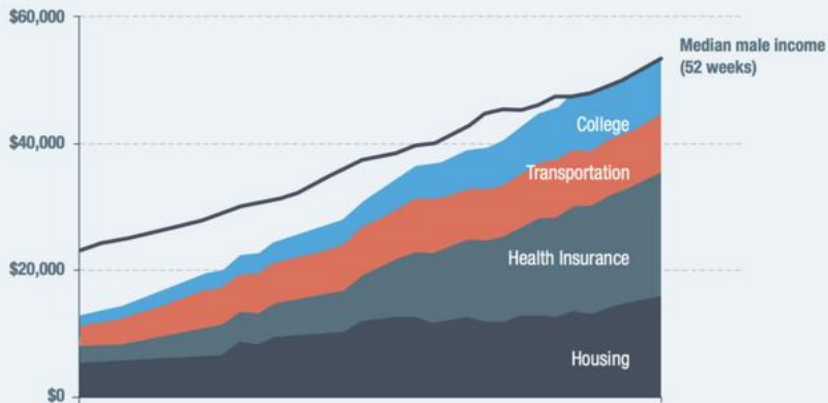


Major Household Expenditures vs. Median Income

(in nominal dollars)
TOP ARTICLES 1/5



How It works

10pm EDT



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Rock River Valley Self Help Enterprises, an Illinois nonprofit, billed itself as a vocational training program for people with disabilities. But it essentially operated as a subcontractor for local factories, providing menial tasks to workers with developmental disabilities, such as **scraping debris** from metal casts.

Last week, the **Department of Labor** took action against the company “after finding nearly 250 workers with disabilities were being exploited.” One of the ways they were being exploited? Self Help paid some workers with gift cards instead of money.

The DOL’s announcement underscores the grim employment landscape for many disabled workers. Several nonprofits, including **one in Seattle**, have recently been cited for underpaying workers with disabilities. But while Self Help’s infractions are outrageous, it’s also worth noting that federal law allows companies to provide less compensation to some workers with disabilities.

In addition to sometimes paying workers in gift cards, Self Help also paid them less than the minimum wage. Paying workers with disabilities in gift cards is unlawful; paying them a subminimum wage is legal. That’s because current law allows employers to pay as little as \$1 per hour, or less, to workers with disabilities if they can’t perform a job as well as a person who is not disabled (the current federal minimum wage is \$7.25). It’s an exemption to the Fair Labor Standards Act that has been in place for 80 years.

Self Help had the exemption — but the DOL revoked that waiver after its investigation. In addition to finding that the nonprofit was paying workers with gift cards, the agency also noted that Self Help could not show proof that the disabled workers were not as productive as workers without disabilities, a requirement to get a waiver. And the DOL found that the company had tried to “mislead and obstruct ... by concealing relevant information” from the agency’s investigation. The agency ordered Self Help to pay two years of back wages to more than 250 workers. The department did not say how much they were earning.

The incident underscores how the waiver program for workers with disabilities can be horribly misused. Giving employers permission to pay workers less seems to justify treating them differently in other ways. The workers at Self Help and their guardians knew they were allowed to receive less than the minimum wage, but they may not have realized that getting paid in gift cards is against the law.

There are about 153,030 workers with disabilities in the US who can be paid less than minimum wage under federal law, according to **data** from the Department of Labor. Some workers earn as little as **4 cents** an hour.

In February, Alaska became the third state **to ban the practice**, and last week, a group of Democratic lawmakers, including Sen. Elizabeth Warren (D-MA) and Sen. Bernie Sanders (I-VT), expressed concern about the potential abuses.

“These waivers are inherently discriminatory and should be phased out in a responsible way,” they **wrote** in a letter Labor Secretary Alexander Acosta. “While the Department continues to issue these waivers, however, we are concerned by past abuses of the program and hope to better understand the extent to which the Department is able to prevent employers’ mistreatment of and discrimination against workers with disabilities.”

The 14(c) waiver created under the Fair Labor Standards Act was meant to help people with severe disabilities find meaningful work, but it has left many trapped in factory-type jobs with unlivable wages.

The US government has had low expectations for disabled Americans

In February, Alaska became the first red state to **bar employers** from paying workers with disabilities less than the state’s \$9.75 minimum wage. New Hampshire was the first state to do so in 2015, followed by Maryland in 2016. Paying sub-minimum wages to Americans with disabilities has been legal under federal law since 1938.

These recent changes highlight America’s shifting views about the best way to help people with disabilities live their lives. Advocates for the disabled are pushing for services that focus on independence and integration over the isolation of mental institutions or segregated workshops. About **13 percent** of Americans have mental or physical disabilities, and they are far less likely to work than the average American. Even so, 36 percent of Americans with disabilities had jobs in 2016 (among those who are working age and not living in institutions), according to a **recent report** from the Institute on Disability at the University of New Hampshire.

“There’s been a real sea change,” Robert Dinerstein, a law professor at American University and director of the school’s Disability Rights Law Clinic, told Vox. “There

used to be such low expectations of what someone with Down's syndrome could achieve.”

Americans with disabilities were segregated for decades

For most of modern American history, politicians and doctors didn't really know what to do about — or for — people born with severe developmental disabilities. The widespread assumption was that they could not learn, work, or care for themselves.

The default solution was to isolate Americans with disabilities from the rest of the world, **writes** Samuel Bagenstos, a disability rights lawyer and law professor at the University of Michigan:

Children with significant disabilities received separate schooling, if they received schooling at all. As late as 1970, only a fifth of children with disabilities received public schooling; schools often simply excluded children with developmental disabilities as uneducable. As they grew to adulthood, individuals with developmental disabilities moved to state-run institutions that theoretically provided training and treatment, but in practice warehoused them.

Because lawmakers assumed Americans with disabilities would probably never work, Congress allowed businesses to pay them less than the minimum wage under the Fair Labor Standards Act of 1938. The law basically said a business could pay workers with disabilities less than able-bodied workers to do menial tasks in a “workshop” environment with other workers with disabilities. The idea was that low-paid work was better than not having the option to work at all.

During the civil rights era, advocates began pushing back against this paternalistic, custodial attitude, which led to a series of laws mandating equal access and equal treatment for Americans with disabilities. The landmark Americans With Disabilities Act of 1990 made it illegal for the first time for employers to discriminate against workers who had disabilities. While these changes made huge strides in allowing Americans with disabilities to lead normal lives, they didn't address the 1938 federal law that allows businesses to pay less than minimum wage in some cases.

The process can be easily manipulated

For an employer to hire a worker with a disability and pay them less than the minimum wage, they must first get permission from the Department of Labor. But they can only do so if they can show that the disability would prevent them from being hired at the minimum wage. That's a tricky thing to prove, and involves some strange calculations. One way is to test the worker's speed at completing a task compared to an able-bodied person.

For example, an employer that wants to hire a disabled person to make widgets must first find out what the local average wage is for a widget maker. Then they must find out how long it takes the average worker to make a widget and compare it to how long it takes the worker with a disability. If the average widget maker in Columbus, Ohio, makes a widget in 10 minutes for \$9 an hour, but it takes disabled workers three times as long, then the employer can pay them a third of the rate: \$3 an hour.

Employers are supposed to submit all the paperwork for these calculations when they apply for a certificate from the Department of Labor, but, as in the case of Self Help, employers don't always tell the truth. And it may only come up if the DOL decides to do an investigation, which is what happened in the case of Self Help.

"The employer attempted to mislead and obstruct [the Labor Department's] investigation by concealing relevant information from [the department] during the investigation, hiding work that the employer had not time studied but had the workers perform. On some weekends, Self Help unlawfully paid workers with gift cards instead of wages," according to a Labor Department announcement.

The Labor Department said it notified law enforcement officials about the case, but did not say if Self Help was accused of criminal activity.

Congress thought that lower wages would encourage hiring

When Congress passed the Fair Labor Standards Act in 1938, it created the exemption to encourage business to hire disabled workers, in hopes that it would lead to some level of independence and self-sufficiency. But the vast majority of workers in the federal program have jobs in sheltered workshops frequently run by

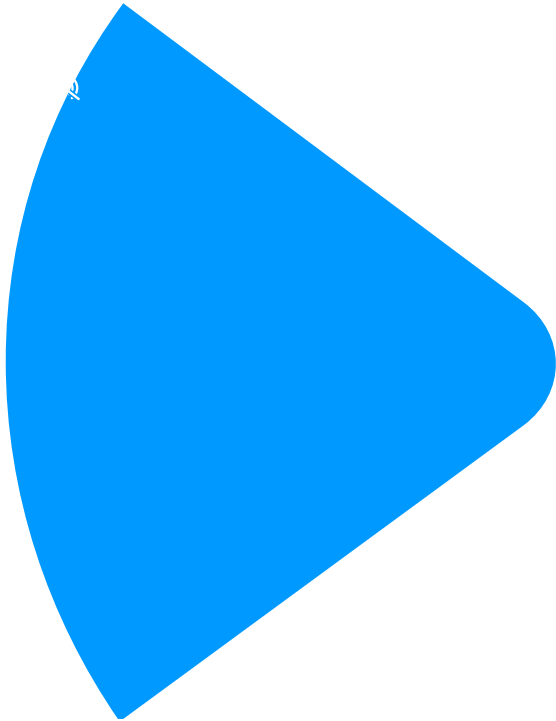
nonprofits and isolated from the rest of society with little opportunity for advancement.

Jobs in segregated workplaces are exactly the kind that disability rights activists want to abolish — at least for the next generation of workers with disabilities, who now graduate from regular public schools and want to lead normal lives.

The workplace integration movement has pushed for “Employment First” initiatives in recent years, something many conservative and liberal states have adopted. These initiatives direct public service providers to focus on helping citizens with disabilities get regular jobs and live on their own, as opposed to more institutionalized care — getting a minimum wage job bagging groceries is considered far better than sorting recyclable trash in a sheltered environment with other workers with disabilities.

While the Employment First movement has picked up in recent years, it does pose new challenges in how providers should tailor job-training services for each person, says Dinerstein of American University. One approach has been to give workers a job coach, who goes to work with them during their first month on the job and helps them learn the ropes.

People with disabilities just want a chance to be independent, taxpaying, productive members of society, said Dinerstein. “If we don’t do this, we are leaving them behind.”



This viral chart doesn't explain much about middle-class living standards

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