

Subminimum Wage Certificates

A report prepared jointly by

The Department of Labor & Industries

And

The Department of Social and Health Services



Transforming Lives

2021 Annual Report to the Legislature

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Executive Summary

Introduction

The 2021 Washington State Legislature ended the practice of allowing workers with a disability to earn less than minimum wage under a subminimum wage certificate. Senate Bill 5284 eliminated new certificates for any employer in Washington State after July 31, 2023 and phases out existing certificates. Active certificates as of July 31, 2023 remain in effect until the listed expiration date. The Legislature also directed the Department of Labor & Industries (L&I) to notify employers, employees, legal guardians, or other authorized representatives of their certificate's expiration date and allow employers to request a one-time, one-year extension.

L&I and the Department of Social and Health Services (DSHS) are also directed to update the Legislature annually on the remaining certificates for these workers. This is the first of those annual reports and, while not all data is readily available, will serve as the benchmark for future reports.

2021 Status Update

As of July 25, 2021 there were 174 active subminimum wage certificates issued to employers of workers with a disability. These certificates are held by 11 employers.

Based on DSHS records, three clients employed under a certificate contacted the DSHS Developmental Disabilities Administration (DDA) for assistance.

From November 6, 2020 to August 31, 2021, 156 workers employed under a Federal FLSA Section 14(c) certificate were referred to DSHS Division of Vocational Rehabilitation (DVR) to receive career counseling, information, and referral services based on their payment of a subminimum wage. By DSHS DVR records, of the 156 referrals received, 107 individuals were provided with DSHS DVR career counseling, information and referral services for subminimum wage workers.

The two agencies executed a data sharing agreement that will allow a comparison of the workers receiving services through DSHS DVR and those who are working under a subminimum wage certificate issued by L&I.

Introduction

Washington’s Minimum Wage Act was first passed in 1959, requiring most workers be paid at least minimum wage for all hours worked. It allowed several exceptions, specifically authorizing the Director of L&I to issue certificates so certain employers could pay less than minimum wage to learners, apprentices, messengers, and workers with a disability.

Following the passage of Washington’s Minimum Wage Act, L&I enacted rules to administer and enforce the statute in 1960¹. Those rules allowed employers to request certificates to pay less than minimum wage to workers with a disability. These rules were untouched until 2017—then amended to use “people-first” language during regulatory clean-up efforts stemming from Initiative 1433².

The next change to the regulatory environment for workers with a disability in Washington came in 2019 when the Legislature restricted any state agency from employing workers with a disability under a certificate. Existing certificates for such employees expired June 30, 2020.

The 2021 Washington State Legislature extended these restrictions to all employers of workers with a disability³. L&I is prohibited from issuing new certificates after July 31, 2023. Such certificates are typically issued for a two-year period. For example, a certificate issued on July 30, 2023 could continue until July 30, 2025. Under the law, employers may also request a one-time, one year extension for certificates for workers eligible for services from DSHS Developmental Disabilities Administration (DDA).

L&I must notify employers, employees, legal guardians, and/or other authorized representatives of the impending expiration date for each certificate and the employer’s right to request extension. L&I must provide this notification to the parties 90 days prior to the expiration of each certificate.

L&I must coordinate with DSHS to update the Legislature on the remaining certificates for workers with a disability. The agencies must also report how many workers with a disability had certificates that are now expired, lost their jobs and requested DSHS services. They must also report how many workers were employed at higher wages after their certificate expired. This report details this information to the Legislature. The report is no longer required after all remaining certificates expire.

¹ Regulation 294.6.005, filed 12/30/60

² WSR 17-21-092, filed 10/17/17

³ ESSB 5284 (2021); Chapter 97, Laws of 2021

2021 Status Update

The Legislature directed L&I and DSHS to prepare an annual report until all remaining certificates for workers with a disability expire. The annual report must contain three key components:

1. The number of certificates remaining;
2. The number of individuals working under a certificate who have contacted DSHS DDA to receive individual technical assistance or other services, and a list of services provided; and
3. The number of individuals who continue to be employed after the expiration date of their certificate, and a description of any services or assistance provided to these individuals by DSHS DDA or DVR.

The two agencies offer the following information in response to the legislative request.

- As shown in Figure 1 below, as of July 25, 2021 there are 174 active certificates issued to employers of workers with a disability. These certificates are held by 11 employers.
- A data sharing agreement between L&I and DSHS has been executed. For future years, this allows the agencies to match DSHS DDA clients to L&I's active certificates.
- Based on agency data regarding client wage information provided by county subcontractors, three of these workers employed under a certificate who have contacted DSHS DDA to receive individual technical assistance. Services provided include; community inclusion, individual employment, and assistive technology.
- From November 6, 2020 to August 31, 2021, 156 employees working under a Federal FLSA Section 14(c) certificate for subminimum wage employment were referred to DSHS DVR to receive career counseling, information and referral services. Upon referral from an entity employing individuals at subminimum wage, DSHS DVR is required, under the Workforce Innovation and Opportunity Act of 2014, to provide these services to people with disabilities (or their representative), regardless of age, employed at subminimum wage so they may pursue competitive integrated employment if they wish to do so.
- By DSHS DVR records, of the 156 referrals received, 107 individuals were provided with DSHS DVR career counseling, information and referral services for subminimum wage workers. At this time, DSHS DVR does not have the information to indicate if these individuals continued to be employed after the expiration date of special certificates issued by L&I. Individuals can also sign a refusal of services form, may not participate due to extenuating circumstances or may participate in a career counseling information and referral for services session but do not complete the required documentation.

Figure 1: Number of Active Certificates for Workers With a Disability

Fiscal Year	Number of Certificates Remaining	Number of Employers With Certificates
2021	174	11
2022	To be determined	To be determined
2023	To be determined	To be determined
2024	To be determined	To be determined

Source: L&I Employment Standards Program

Conclusion

In future reports, L&I and DSHS will report jointly information regarding subminimum wage certificates for workers with a disability. This Fiscal Year 2021 report serves as an initial benchmark. Future reports will include an annual comparison of data as the use of subminimum wage certificates is phased out.