

**EQUAL RIGHTS DIVISION**

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**Special Minimum Wage Advisory  
Council of Wisconsin**

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**Report and Recommendations of the  
Special Minimum Wage Advisory Council**

**To**

**Secretary Roberta Gassman**

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**July 2008**

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Department of Workforce Development  
Equal Rights Division  
P.O. Box 8928  
Madison, WI 53708-8928  
Telephone: (608) 266-6860  
Fax: (608) 267-4592  
TTY: (608) 264-8752



State of Wisconsin  
Department of Workforce Development  
Jim Doyle, Governor  
Roberta Gassman, Secretary  
Jennifer A. Ortiz, Division Administrator

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July 11, 2008

Secretary Roberta Gassman  
Department of Workforce Develop  
201 E. Washington Avenue  
Madison, WI 53702

Dear Secretary Gassman:

I am pleased to provide you with the enclosed Special Minimum Wage Advisory Council Report.

As you know, the Council was charged with collecting, reviewing and analyzing data concerning the department special minimum wage regulations. During the past three years the Council took time from their schedules to review the current regulations and to make recommendations to you to improve and update the current regulations.

The report is a testament to the complexities of the issues involved with special minimum wage rates and the dedication and deep interest that Council members had in addressing these issues.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jennifer A. Ortiz', written in a cursive style.

Jennifer A. Ortiz  
Administrator  
Equal Rights Division

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## Background

In 2005, the Department of Workforce Development promulgated an administrative rule to increase Wisconsin's minimum wage rate from \$5.15 per hour to \$5.70 per hour on June 1<sup>st</sup>, 2005 and to \$6.50 per hour on June 1<sup>st</sup>, 2006. During the process of seeking public input on this rule change, a number of parties raised concerns about the Department's special minimum wage license program for people with disabilities and the Department's licensing of sheltered workshops. The Department chose to address these concerns by appointing an advisory council to specifically examine these issues.

Secretary Gassman charged the Special Minimum Wage Advisory Council to do the following:

- To collect, review and analyze data relating to the State of Wisconsin's sub-minimum wage rules in s. DWD 272.09;
- To determine whether s. DWD 272.09 adequately ensures that sub-minimum wage rates prevent the curtailment of employment opportunities;
- To recommend to the Department if potential process improvements or adjustments to the sub-minimum wage rules are needed as a part of assuring employment opportunities for people with disabilities;
- To report to the Department of Workforce Development by April 28<sup>th</sup>, 2006.

The council was asked to make recommendations to the department based upon the consensus of the appointed members of the council.

The appointed Council membership:

1. Larry Debbert, representing Creative Care Options of Fond du Lac,
2. Steve Gilles, representing the Wisconsin Department of Public Instruction,
3. Attorney Jodi Hanna, representing Disability Rights Wisconsin,
4. Marcia Jagodzinske, representing Riverfront, Inc. [licensed sheltered workshop],
5. Jeffrey Johnson and Lisa Mills, representing People First Wisconsin, Inc.,
6. Colleen Kennedy, Consultant,
7. John Olson, representing the Governor's Committee for People with Disabilities,

8. Al Schraeder, representing Diverse Options of Ripon [Licensed sheltered workshop],
9. Leonila Vega, representing Service Employees International Union Local 150 [Ms. Vega did not attend or otherwise participate in the council proceedings],
10. Linda Vegoe, representing the Wisconsin Rehabilitation Council and the Client Assistance Program,
11. Jacquelyn Wenkman, representing the Wisconsin Council on Developmental Disabilities.

While not participating as decision-makers, the Department of Workforce Development assigned the following staff to facilitate the meetings, provide input from their perspectives and assist the council in its work:

- Jennifer Ortiz, Administrator of the Equal Rights Division,
- Bob Anderson, Director of the Labor Standards Bureau,
- Lynn Hendrickson, Office Manager

#### **History/Wisconsin Statutes**

Sub-minimum wage programs began after federal law created a national minimum wage in 1938. The stated purpose of special minimum or sub-minimum wage, in Wisconsin is to enable persons with disabilities to gain job skills to enable them to eventually earn either the minimum wage or competitive wages for that type of work. The program enables employers to hire workers with disabilities who may not have the current capacity to earn at least minimum wage for a specific position to improve their long-term earning capabilities.

Under the provisions related to the special minimum wage, the Wisconsin Administrative Code defines a "worker with a disability" as: "an individual whose earnings or productive capacity is impaired by a physical or mental disability, including those relating to age or injury, for the work to be performed. Disabilities which may affect earning or productive capacity include blindness, mental illness, mental retardation, cerebral palsy, alcoholism and drug addiction." DWD 272.09(1)(n) Wis. Admin. Code. The special minimum wage in Wisconsin imposes no floor, or minimum wage to be paid, nor does it set a time limit on participation.

To determine the commensurate wage to be paid to the worker, DWD must consider several factors, including the nature and extent of the disabilities as related to productivity, the prevailing wages of experienced, non-disabled employees in the vicinity engaged in comparable work, and the productivity of the worker with a disability compared to a nondisabled employee through use of a verifiable work measurement method. DWD 272.09(5)(a) Wis. Admin. Code. A disability which may affect

productivity or earning capacity for one type of work may not affect earning capacity or productivity for another type of work.

The special minimum wage licensing program in Wisconsin has two components which apply to people with disabilities. The first type of license permits employers to hire a worker with a disability at less than the minimum wage if the worker's disability affects the ability to perform a specific job. The Department also has the authority to issue a "Type II License" to a sponsoring agency rather than to the employee's actual employer. The purpose of the Type II License is to allow a sponsoring agency which intends to give a worker experience in a variety of work environments the chance to do so without having to obtain a separate license for each place of employment.

The second type of special minimum wage license is issued to sheltered workshops. The license permits the workshop to employ any person with a disability at less than the minimum wage for a specific job, provided that person is paid commensurate with their ability to produce on the job. There is no license requirement that sheltered workshops place workers in jobs that maximize their ability to produce or maximize the wages they earn under this type of license. Sheltered workshops may serve as transitional work settings to help persons with disabilities gain the skills necessary to obtain competitive or minimum wage level jobs in the community. The workshop may also serve as a place of on-going employment for persons with disabilities who are unable to transition into employment within the community.

### **Statistical Information**

One of the objectives of the department's special minimum wage licensing program for workshops is to assist persons with disabilities to transition into community jobs that pay at least the minimum wage. In reviewing statistical information provided by Wisconsin's Bureau for Labor Standards (BLS) for license years 2002, 2003, 2004 and 2005, the Council learned that 76% of the workers in the 85 licensed sheltered workshops had been employed for three or more years, which may indicate that participants are not transitioning to integrated, competitive employment. In 2005, the workshops employed 9,416 persons with disabilities at less than the minimum wage rate. By contrast, the Department issued licenses to community employers to employ only 114 persons with disabilities in the entire state at less than the minimum wage. No statistics, however, were available to indicate how many persons with disabilities who formerly participated in the sheltered workshops are now employed in the community earning more than the minimum wage.

The Council also examined statistics provided by the BLS on the number of special minimum wage workers being paid less than \$1.00 per hour. In community jobs covered by individual Type I or II licenses, only six of the 114 workers received less than \$1.00 per hour in 2005. By contrast, BLS numbers show that in the 85 licensed workshops, 3,255 workers, or 34.5% of all workshop participants, were earning less

than \$1.00 in 2005. In 56 of the 85 licensed workshops, 20% or more of the sheltered workers earned less than \$1.00 per hour.

The Council examined whether or not wages paid to special minimum wage workers were periodically adjusted and whether the workers were making progress toward earning higher wages. For statistical purposes, a worker's wages were considered static if the worker's wage rate had not varied more than \$0.15 over a three year period of time. In integrated community employment only 2.6% of workers with disabilities covered by special minimum wage licenses had static wages over a three year period of time. In sheltered workshops, 7.3% of the participants had static wages over a three year period of time. It should be noted, however, that while some workers wage rates were not static, the workers may have experienced overall reductions in annual wages. The wage decreases may be either the result of decrease in available work, decreases in performance or workers being assigned to jobs in which they could not achieve the same level of productivity as in previous years.

The Council attempted to gather statistics from surrounding states concerning their special minimum wage licensing programs. Unfortunately, contacts with the government organizations in surrounding states administering minimum wage laws produced no reliable statistical information the council could use for comparison purposes. The lack of data made it difficult to analyze and critique whether or not the special wage licensing program was meeting the stated purpose. This lack of data made it impossible for the Council to make recommendations concerning the possibility of setting a specific floor on the special minimum wage, since insufficient data existed to analyze the fiscal consequences of this decision. To make recommendations, the Council used the numbers of licensed employers and workshops provided by BLS, along with position papers prepared by People First Wisconsin and Disability Rights Wisconsin (See Appendix 1), and the Institute for Community Inclusion paper (See Attachment 1).

To summarize, in CY 2005, a total of 114 persons with disabilities were employed within the community by employers under type I or II special minimum wage licenses. Six of the 114 persons were employed at less than \$1.00 per hour. The vast majority of the workers who had been employed for three or more years were receiving periodic pay raises.

In CY 2005, the Department licensed 85 sheltered workshops under the second type of license that employed a total of 9,416 workers with disabilities at less than the minimum wage. While the percentages of persons earning less than \$1.00 per hour varied considerably from workshop to workshop, at 56 of the workshops, more than 20% of the workers with disabilities earned less than \$1.00 per hour. Sixty-six of the workshops had more than 60% of their workers enrolled in the workshop for three or more years. Rates paid to long term workshop employees appeared to be adjusted periodically for the vast majority of workshop employees. The adjustments, however, may not have always represented increases in annual pay.

## **Summary of Issues**

The Council discussed three primary issues:

- Lack of statistical data to analyze the current status and use of special minimum wage licensure. The current data is inadequate to measure the effectiveness of sheltered workshops in helping workers with disabilities to transition into the community workforce at jobs that pay at or above the minimum wage. The data does not allow determination of whether or not workers with disabilities earning less than the minimum wage are increasing job skills and/or increasing their wages over time.
- Need for the department to develop a more efficient, streamlined application and renewal process that can facilitate effective on-going evaluation and monitoring by the Department of program compliance and rule enforcement. Review of special minimum wage applications revealed mathematical errors in time studies, lack of supporting documentation and lack of information that would allow a reviewer to discern the methodology used for conducting time studies for specific jobs.
- Whether or not the Department should set a floor or absolute minimum wage for persons with disabilities just as the department sets absolute minimum wage rates for other groups of workers and/or whether a time limit should be set for those earning less than minimum wage, such as exist for some other categories of workers. Recommendations that Council members agreed to by consensus follow. These recommendations are not in order of priority.

## **Recommendations**

1. Issue two-year special minimum wage licenses for sheltered workshops and individuals

The U.S. Department of Labor (USDOL) currently issues federal licenses for a two-year period of time. Wisconsin statutes and department regulations currently do not prescribe the term of a sub-minimum wage license. The Department therefore could adjust its practice of issuing one-year license to a two-year license through a policy change, which would reduce paperwork and administrative time for employers, sheltered workshops and the Department.

2. Adopt the U.S. Department of Labor (USDOL) application as Wisconsin's special minimum wage application form, with the additional requirement that applicants submit information on each worker indicating their total hours worked and total wages earned per year.

Standardizing the Department's application form with the USDOL form would minimize paperwork for sheltered workshops and private employers. The council strongly recommends that the Department gather additional information to effectively analyze the effectiveness of the sub-minimum wage licensing program.

3. Make license application and renewal materials available on-line and permit submission on-line.

This recommendation is intended to be used in conjunction with the second recommendation. By collecting data on licenses on-line, the Department can utilize the statistical data to prepare the biennial report with a minimum of staff time used to compile the data. On-line application reporting of statistical data will also aid the Department in standardizing how applicants submit their data.

4. Use the Department's internet website to provide on-line time study calculation forms that auto-calculate totals when raw data is entered.

A review of special minimum wage license applications indicated many errors in time study calculations and USDOL studies also show that time study error is common. By providing on-line calculators for the most common time study methodologies, the Council believes the Department will assist applicants in reducing errors and ensuring greater consistency in how time studies are conducted. These calculators are available and can be obtained by the Department from RFW, Inc. and NISH (<http://www.nish.org>). This recommendation attempts to balance the Department's need to gather standardized data that can be analyzed and concerns of sheltered workshops and other providers that they not be constrained by specific methodologies (particularly when they may be using proprietary software). Applicants are permitted to use any reliable methodology.

5. Prepare and submit to the Secretary, the Wisconsin Rehabilitation Council and the Governor's Committee on People with Disabilities a biennial report on sub-minimum wage licensure.

The Council recommends that the Department use this report to conduct an on-going evaluation of the special minimum wage licensure program in order to determine if the program is meeting its objectives. The report should compare and contrast data in the current reporting period with the previous biennial report in order to help analyze trends. The report should provide separate analysis of individual community and facility-based licenses. This Council recommendation is predicated upon implementation of Recommendation #3, which would allow the Department to efficiently and accurately compile the statistical information to be used in the biennial report. The staff time saved by moving to a two-year

license renewal process would provide the necessary time to prepare the biennial report.

6. Provide on-line FAQ documents which include information about how to accurately determine what is compensable and non-compensable time and which provide information about posters that are required to be placed in the workplace.

Workshop participants frequently have questions concerning why they didn't get paid for all of the time they spend at a workshop. The Council believes it would be helpful for sheltered workshops and workers to have access to on-line information about this and other subjects.

7. Increase the amount of technical assistance the Department provides to sheltered workshops.

Conducting time studies to determine the productivity of a worker with a disability as compared to someone without a disability is a difficult challenge and Department of Labor studies have confirmed that time study errors are one of the most common problems with the sub-minimum wage program. Sheltered workshops would find it helpful if the Department offered more guidance in terms of how to conduct these time studies and how to select performance standards against which to measure the productivity of the person with the disability. The Department could offer training sessions for sheltered workshops, visit workshops to offer assistance or provide information on its website.

8. Revise the special minimum wage poster.

The contents of the poster are targeted for persons with a variety of disabilities. The Department needs to revise the contents to ensure the information is easily understandable for people with limited reading skills. The poster needs to clearly explain that someone filing a complaint has retaliation protection. The poster should also offer persons with disability the opportunity to file a complaint by telephone as a reasonable accommodation. The poster should make it clear that both affected parties and third parties, such as family members, case managers, brokers or guardians, may file complaints.

9. DWD or a recognized auditing agency needs to conduct compliance audit monitoring of sheltered workshops and individual licenses.

The current system is complaint-driven. However, workers employed under the special minimum wage licensure program often face communication and other barriers to reporting complaints. Therefore, DWD or a recognized auditing agency needs to routinely conduct an audit of a certain number of workshops each year so that over a period of time all workshops will be directly monitored by DWD. DWD can review and accept reports from other crediting or monitoring

agencies at its discretion. The two most common problems encountered involve improper time studies and employers failing to pay workers for time that is compensable time according to state law.

10. Revise DWD 272.09(1)(a) to define “commensurate wage” as “wage rates paid which are in keeping with those paid to non-disabled, experienced workers in industry in the vicinity for essentially the same type, quality and quantity of work.”
11. Revise DWD 272.09(5)(a)3 “productivity of a worker with a disability compared to the norm established...” to add “taking into account available reasonable accommodations and assistive technology.” Essentially this step would adopt the federal language in this area.
12. The Council recommends the DWD Secretary work with the DHFS Secretary to look at how to set standards for determining if there is evidence of progress (successful rehabilitation) for an individual in facility based work.

One of the principal objectives of sheltered workshops is to provide training and work experiences designed to help persons with disabilities transition into community-based competitive employment opportunities. Providing a means for people to achieve employment at minimum wage or higher is also the principal objective of the state’s sub-minimum wage license program. Workshops currently do not appear to be achieving very much success in making these transitions. The council believes if DWD and DHFS place more emphasis on workshops offering training and work experience that help people with disabilities transition into community-based competitive employment the workshops will have more success in achieving transitions into community based jobs that pay at or above the minimum wage.

13. The Council supports the concept of setting a floor for the special or sub-minimum wage for people with disabilities. Since there is a wage floor for all other workers in Wisconsin, the Council believes the state must have a floor for sub-minimum wage. DWD should convene a work group which includes DHFS, representatives from each of the constituencies of this Council and other key stakeholders to determine the floor. In making the decision, the work group should: take into account the impact and consequences, both intended and unintended; implement the decision in a way that does not remove work opportunities for people with disabilities; and provide a systems transition plan.

Council members initially struggled to reach consensus on whether or not an absolute floor or minimum rate should be set. The Council was deeply concerned that people with disabilities were being paid as little as one-third of a cent per hour for their work. Council members questioned the value of having someone work at a job where their productivity was so low as to be “negligible,” a term used in the

Wisconsin Administrative Code. Council members questioned whether these workers were properly matched to the best jobs suited to their skills and abilities. Some Council members thought setting a minimum wage floor would compel workshops to find other types of work for these persons at which they could be more productive. Council members also expressed concern that any change to the current system must be done in a way that does not remove work opportunities or choice for individuals with disabilities. At the April 18, 2006, meeting the Council specifically voted on the issue of "Should there be a floor on Sub-minimum wage, regardless of impact?" The council had three votes in favor, three votes against, three votes undecided and one vote abstained.

The council discussed the idea of setting a specific \$1.00 per hour minimum wage floor for persons with disabilities but could not come to agreement. Some Council members were clearly in favor of some floor, perhaps even higher than \$1.00 per hour. One Council member advocated that the special minimum wage program be abolished. One Council member believed that sheltered workshops have the financial resources to afford a \$1.00 floor and cited the sheltered workshops tax returns as evidence of their financial ability to afford the \$1.00 floor.

Council members not favoring a floor of any type expressed fear that workshops might not be able to afford to pay the floor and might not find alternative work activities or training and would simply cease providing services to these individuals. The council was also concerned about setting a specific wage floor without having sufficient statistical evidence on the actual costs or impact if the department were to enact a wage floor. Council members representing workshops reported that some workshops felt a \$1.00 floor was manageable and would not greatly affect their operations while other workshops felt such a floor would jeopardize the continued operation of the entire workshop.

In an effort to gather data on the fiscal impact of setting a \$1.00 per hour wage floor for workers under the special minimum wage license, RFW, Inc., Board Member Al Schraeder offered to survey RFW members. All workshops were not contacted, nor were those contacted required to respond to the survey. Nineteen of the 85 sheltered workshops (22%) responded to the survey. In 2005, these 19 workshops together employed 696 individuals paid under \$1/hour, or 21% of the total statewide number of workers being paid under \$1/hour. The responses varied considerably, as indicated in the attached survey (See Appendices 2 and 3). The survey results indicated a range of fiscal impact, from an estimated low cost of \$28 per year at one workshop to a high cost of \$18,386 at another workshop. Using these survey results, the projected average annual cost per worker of paying those workers at least \$1.00 per hour is \$205, or \$4 per week.

Although the Council could not reach consensus in 2006 on the issue of setting a floor, members did agree that more study and research on the impact of implementing an absolute floor or minimum needed to be done. In response to this request, DWD contracted with the Institute of Community Inclusion at the University

of Massachusetts-Boston to complete a study entitled *State and International Efforts to Reform or Eliminate the Use of Sub-Minimum Wage for Persons with Disabilities* (November, 2007) (See Attachment 1). Equal Rights Division Administrator Jennifer Ortiz distributed the study to Council members and reactivated the Council, which reconvened in February, 2008.

Discussion at this meeting and at the March 12, 2008 meeting centered around concerns about the impact and consequences of setting a floor, both intended and unintended. Providers expressed concern that they not be forced to shoulder the financial burden for implementing a floor, while opponents argued that employers do not receive a subsidy when the general minimum wage is raised. Council members were in agreement that the floor not be a mere subsidy, but that the floor should encourage a better job match so that workers with disabilities have the job skills, interests and experience to earn the floor competitively. Council members were able to phone conference with the study authors at the February, 2008, meeting. Council members expressed that the most important "take-aways" from the study were that it is important to make no extreme and sudden changes in the sub-minimum wage program and that changes must be phased-in over time with buy-in from the various stakeholders. A vote was taken on a motion related to setting a floor at the February meeting (6-2 in favor) and then consensus was reached on the wording in Recommendation 13 at the March, 2008 meeting

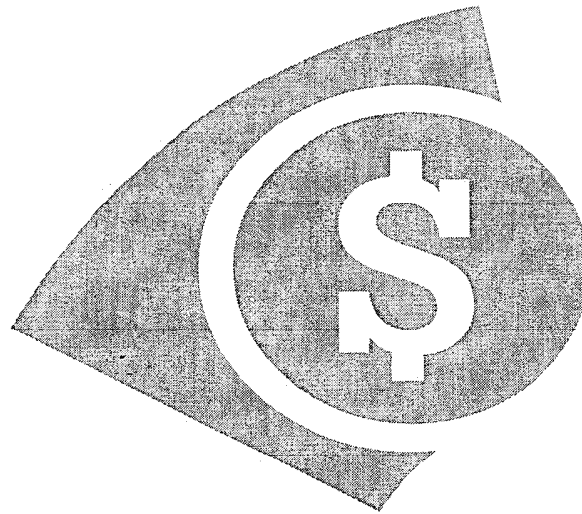
The Council is particularly interested in ensuring that DHFS and DWD work together to provide leadership and promote the inclusion of people with disabilities in to integrated, competitive employment at or above minimum wage in jobs that maximize their earnings and provide a good match between required skills and worker abilities. Council members also discussed that providers needed incentives, resources and technical assistance to better match workers with community jobs and that this support would appropriately come from DHFS.

### **Conclusion**

The Council members would like to thank Secretary Gassman for creating the Advisory Council and giving stakeholders an opportunity to discuss the issues explored by the Council and to make recommendations on proposed changes to the Department's special minimum wage licensing program. The Council looks forward to receiving the Secretary's response to our recommendations. We offer our support and commitment to working with the Secretary to help implement these recommendations.

Reforming Wisconsin's  
Sub-Minimum Wage Laws  
for Working People with Disabilities:

An Information Paper



People First Wisconsin  
Wisconsin Coalition for Advocacy

August, 2004

“The myth that people with disabilities are just grateful to work is precisely that: a myth.”

-Governor Jim Doyle

## Introduction

NISH, formerly the National Industries for the Severely Handicapped, the national nonprofit agency that provides technical assistance to Community Rehabilitation Programs (sheltered workshops, work centers), states that a goal of Community Rehabilitation Programs should be to: “aggressively increase employment opportunities to realize higher wages, better benefits, upward mobility, and maximize integrated employment for people with severe disabilities.”

Three things suggest that Wisconsin is falling far short of achieving this goal:

- 1) The number of people with developmental disabilities being paid sub-minimum wages below \$2.00 (about 40% of the state minimum wage);
- 2) The lack of evidence of these people achieving meaningful and permanent wage increases, through either increased productivity, reward for longevity or upward mobility;
- 3) The percentage of people working in segregated workshop settings.

We believe that a combined reform effort, which addresses both the state sub-minimum wage laws, and the procedures used for ensuring compliance, is needed to stimulate change and move Wisconsin closer to achieving the laudable goal set by NISH and shared by disability advocates. In addition, the goal of maximizing integrated employment is not just a laudable goal: it is an outcome that state and county governments have an *affirmative obligation* under federal and state law to pursue. These governments, and their purchase of service agencies, have a legal obligation to ensure that individuals with disabilities are receiving the services they need in *the least restrictive environment* in which those services can be delivered.

This paper addresses the need to reform our state’s sub-minimum wage laws and the procedures used to ensure compliance, which together set the minimum standards for pre-vocational services in our state.

## Why a Taskforce on Sub-Minimum Wage Reform is Needed

The advocates who called for a taskforce to look at how sub-minimum wage licenses are being used and monitored in our state, and to consider whether reforms are necessary, are not alone in concluding that a process of evaluation and review is long overdue and much needed. These calls for greater oversight and monitoring in Wisconsin are supported by recent initiatives at the US Department of Labor.

*The US Department of Labor's Office of Inspector General recently issued a report citing the need for oversight and monitoring of the sub-minimum wage certificate program as established in section 14(c) of the Fair Labor Standards Act.*

*As a result, the U.S. Department of Labor (DOL) Office of Disability Employment Policy (ODEP) is undertaking a nationwide survey on Section 14-c certificates. The data collected from this survey will provide descriptive information on the current use of 14 (c) Special Wage Certificates by Community Rehabilitation Programs (CRPs) in the United States.*

*According to ODEP, the survey examines what barriers CRP's face in achieving competitive employment outcomes for individuals with severe disabilities, including each CRP's perceived training and resource needs related to moving their programs from 14 (c) to integrated employment outcomes. ODEP has indicated that it plans to use the survey results to revise federal policies, design and disseminate resources, and provide technical assistance.*

In addition, the Director of the Bureau of Labor Standards here in Wisconsin recently acknowledged that bureau staff have engaged in very little oversight of the program. Where this has been done, it has focused on community businesses, where they assume the exploitation of workers with disabilities is most likely to take place. Bureau staff have long assumed that sheltered workshops do not need monitoring but they acknowledge that they had no tangible evidence to justify this assumption. The Director reported that they only investigate formal, written complaints, and he recalls only about five of these in his twenty-some years at the Bureau.

## Why Reforms of Sub-Minimum Wage Law Are Needed

We believe that existing sub-minimum wage laws, and the way they are being used, monitored and enforced, discourage the pursuit of opportunities that exist to develop more integrated and higher paying vocational opportunities for people with developmental disabilities. A summary of our concerns about the current sub-minimum wage laws follows:

#1. There is no floor on how little a person with a disability can be paid if the employer has a sub-minimum wage license.

- All other classes of workers that can be paid sub-minimum wage have a floor on how little they can be paid. That floor is 75% of the state minimum wage.
- But because there is no floor for people with disabilities:
  - Many people with disabilities are making less than \$2.00 an hour.
  - In one sheltered workshop, we found 47 people being paid 1 cent an hour and 87 people being paid 10 cents or less an hour!
  - One person worked 440 hours in 2002 and was paid \$1.68 for all of those hours. This person's hourly wage was less than 1/3 of a cent per hour.
  - There is no incentive for sheltered workshops to ensure people are working at the types of jobs that best match their skills and maximize their productivity, or, at the very least, that help them achieve a minimum level of productivity and corresponding earning potential.
- Without scrutiny, it is easy to argue that the low wages people are paid are a result of their disability. We can overlook the fact that the jobs they are being asked to do are poorly matched to their skills, and that they could earn more if offered a different job.
- Without a floor, the reality of people's "employment" experience does not measure up to the standards we expect in relation to the activities of people's daily lives being *meaningful, dignifying and growth-producing*.

#2. The choice of alternative employment is not offered to people who cannot earn a meaningful and dignifying wage doing the types of jobs the workshops currently offer.

- The law [272.09(1)(m)] already calls for a separate program for people whose "productive capacity" (and corresponding earning potential) is determined to be "inconsequential," based on time studies of these individuals doing the types of jobs workshops typically have available. This suggests that if an individual's productivity (and corresponding earning potential) is below a certain threshold (which the law should, but does not, explicitly define), s/he should have access to an alternative program. However, the law does not require sheltered workshops to expand the scope of the paid work they offer in order to provide these individuals with work that truly matches their skills and maximizes their productivity and corresponding earning potential.

- Because the sub-minimum wage program ties wages directly to productivity, setting a floor wage would help us define what the law means by “inconsequential productive capacity.” The floor wage would correspond to the minimum level of productivity, beyond which we consider a person’s production capacity to be “inconsequential.” For example, inconsequential productivity could be defined as productivity that does not enable a worker with a disability to earn at least 25% of the state minimum wage. In this example, the floor wage would be 25% of the state minimum wage.
- We believe that if people are going to be paid on the basis of productivity, and a vocational provider cannot help them achieve a production capacity that is not *inconsequential*, then those individuals should be the subject of closer scrutiny by the Bureau of Labor Standards and disability advocates, to ensure that:
  - The vocational provider is utilizing all of the resources and strategies available to it to maximize these workers’ productivity and corresponding earning potential; and
  - These individuals have the opportunity to make an informed choice about whether they wish to continue with this work or instead choose to participate in alternative programming that can provide meaningful opportunities for personal growth and community participation.

#3. There is no limit on how many times a sub-minimum wage license can be renewed for an individual worker, without showing that the person's wage has been increased.

- All other classes of workers that can be paid sub-minimum wage have a time limit on how long they can be paid a sub-minimum wage.
- Even though the law defines a “sheltered workshop training program” or a “rehabilitation training program” as a program of *not more than 12 months* [272.09(1)(h)], the automatic and continuous renewal of sub-minimum wage licenses, without a limit, undermines the intent of the law to use sub-minimum wage on a time-limited basis to facilitate short-term rehabilitation programs that constitutes ‘rehabilitation’ by virtue of the fact that the person’s skills and productivity improves within the program’s time period.
- But because there is no time limit associated with minimum wage increases for people with disabilities:
  - There is no incentive for sheltered workshops to increase people’s productivity over time by investing in effective training, assistive technology and other methods of increasing productivity.

- The intent of the sub-minimum wage program, to provide people with disabilities with a stepping stone to competitive employment, is being undermined.
- Without scrutiny, it is easy to argue that people's lack of wage increases is due to the fact that their disability does not allow them to be more productive. We can overlook the fact that people are not being provided with adequate, effective training and access to assistive technology or other supports that could help them increase their productivity, or access to *different* work opportunities that are better matched to their skills. We can overlook the fact that the nature of sheltered workshop contracting can often mean many short-term jobs, which repeatedly return people to the beginning of the learning curve and offer no real opportunities to develop productivity over time by doing the same job every day.
- Without scrutiny regarding whether meaningful and permanent wage increases are actually occurring for workers employed under sub-minimum wage licenses, we question whether precious human service dollars are being spent in the best possible way. If someone has worked a number of years in a sheltered workshop and his/her earning potential is consistently very low, it raises the question about whether this is the best use of this person's human service dollars and whether she or he might be able to use those service dollars in a different way that offers a more growth-producing opportunity.

#4. There are no minimum standards for what counts as legitimate "rehabilitation" services.

- It is generally accepted that successful outcomes for a rehabilitation program would be defined as *increasing wages* or a *move to community employment*, or *both*.
- An increase in a sheltered workshop participant's wages cannot only be achieved by an increase in productivity. Evidence suggests it can also be achieved by a move to a community job. Evidence further suggests that a move to a community job is likely to result in a much greater increase in wages than a focus on increasing productivity in a sheltered workshop's assembly/production programs would. A number of examples can be pointed to, of people with significant disabilities who are making more than \$2.00 per hour in a community job, but who would be making a fraction of that if they were still working in assembly/production programs in sheltered workshops, according to people who know them well.

- As well, evidence suggests that regular and permanent increases in wages occur in community jobs, and people in community jobs are getting raises commensurate with co-workers (e.g. a 25 cent raise regardless of what your hourly rate is). As a result, the rate of increase in their hourly wage is far greater than for their counterparts in sheltered workshops and they have a much higher likelihood of achieving minimum wage than their counterparts in sheltered workshops.

#5. The law concerning “compensable time” appears not to be followed in some sheltered workshops.

The section addressing compensable time [272.09(3)] requires that employers must compensate (pay) employees for “hours when no work is performed but the individual is required by the employer to remain available for the next assignment.” Individuals who attend sheltered workshops almost universally refer to this as “downtime.” One of their strongest complaints about downtime is that **they do not get paid**.

This section of the law further states that “if the individual is completely relieved from duty and is not required to remain available for the next assignment, the time will not be considered compensable (but) *the burden of establishing that any hours are not compensable rests with the facility and the hours must be clearly distinguishable from compensable hours.*” The law gives examples of what is meant by “completely relieved of duty” and these examples include providing the person with: therapy; the opportunity to participate in an alternative program or activity within the facility that does not involve work and is not directly related to the person’s job (examples given are self-help skills training, recreation, job seeking skills training, independent living skills, or adult basic education). Individuals that attend sheltered workshops in different parts of the state report being asked to watch movies, look at magazines, do crossword puzzles or even just sit around and do nothing. These activities do not seem consistent with what the law expects in terms of *meaningful*, alternative programs and activities.

In addition, individuals who attend sheltered workshops in different parts of the state report that some people are told to stay home when there is no work, while others are given the choice to stay home and still others are told they cannot go home if there is no work. Despite the payment of service dollars to sheltered workshops for people to attend workshops a certain number of hours or days a year, there is no consistent requirement to make funds available to support people’s activities at their homes or in other programs on the days when there is no work at the workshop.

#6. Rights of employees in sheltered workshops are not being enforced in some sheltered workshops.

While the law clearly states that “an employment relationship arises whenever an individual is permitted to work,” [272.09(2)(c)] evidence reported from individuals who work in sheltered workshops around the state suggest that the status of employees is not consistent from one workshop to another. In particular, it appears that employee rights under Wisconsin law are not being afforded to workers in sheltered workshops.

For example, workers in sheltered workshops report not having:

- a) Personnel policies
- b) OSHA protections

Some people are working in very over-crowded conditions, at work stations that would not pass OSHA requirements. There is legal precedent for OSHA requirements to be enforced and this precedent can be found in the Javits-Wagner-O'Day Act (41 U.S.C. § 46-48) which requires that a community rehabilitation agency must comply with any applicable occupational health and safety standard prescribed by the Secretary of Labor.

#7. Education about sub-minimum wage licenses, appeal process and rights is not being provided to some people being paid sub-minimum wages in sheltered workshops.

The law requires that each worker with a disability shall be informed, verbally and in writing, of the terms of the license under which the worker is employed. [272.09(8)(g)] There is no evidence of monitoring to ensure this is occurring. In talking with individuals who attend sheltered workshops around the state, many were found who knew nothing about sub-minimum wage licenses or their rights under these.

#8 Criteria for renewing or denying of sub-minimum wage licenses are not defined in the law.

The law details how applications of renewals for sub-minimum wage licenses are handled. [272.09(9)] However, the law does not define the criteria for renewal and grounds for denial, and this has resulted in a practice of automatic approval of all renewal applications, even if the forms are not completed correctly. There should be standards defined in the law that explicitly establish criteria that need to be met in order for an application for renewal to be approved. These standards should be in keeping with the spirit and intent behind the creation of the law.

#9 No minimum standard for ensuring compliance, through monitoring and enforcement activities conducted by the Bureau of Labor Standards

Currently, the Bureau of Labor Standards does no monitoring related to sub-minimum wage licenses. They do respond to written complaints, but most people would agree that the individuals covered under sub-minimum wage licenses are, in most cases, unable to fill out the necessary form to lodge a complaint. In addition, these individuals often do not know their rights and therefore would not know if those rights had been violated. The onus to protect these workers must lie with the Bureau of Labor Standards. In addition to enhancing the law regarding the criteria for approval of new or renewal license applications, we believe the Bureau of Labor Standards should, in collaboration with knowledgeable and independent rehabilitation professionals, also routinely:

- Analyze trends and publish those for public information;
- Conduct random inspections of workshops, and interviews with their participants, to ensure compliance;
- Enhance monitoring of people making under \$2.00 per hour;
- Do in-depth monitoring of workshops that have large numbers of people making under \$2.00 an hour;
- Revise and expand the forms required for obtaining a sub-minimum wage license to ensure that the information provided is adequate and is provided in a standardized format to allow for comparison, easy identification of potential concerns, and analysis of trends. For example, all workshops should be required to do time studies in a consistent manner, using a standardized approach and form. As well, all workshops should be required to report the total number of hours worked and the gross pay for each worker during the time period covered by the license. This would help in determining how much downtime people may be experiencing and in confirming to what extent other meaningful programming should be available.

## Why Wisconsin Needs to Increase Inclusion in Its Vocational Services

### #1. National Trends Regarding Segregated Versus Integrated Settings

National survey released March, 2004 revealed that in the past 15 years, 14 states reported that sheltered workshops had closed as a result of conversion efforts but another 14 states reported that new sheltered workshops have opened, or existing segregated services have actually expanded.

### #2. How Wisconsin Compares to Other Mid-West States on Supported Employment:

- In Wisconsin, only 1 out of 5 people with developmental disabilities who get vocational services, is working in the community.
- Wisconsin is below the national average for numbers of people with developmental disabilities working in the community.
- In the mid-west, Wisconsin has less people with developmental disabilities working in the community than all of her neighbors, except Illinois.
- Michigan, Minnesota, Iowa, Ohio and Indiana all have more people who are receiving vocational services working in the community.

### #3. Numbers in Segregated Settings

An estimated 6,000 people with developmental disabilities are in sheltered workshops in Wisconsin. There are more people in sheltered workshops than any other vocational option. The number is growing, not declining.

### #4. State and County Governments' Duties in Relation to Inclusion

- State and county governments have an *affirmative obligation* under federal and state law to ensure individuals with disabilities are receiving the services they need in *the least restrictive environment* in which those services can be delivered.
- We are seeing evidence that Olmstead is beginning to be applied to vocational services.
- If people can live in the community, we must ask ourselves why they can't receive vocational services that are more integrated than sheltered workshops.

## Conclusion

The requirement and expectation that citizens of the United States work is predicated on some protections regarding minimum pay for that work, and access to a set of rights afforded to all other employed workers. There is a threshold around earning potential, and if a particular job pays below this, reasonable citizens would not consider it fair or useful to require someone to do that particular job. Generally, the threshold is established by the minimum wage law. We need to determine where that threshold should fall for people with disabilities; but we should not accept that no threshold at all is consistent with affording people with disabilities equal protection under the law.

Quantitative work productivity is one way to determine the value of the contribution people with developmental disabilities can make to our society. But it is not the only way. And everyday, we are discovering that simple, repetitive assembly work is not the only thing people with developmental disabilities can excel at: the variety of successful, community-oriented micro-enterprises that people with significant developmental disabilities have been assisted to achieve over the past decade shows that earning potential depends on many factors including but not limited to:

- Market demand for what you are producing;
- Who your customers are and what they are used to paying for similar products;
- How unique the service or products are that you provide;
- How well you market the service or product you offer.

We need to update the models for preparing people for work to reflect modern day demands for products and services, and to reflect our recognition of the diversity of skills and abilities that people with developmental disabilities have to offer. We also need to ask ourselves to honestly consider whether the “therapeutic value of work” for extremely low wages at a sheltered workshop really outweighs the potential for community contribution, involvement and feelings of being valued and engaged in meaningful activities that might come from participation in day services and/or supported employment.

Survey Responses on Quarterly Cost of \$1.00/hr. Wage Floor

APPENDIX 2

Workshop	Location	2005 License Participants	Quarterly cost of Subsidized Wages
ASPIRO	Green Bay	401	\$ 1,575.00
Career Industries	Racine	152	\$ 1,768.32
Chippewa River Industries	Chippewa Falls	124	\$ 4,393.00
Crawford County ARC	Prairie du Chien	78	\$ 1,588.87
Diverse Options	Ripon	119	\$ 4,596.47
East Shore Industries	Algoma	123	\$ 7.62
Eisenhower Center	Milwaukee	76	\$ 2,464.26
Goodwill Industries of North Central	Menasha	12	\$ 7.00
Green Valley Enterprises	Beaver Dam	106	\$ 3,207.82
Greenco Industries	Monroe	93	\$ 1,490.92
Handishop Industries	Tomah	86	\$ 345.63
Hodan Center	Mineral Point	84	\$ 1,162.54
Holiday House of Manitowoc Co.	Manitowoc	188	\$ 3,781.00
NEW Curative Rehabilitation	Green Bay	168	\$ 909.29
Polk County Dev. Center	Balsam Lake	64	\$ 12.59
Rehabilitation Center of Sheboygan	Sheboygan	270	\$ 1,200.00
St. Croix Industries	New Richmond	85	\$ 530.52
Superior Vocations Center	Superior	51	\$ 2,552.77
VIP Services	Elkhorn	173	\$ 4,190.00

# Wisconsin Sheltered Workshops

1.60%	Location	# of Workshop Participants in 2005	% of Participants Earning Less than \$1.00	% of Participants Enrolled for 3 or more years	% of Participants Whose Wages Have been Static
ASPIRO	Green Bay	401	23.9%	79.3%	1.2%
Barron County	Barron	76	65.0%	77.7%	13.1%
Bethesda Lutheran	Watertown	189	93.1%	90.4%	50.2%
Black River Industries	Medford	84	26.2%	88.1%	13.0%
Brooke Industries, Inc.	Fond du Lac	126	19.8%	65.0%	1.6%
Brown county Mental Health Ctr.	Green Bay	54	35.2%	53.7%	0.9%
Careers Industries, Inc.	Racine	152	49.3%	79.6%	6.5%
Central Wisconsin Center	Madison	49	95.9%	79.5%	26.5%
Cerebral Palsy, Inc.	Green Bay	71	61.9%	91.6%	9.9%
Challenge Center, Inc.	Superior	98	28.5%	97.6%	4.8%
Chilenda Vocational Services	La Crosse	15	40.0%	26.6%	0.0%
Chippewa River Industries	Chippewa Falls	124	29.8%	78.3%	0.0%
Clark County Development Service	Greenwood	60	23.3%	83.3%	13.3%
Clark County Health Care Ctr.	Owen	98	38.7%	NA	NA
The Counseling & Development Ctr.	Phillips	25	12.0%	88.0%	0.0%
Crawford county ARC	Prairie du Chien	78	16.6%	85.9%	0.0%
Curative Care Network	West Allis	124	61.3%	59.7%	3.2%
Curative Commercial Services, Inc.	Racine	154	17.5%	61.0%	1.9%
Diverse Options, Inc.	Ripon	119	46.2%	81.5%	3.3%
Diversified Services, Inc.	Siren	48	0.0%	87.5%	0.0%
East Shore Industries, Inc.	Algoma	59	6.7%	61.0%	0.0%
Eisenhower Center, Inc.	Milwaukee	76	55.2%	96.1%	15.7%
E Z View Group Home	Cornell	8	75.0%	25.0%	0.0%
Focuscorp. Inc.	Madison	50	56.0%	58.0%	4.0%
Fox River Industries	Berlin	69	20.2%	78.2%	4.3%
Goodwill Industries of North Central WI	Menasha	12	0.0%	58.3%	0.0%
Goodwill Industries of Northern WI	Marinette	185	51.8%	58.9%	4.3%
Goodwill of SE Wisconsin, Inc.	Milwaukee	552	39.5%	76.4%	3.2%
Green Valley Enterprises, Inc	Beaver Dam	106	26.4%	83.0%	6.6%
Greenco Industries, Inc.	Monroe	93	58.0%	87.1%	8.6%
Handishop Industries, Inc.	Tomah	86	17.4%	83.8%	1.1%
Headwaters, Inc.	Rhineland	109	90.8%	85.3%	8.2%
Highline Corporation	Hurley	54	9.2%	59.2%	55.5%
Hodan Center	Mineral Point	84	50.0%	77.3%	2.3%
Holiday House of Manitowoc Co.	Manitowoc	188	48.8%	92.6%	2.1%
Indianhead Enterprises	Menominee	48	52.0%	83.3%	10.4%
Industries for the Blind	Milwaukee	23	0.0%	100.0%	0.0%
Innovative Services	Green Bay	3	NA	NA	NA
Juneau County Work Activities Ctr.	Mauston	19	NA	NA	NA
Kandu Industries	Janesville	183	52.3%	95.6%	1.5%
Kenosha Achievement Center	Kenosha	188	26.5%	70.2%	<1%
L. E. Phillips Center	Eau Claire	187	14.4%	61.0%	1.6%
Lakeland Industries	Shawano	93	36.5%	78.5%	4.3%
Lakeside Curative Services, Inc.	Racine	56	5.3%	66.0%	0.0%
Lakeside Packaging Plus, Inc.	Neenah				
Lauri jean Zach Center, Inc.	Glidden	3	0.0%	33.0%	33.0%
Lincoln County Services	Merrill	91	48.3%	82.5%	7.7%

# Wisconsin Sheltered Workshops

1.60%	Location	# of Workshop Participants in 2005	% of Participants Earning Less than \$1.00	% of Participants Enrolled for 3 or more years	% of Participants Whose Wages Have been Static
Marc-West	Madison	148	33.1%	81.8%	8.1%
Mazzuchelli Citizens, Inc.	Sinsinawa	2	0.0%	50.0%	0.0%
Milwaukee Center for Independence	Milwaukee	113	0.0%	16.8%	0.0%
NEW Curative Rehabilitation, Inc.	Green Bay	168	12.5%	70.8%	3.5%
New Hope Center, Inc.	Chilton	48	16.6%	87.5%	0.0%
New View Industries	Gillett	44	43.1%	100.0%	13.6%
North Central Health Care Facil.	Wausau	184	21.7%	90.8%	6.5%
Northern Valley Workshop	Wausau	89	1.1%	NA	39.2%
Northwoods Inc. of Wisconsin	Portage	86	23.2%	81.4%	2.3%
ODC Government Services	Wisconsin Rapids	13	7.7%	53.8%	7.7%
Opportunities, Inc. of Jefferson Co.	Fort Atkinson	292	24.3%	83.2%	3.0%
Opportunities Unlimited	Rhineland	43	53.4%	76.8%	11.6%
Opportunity Development Ctr.	Wisconsin Rapids	202	20.8%	70.8%	10.4%
ORC Industries	La Crosse	145	37.9%	62.1%	4.1%
Pathways	Madison	27	11.1%	88.9%	0.0%
Polk County Dev. Ctr.	Balsam Lake	64	37.5%	75.0%	9.3%
Portal Industries	Grafton	95	28.4%	79.0%	7.3%
Reach Inc.	Eau Claire	125	79.2%	84.0%	28.0%
Rehabilitation Center of Sheboygan, Inc.	Sheboygan	270	21.8%	75.1%	1.1%
Richland County*	Richland Center	45	24.4%	71.1%	0.0%
Riverfront	La Crosse	265	42.6%	69.8%	17.3%
Sheperd's Ministries	Union Grove	113	11.5%	82.3%	0.0%
St. Coletta School	Jefferson	76	64.4%	82.9%	25.0%
St. Croix Industries	New Richmond	85	9.4%	71.7%	5.8%
Southwest Opportunities Center, Inc.	Lancaster	76	28.9%	81.2%	6.5%
Sunshine House, Inc.	Sturgeon Bay	68	20.5%	86.8%	1.4%
Superior Vocations Center, Inc.	Superior	51	35.2%	62.7%	29.4%
The Training Station	Hayward	6	16.6%	16.6%	0.0%
The Threshold, Inc.	West Bend	146	30.1%	77.4%	5.4%
Valley Packaging Industries, Inc.	Appleton	513	20.9%	69.8%	4.9%
Ventures Unlimited, Inc.	Shell Lake	102	47.1%	68.6%	16.7%
Vernon Area Rehab Center	Viroqua	210	40.0%	69.0%	10.9%
VIP Services, Inc.	Elkhorn	173	36.4%	82.6%	6.3%
Waukesha Training Center	Waukesha	292	56.8%	80.5%	9.2%
Waupaca County Industries	Waupaca	140	15.7%	73.6%	4.3%
Wausaukee Enterprises Inc.	Wausaukee	35	20.0%	65.7%	2.9%
Waushara Industries, Inc.	Waushara	73	5.5%	72.6%	2.7%
Wiscraft Inc.*	Milwaukee	19	0.0%	47.4%	0.0%

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Static Wages as used in this chart means individuals who have participated for 3 or more of the past four years in a sheltered workshop program and the persons wages have not varied more than \$0.15 during that period of time.

\* Didn't exist in 2005 so statistics are from 2004