an individual basis, the transition of workers away from sheltered work toward community jobs.

WHAT CAN WE LEARN FROM OTHER STATES?

Which Model Should Minnesota Adopt?

While the MDLC recognizes that every state has a unique political history and landscape, there are similarities in states' disability employment services systems. Minnesota lawmakers should learn from the examples set by the five states included in this report and others that have phased out subminimum wages and selectively implement the aspects of these programs that were successful.

First, Minnesota should look to states that implemented a thoughtful, phase-out approach to ending subminimum wage through legislative processes. The Minnesota Legislature has already signaled its willingness — by the creation of a task force — to study the issue. The MDLC recommends that the Legislature pass legislation to phase out subminimum wages by a date certain in the next five years. Maryland provides an example of a phase-out approach. Not only was the systems change carefully implemented over four years, but it also provided robust, individualized programming for each person with disabilities transitioning away from sheltered work to a community job. Notably, the transition in Maryland was led by people with disabilities; the outcomes, thus far, have been overwhelmingly positive.

If a legislative solution is untenable, Minnesota policymakers should consider the example of Vermont, where the policy change was implemented through agency action. Vermont state agencies unilaterally altered their Medicaid HCBS funding model to halt, over a four-year phase-out period, reimbursement for any facility that provided subminimum wage work in a sheltered setting. Minnesota state agencies could take similar action.



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Any phase-out must be paired with sufficient funding to ensure, that as people with disabilities transition away from sheltered work, there are robust supports available to transition to an appropriate community job or integrated community day programming. For example, despite a court-mandated ten-year phase-out, Rhode Island has not met its stated goals due to a lack of funding.¹⁵⁶ Even Maryland, with a more clearly defined phase-out, has not fully capitalized on their well-designed plan due to the state's fiscal challenges.

The United States Commission on Civil Rights noted that Oregon's transition has been successful because the state earmarked funding for the "right supports including 'longer, more intensive transition services.'" ¹⁵⁷ In Vermont, stakeholders worked to ramp up support for individualized employment support programs before ending subminimum wage in sheltered settings. In the 1980s, using federal funding, Vermont created an employment support infrastructure that surpasses what exists in Minnesota today.¹⁵⁸

Minnesota legislators should ensure that Minnesota's transition is fortified by sufficient funding. Minnesota was recently awarded a \$13 million federal grant to transition away from subminimum wages and sheltered employment.¹⁵⁹ However, Minnesota legislators must do more to address the fact that funding for sheltered employment remains ten times higher than funding for community jobs.¹⁶⁰

Finally, data collection played a role in each states' transition to community employment. States took different approaches, but most states tracked outcomes for specific groups of people transitioning away from subminimum wages. Only Rhode Island and Maryland tracked both individualized and aggregate longitudinal outcomes, which allowed the states to track if and when people moved from subminimum wage work to community jobs. Granular data allows policymakers to track outcomes across time, ensuring no one person, or group of people, is lost in the transition. The state should also track outcomes across demographics, including, but not limited to, race, gender, age, type of disability, and location. These data will reveal inequities that may arise in the implementation of a transition from subminimum wage employment to community jobs.

POLICY RECOMMENDATIONS

After reviewing the status of subminimum wage employment in Minnesota, the outcomes for workers with disabilities in states that have phased out subminimum wage, and studies by other organizations, the MDLC supports policy changes to phase out the payment of subminimum wages in Minnesota. The 92nd Minnesota Legislature (2021-2022) began this process by passing legislation to create a task force to plan by 2023 for the transition away from subminimum wages by 2025.¹⁶¹ The MLDC applauds the Legislature for taking this important step and supports a thoughtful, planned approach to eliminating subminimum wages to lead to the best outcomes for workers with disabilities.¹⁶²



People with disabilities must be leaders in the planning to phase out subminimum wages. The MDLC is pleased that at least three representatives on the task force must be people with disabilities.¹⁶³ People with disabilities, including those who have earned subminimum wages and those who have worked in community jobs, have lived experience that is an asset to the planning process. The task force must think creatively about how Minnesota can adapt its service delivery models and funding to support people looking for and maintaining community jobs.

After researching five states that phased out the subminimum wage for people with disabilities, the MDLC recommends the following ten policy changes:

POLICY RECOMMENDATIONS

1

Expand the information, options, and education provided by the Department of Human Services (DHS), the Department of Employment and Economic Development (DEED), and the Department of Education (MDE) to empower people with disabilities to learn, through individualized planning, about support to find a community job.

State agencies need to improve coordination to better support people with disabilities seeking community jobs. Key state agencies, including the Minnesota Department of Employment and Economic Development (DEED), Department of Human Services (DHS), and the Department of Education (MDE) are already coordinating through a partnership called “EIMN.”¹⁶⁴ EIMN is part of the state’s Employment First plan. However, more coordination and support are required to transition people from subminimum wage employment to community jobs that match individuals’ interests and skills. Like the division of responsibility created by EIMN policies and the Workforce Innovation and Opportunity Act,¹⁶⁵ DHS, DEED and MDE need to be transparent with workers with disabilities and their support networks about each agency’s responsibility in helping people transition to community jobs. DHS, DEED and MDE also need to continue to improve coordination to prevent siloed systems from impeding the success of workers with disabilities in community jobs. The agencies and lead agencies, including counties and tribal nations, need to go beyond strategies used in the past to inform workers with disabilities about the supports available to them, and the information needs to be provided in plain language, in multiple languages, and in multiple formats to ensure accessibility.

2

Provide sufficient financial resources, policy guidance, and technical assistance to employment service providers transitioning toward helping people find community jobs.

Subminimum wage employers need financial resources, policy guidance, and technical assistance to transition from paying subminimum wages to providing employment services focused on helping people with disabilities

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find community jobs. A 2022 report from the University of Minnesota's Institute for Community Integration and the University of Massachusetts Boston's Institute for Community Integration on the Minnesota Technical Assistance Project (MN-TAP)¹⁶⁶ includes several recommendations, such as ongoing technical assistance for employment service providers, affordable training for employment services staff, and providing microgrants for people seeking community jobs.

The same legislation that created the task force to plan for phasing out subminimum wages also provided \$14 million for a provider reinvention grant program for HCBS waiver service providers seeking to stop paying subminimum wages and instead help people find community jobs.¹⁶⁷ In November 2021, DHS issued a Request for Proposals to find an entity to provide technical assistance to providers under the grant.¹⁶⁸ The provider reinvention grant and technical assistance will assist HCBS waiver service providers moving away from paying subminimum wages. More technical assistance and funding may be necessary to help all subminimum wage employers shift their services toward helping people find community jobs.

3

Modify Medicaid Home and Community-Based Services Waiver Employment Services to ensure that people receiving Waiver Employment Services are not earning subminimum wages as a part of their Employment Support Service.

If the Minnesota Legislature does not pass legislation to phase out subminimum wages, the MDLC urges the Minnesota DHS to limit the payment of subminimum wages to people with disabilities by stopping the use of Medicaid HCBS funding to fund services at facilities that pay subminimum wages. Similar to Maine, Minnesota's DHS should amend the scope of waived employment services to prohibit subminimum wage employers from paying workers with disabilities a subminimum wage while the subminimum wage employers are receiving federal funding to provide waiver funded employment services.¹⁶⁹ Maine reduced the number of people earning subminimum wages by preventing state agencies from using federal Medicaid

POLICY RECOMMENDATIONS

HCBS dollars to pay for supported employment services at facilities that pay subminimum wages.¹⁷⁰ If the Minnesota Legislature does not act, Minnesota DHS should do the same.

4

Modify Medicaid Home and Community-Based Services Waiver Employment Services to ensure the service system fully supports and funds the individualized process of supporting a person to find a community job based on their interests and strengths.

Services and planning for people with disabilities must be individualized. Service providers must consider individuals' strengths, interests, and needs, and move beyond the traditional and limited fields of employment in which many people with disabilities have traditionally worked, like assembly, cleaning, food service, and landscaping. A person's support team, including case managers, waiver employment service providers, and vocational rehabilitation counselors, need to invest time to address questions about working in the community, resolve potential barriers such as transportation, and provide benefits counseling.

More training and funding may be needed for assessors and case managers to support an individualized planning process following person-centered practices. Additionally, as recommended above, more training and funding may also be needed for service providers to provide support, assistance, and coordination to people with disabilities looking for or trying to keep community jobs. DHS needs to allow for more flexibility in using waiver funding for transportation to and from work. As state agencies change their service systems and waiver reimbursement rates to support employment service providers helping people find community jobs, it is important to design a system that encourages providers to find a job that is a good match for a person's interests and skills, rather than incentivizing service providers to help find the first job that comes along.

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5

Pass legislation to phase out the payment of subminimum wages in Minnesota by a specific date with funding to implement the phase out.

Legislation introduced in 2021 sought to phase out the payment of subminimum wages over five years and create a task force to plan for the transition away from subminimum wages.¹⁷¹ Now that the task force has convened,¹⁷² we urge the Legislature to pass legislation phasing out subminimum wages by a specific date within five years. While a thoughtful process is required, planning to phase out subminimum wage is not sufficient. The state must act to phase out subminimum wages for workers with disabilities with time and funding, with the goal of a seamless transition.

6

Design and implement data collection programs to ensure the adequate tracking of each person's progress out of subminimum wage work and into a community job.

To measure outcomes, Minnesota state agencies, including DHS and DEED, should design and implement data collection systems to track each person's progress away from subminimum wage work and toward a community job. DHS and DEED already collect some data about the employment status and work income of people receiving services from their agencies.¹⁷³ DHS and DEED need to collect additional data, starting before subminimum wages are phased out, to ensure that the agencies, people with disabilities, and other stakeholders can track Minnesota's transition away from paying subminimum wages.

The data collected should include: how much each individual earned and how many hours they worked in subminimum wage employment; how much they earned and how many hours they worked after moving to a community job; if the individual wants to work additional hours; and whether they found a job in their chosen field. The data collected should also include demographic information, including racial and ethnic information, to allow analysis of

POLICY RECOMMENDATIONS

whether there are racial and ethnic disparities in employment outcomes. Like in Oregon and Maryland, data should be collected at least every six months to allow for periodic analysis of outcomes.

While states that have phased out the subminimum wage have collected data to track the outcomes of groups of workers with disabilities previously earning subminimum wages, the data collected did not provide enough information to fully understand the employment status of all workers who previously earned subminimum wages and whether they needed additional support to reach their community job goals. California's law phasing out subminimum wage and requiring individual-level and aggregate data tracking may serve as a helpful model.¹⁷⁴ Minnesota should follow suit to ensure that outcomes are equitable across demographic groups.

7

Fund transportation and help people find transportation to get to and from work, particularly in rural areas and in areas without public transportation.

Transportation is a significant barrier to employment for people with disabilities.¹⁷⁵ Funding and creative solutions for transportation are essential to transitioning people with disabilities into community jobs. Minnesota has taken steps forward with pilot projects, like Dakota County's Lyft Ridesharing program that provides waiver recipients with Lyft vouchers to get rides to and from work and community activities. Dakota County's project was funded by DHS' Innovation Grant.¹⁷⁶ Washington County also had success allowing workers with disabilities to gain independence and take jobs not accessible by public transportation by providing workers with Lyft vouchers.¹⁷⁷ DHS should move forward with including ridesharing as a part of waiver services throughout the state, while also taking steps to ensure that accessible vehicles are available through ridesharing programs. DHS and lead agencies should also investigate other solutions to transportation barriers. Additional creative projects, such as volunteer driver programs¹⁷⁸ and collaboration with community and faith groups, may be needed to support people working

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community jobs. As creative solutions are determined to be successful, they should be replicated to reach as many areas of the state as possible.¹⁷⁹

8

Support and demand seamless collaboration amongst DEED’s vocational rehabilitation programs and special education providers to ensure youth who have disabilities aged fourteen to twenty-four leave school with a concrete plan, resources, and contacts for future education, training, or employment.

Youth with disabilities aged fourteen to twenty-four need more help and seamless collaboration among agencies and service providers to ensure that they leave school with a concrete plan and resources for future education, training, and employment. Additionally, school districts, MDE and DEED need to cooperate more to ensure that students with disabilities are meaningfully connected to DEED’s vocational rehabilitation programs early in high school to avoid an interruption in employment search assistance, training, or post-secondary education. DEED must implement a plan to communicate with families about vocational rehabilitation services and track outreach efforts and the number of students reached. At present, too many young people with disabilities are unemployed.¹⁸⁰ The MDLC has represented young people who have lost time and momentum after graduation waiting to connect with services and waiting to make a plan to find a job or receive additional education.

Several legislative changes could improve coordination between special education providers and DEED’s vocational rehabilitation programs. The legislature should pass legislation to require the following:

- School districts must provide information about DEED vocational rehabilitation services at a student’s annual IEP meeting after a student eligible for special education services turns 14 years old.

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- For students receiving vocational rehabilitation services from DEED, their vocational rehabilitation counselor must attend an IEP meeting between 12 to 24 months before the student's expected completion of twelfth grade.
- School districts must document the attendance of the DEED vocational rehabilitation counselor in the student's prior written notice or the IEP.
- School transition services and DEED Pre-Employment Transition Services (Pre-ETS) should include training on safety in the community to help prepare transition-age youth to work in the community.

9

Ensure access to benefits counseling to encourage community jobs.

Benefits counseling is essential to supporting people who want to work in community jobs. Many people are understandably confused about how earned income may affect their government benefits and need the help of a trained professional to understand how earning income could affect their health insurance, food assistance, housing assistance, Social Security disability benefits, and other government benefits. Trained benefits counselors are especially important because there is a lot of misinformation about how working can affect government benefits.

The Work Incentives Connection at Goodwill Easter Seals provides a helpful resource by conducting benefits analysis for people who receive Social Security disability benefits. Recent efforts by DEED and DHS to increase the number of trained benefits counselors is a positive step toward more help for people with disabilities who are working and receiving government benefits. More timely, comprehensive, and clear benefits counseling is needed to empower everyone who wants to work in community jobs to understand how their benefits may be impacted by working. People also need the opportunity to return for additional information about how their benefits may be affected if they change their hours or get a raise.

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10

Provide high-quality, integrated day programming for people who choose not to work.

Phasing out subminimum wages could mean that some people with disabilities choose not to work or choose to work a limited number of hours. Minnesota should ensure that high-quality, integrated day programming is available for people who choose not to work, or for people who choose not to work full-time during the traditional work week. Day programming provides an opportunity for people to have organized, integrated social opportunities that some people may not otherwise have and would allow people to remain connected to friends/co-workers from their previous time working in a setting providing subminimum wages.

Many supporters of subminimum wage work highlight the social relationships developed at CRPs. People could maintain social relationships with former CRP co-workers, including by participating in high-quality, integrated day programs. In Vermont, people who transitioned from earning subminimum wages to working in community jobs continued to meet for lunch with friends/co-workers they met while working for subminimum wages.¹⁸¹ Not only did the lunches allow people to maintain social connections, they also provided an opportunity for people to learn from each other about their search for community jobs and their integrated work experiences.¹⁸² People with disabilities would also be able to form new relationships with people in the community, including people who have and who do not have disabilities, through high-quality, integrated day programming.

CONCLUSION

Minnesota's Olmstead Plan,¹⁸³ the Employment First policy,¹⁸⁴ federal law,¹⁸⁵ and court rulings¹⁸⁶ envision and protect the rights of people with disabilities to work in community jobs.¹⁸⁷ While some people with disabilities have found community jobs, too many remain in sheltered, subminimum wage employment. Moreover, while many states have successfully shifted away from the dominant model of subminimum wage work at a CRP, Minnesota has not.

The MDLC applauds the Minnesota Legislature for passing legislation in 2021 to create the Task Force on Eliminating Subminimum Wages to plan for phasing out subminimum wages in Minnesota.¹⁸⁸ In addition to thoughtful planning, the Legislature should act to phase out subminimum wages.



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Executive Summary

- 1) See HOGAN LOVELLS, *Subminimum Wage Data Collected from Freedom of Information Act Request of U.S. Department of Labor Wage and Hour Division* (2019) (unpublished data on file with the Minnesota Disability Law Center).
- 2) U.S. DEP'T OF LAB. WAGE & HOUR DIV., 14(c) Certificate Holders, <https://www.dol.gov/agencies/whd/workers-with-disabilities/section-14c/certificate-holders> (last visited October 6, 2022).
- 3) *Id.*
- 4) See Jean Winsor et al., *StateData: The National Report on Employment Services and Outcomes Through 2018* 95, UNIV. OF MASS. BOSTON, INST. FOR CMTY. INCLUSION (2021), https://www.statedata.info/sites/statedata.info/files/files/state_data_2021_F%53%5D.pdf.
- 5) Health & Hum, Servs. Omnibus Bill, 2021, Special Session 1, Minn. Sess. Law, Ch. 7, H.F. No. 33, art. 17, § 1.
- 6) 'Competitive integrated employment' is the term defined in federal law as work for which workers receive the same "customary rate" pay (minimum wage or higher) and benefits as other workers doing "similar work" and having "similar training, experience and skills." 34 C.F.R. § 361.5(c)(9) (2016). This report sometimes chooses to use the term 'community job' rather than 'competitive, integrated employment' because 'community job' is easier to understand in certain contexts.
- 7) Fair Labor Standards Act of 1938, 29 U.S.C. § 214(c); Fair Labor Standards Act of 1938, ch. 676, § 14, 52 Stat. 1068. See also U.S. DEP'T OF LAB. WAGE & HOUR DIV., 14(c) Certificate Holders, <https://www.dol.gov/agencies/whd/workers-with-disabilities/section-14c/certificate-holders> (last visited May 21, 2020).
- 8) 29 C.F.R. §§ 525.9(a)(3), 525.12(h)(1). See also 29 U.S.C. § 214(c)(1)(C); 29 C.F.R. § 525.12(c).
- 9) U.S. DEP'T OF LAB. WAGE & HOUR DIV., 14(c) Certificate Holders, <https://www.dol.gov/agencies/whd/workers-with-disabilities/section-14c/certificate-holders> (last visited October 6, 2022).
- 10) Allan Baumgarten, *Evaluation of Sheltered Employment Programs* PROGRAM EVALUATION DIV., OFF. OF THE LEGIS. AUDITOR, STATE OF MINN. (Mar. 28, 1984), <https://www.lrl.mn.gov/docs/pre2003/other/840684.pdf>.
- 11) *Id.*

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- 12) See generally U.S. COMM'N ON CIV. RTS., *Subminimum Wages: Impacts on the Civil Rights of People with Disabilities* 23 (Sept. 17, 2020), <https://www.usccr.gov/files/2020/2020-09-17-Subminimum-Wages-Report.pdf>.
- 13) See StateData.info, *Population Data from the American Community Survey* (2022), <https://www.statedata.info/data/showchart/997145>.
- 14) MINN. DEP'T OF LAB. & INDUS., *Minimum Wage in Minnesota*, (Aug. 5, 2022, 2:45 PM), <https://www.dli.mn.gov/minwage>.
- 15) See HOGAN LOVELLS, *Subminimum Wage Data Collected from Freedom of Information Act Request of U.S. Department of Labor Wage and Hour Division* (2019) (unpublished data on file with the Minnesota Disability Law Center) (many of the 14(c) certificate applications reviewed covered periods in 2017 and 2018).
- 16) U.S. DEP'T OF LAB. WAGE & HOUR DIV., *14(c) Certificate Holders*, <https://www.dol.gov/agencies/whd/workers-with-disabilities/section-14c/certificate-holders> (last visited October 6, 2022).
- 17) See generally U.S. COMM'N ON CIV. RTS., *Subminimum Wages: Impacts on the Civil Rights of People with Disabilities* 23 (Sept. 17, 2020), <https://www.usccr.gov/files/2020/2020-09-17-Subminimum-Wages-Report.pdf> (“Over the last 10 years, an average of eight percent of all 14(c) workshops in the country were investigated each year, and the great majority of those investigated were in violation of even the subminimum wage rules and were ordered to pay back pay.”). Federal Courts have ruled that subminimum wage employment at sheltered workshops is in violation of the “Integration Mandate” of the Americans with Disabilities Act (ADA).
- 18) See ASS'N OF PEOPLE SUPPORTING EMP. FIRST, *APSE 14c Update*, https://apse.org/wp-content/uploads/2021/10/10_20_21-APSE-14c-Update-REV.pdf (last visited Oct. 1, 2021).
- 19) *Id.*
- 20) Health & Hum. Servs. Omnibus Bill, 2021, Special Session 1, Minn. Sess. Law, Ch. 7, H.F. No. 33, art. 17, § 1. The MDLC is pleased that at least three representatives on the Task Force on Eliminating Subminimum Wages must be people with disabilities.
- 21) U.S. DEP'T OF EDUC., *Education Department Awards \$177 Million in New Grants to Increase Competitive Integrated Employment for People with Disabilities* (2022), <https://www.ed.gov/news/press-releases/education-department-awards-177-million-new-grants-increase-competitive-employment-people-disabilities>.

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- 22) Jean Winsor et al., StateData: The National Report on Employment Services and Outcomes Through 2018 95, 23 UNIV. OF MASS. BOSTON, INST. FOR CMTY. INCLUSION (2018).

Introduction

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- 24) 29 U.S.C. § 214(c) (1938).
- 25) *Id.*
- 26) Eighty percent of all cases investigated by the U.S. Department of Labor showed that 14(c) providers harm employees with disabilities. U.S. COMM’N ON CIV. RTS., *Subminimum Wages: Impacts on the Civil Rights of People with Disabilities*, i, vii (Sept. 17, 2020), <https://www.usccr.gov/files/2020/2020-09-17-Subminimum-Wages-Report.pdf>.
- 27) As of January 1, 2020, there were 1,558 14(c) certificates either issued or pending renewal by the U.S. Department of Labor’s Wage and Hour Division. Of those 1,558 certificates, 1,452 (93%) were held by Community Rehabilitation Programs. See ADVISORY COMM. ON INCREASING COMPETITIVE INTEGRATED EMP. FOR INDIVIDUALS WITH DISABILITIES, Final Report to: The Hon. Thomas E. Perez, U.S. Sec’y of Lab.; The U.S. Senate Comm. On Health, Educ. & Lab.; The U.S. House of Representatives Comm. on Educ. & the Workforce (Sept. 15, 2016), https://www.dol.gov/odep/topics/pdf/ACICIEID_Final_Report_9-8-16.pdf (finding that the majority of people with disabilities earn a subminimum wage for work in congregate work centers operated by Community Rehabilitation Programs).

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- 30) See ASS'N OF PEOPLE SUPPORTING EMP. FIRST, *APSE 14c Update Rev: Trends and Current Status of 14(c)*, (last visited Oct. 1, 2021), https://apse.org/wp-content/uploads/2021/10/10_20_21-APSE-14c-Update-REV.pdf.
- 31) Task Force on Eliminating Subminimum Wages, 2021, Special Session 1, Minn. Sess. Law, Ch. 7, H.F. No. 33, art. 17, § 14, <https://www.revisor.mn.gov/laws/2021/1/Session+Law/Chapter/7/#laws.17.14.0>.

History of Subminimum Wage in Minnesota

- 32) Allan Baumgarten, *Evaluation of Sheltered Employment Programs*, PROGRAM EVALUATION DIV., OFF. OF THE LEGIS. AUDITOR, STATE OF MINN. (Mar. 28, 1984), <https://www.lrl.mn.gov/docs/pre2003/other/840684.pdf>.
- 33) *Id.* The Minnesota Division of Services for the Blind and Visually Handicapped was established in 1917.
- 34) Although the state did not financially support rehabilitation service facilities during this time, nonprofit and religious entities had already established multiple “sheltered workshops” by 1919. In 1910, the Jewish Vocational Workshop was established. In 1914, the Minneapolis Society for the Blind opened a sheltered workshop. In 1919, Goodwill Industries Twin Cities commenced operation of its workshop.
- 35) Fair Labor Standards Act of 1938, 29 U.S.C. § 206 (2016).
- 36) Fair Labor Standards Act of 1938, 29 U.S.C. § 214(c)(1) (1938).

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- 38) Allan Baumgarten, *Evaluation of Sheltered Employment Programs* PROGRAM EVALUATION DIV., OFF. OF THE LEGIS. AUDITOR, STATE OF MINN. (Mar. 28, 1984), <https://www.lrl.mn.gov/docs/pre2003/other/840684.pdf>.
- 39) OFF. OF THE LEGIS. AUDITOR, STATE OF MINN., *Evaluation of Sheltered Employment Programs* (Mar. 28, 1984), <https://www.lrl.mn.gov/docs/pre2003/other/840684.pdf>.
- 40) *Id.*
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- 42) *Id.*
- 43) MINN. DEVELOPMENTAL DISABILITIES PROGRAM, DEPT' OF ENERGY, PLANNING & DEV., *Policy Analysis Series: Issues Related to Welsch v. Levine/No. 16* (Apr. 19, 1983), <https://mn.gov/mnddc/learning/document/GT020.PDF>.
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- 46) *Id.*
- 47) Peter H. Benzian, *Statement of Minnesota Public Interest Research Group before Bill of Rights Committee of Minnesota Constitutional Study Commission*, MINN. PUB. INT. RSCH. GRP. (June 21, 1972), <https://mn.gov/mnddc/past/pdf/70s/72/72-SPI-PHB.pdf>.

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- 51) MINN. DEP'T OF HUM. SERVS., *Minnesota Employment First Policy* (Sept. 29, 2014), <https://mn.gov/dhs/partners-and-providers/news-initiatives-reports-workgroups/long-term-services-and-supports/employment-first/employment-first-policy.jsp#:~:text=Policy%20Statement%20Employment%20First%20means%20raising%20the%20expectation,before%20being%20offered%20other%20supports%20and%20services.%20Introduction>.
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- 56) Task Force on Eliminating Subminimum Wages, 2021, Special Session 1, Minn. Sess. Law, Ch. 7, H.F. No. 33, art. 17, § 14, <https://www.revisor.mn.gov/laws/2021/1/Session+Law/Chapter/7/#laws.17.14.0>.

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- 58) U.S. DEP'T OF LAB., WAGE & HOUR DIV., *14(c) Certificate Holders*, <https://www.dol.gov/agencies/whd/workers-with-disabilities/section-14c/certificate-holders> (last visited September 20, 2022). The DOL allows employers to continue to pay employees a subminimum wage while their re-certification is pending.
- 59) U.S. DEP'T OF LAB., WAGE & HOUR DIV., *14(c) Certificate Holders*, <https://www.dol.gov/agencies/whd/workers-with-disabilities/section-14c/certificate-holders> (last visited September 20, 2022).
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- 61) See U.S. COMM'N ON CIV. RTS. *Subminimum Wages: Impacts on the Civil Rights of People with Disabilities* 59 (Sept. 17, 2020), <https://www.usccr.gov/files/2020/2020-09-17-Subminimum-Wages-Report.pdf>. According to the U.S. Commission on Civil Rights, the DOL estimates of the number of Minnesotans being paid subminimum wages is “modest.” The Commission report notes that the “snapshot” counting model employed by the DOL undercounts by as much as a factor of three. A 2018 review by the Government Accountability Office revealed that the DOL Wage & Hour Division failed to account for workers earning subminimum wages working at branch and off-site locations, and only counted those working at 14(c) certificate holders’ main establishments. The MDLC acknowledges the possibility that this count inadvertently inflates the number of people working in a subminimum wage job at any one time because each subminimum wage employer only updates the number of workers reported every two years, when the 14(c) certificate is renewed. Therefore, it is possible that some individuals may have moved out of subminimum wage work (and into a community job or another setting) in the time since the last count, potentially inflating the number.

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- 67) *Id.*
- 68) *Id.*
- 69) *Id.* at 95.
- 70) See Jean Winsor et al., *StateData: The National Report on Employment Services and Outcomes Through 2018 95*, UNIV. OF MASS. BOSTON, INST. FOR CMTY. INCLUSION (2021), https://www.statedata.info/sites/statedata.info/files/files/state_data_2021_F%5B3%5D.pdf. (The nationwide percentage of disability-related funding allocated for integrated employment is based on data from forty-five states that reported such data).
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What can learn from other states?

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Policy Recommendations

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