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### DOL Proposes Rule to Nix Subminimum Wage Certificates for Workers With Disabilities



On December 3, 2024, the U.S. Department of Labor announced its proposed rule which would phase out certificates allowing employers to pay workers with disabilities less than the federal minimum wage, which is currently \$7.25 per hour. The proposed rule can be seen [here](#).

Prior to the new proposed rule, the Fair Labor Standards Act allowed employers to apply for DOL-issued certificates to pay workers with disabilities subminimum wages. The FLSA defines workers with disabilities as those whose “earning or productive capacity is impaired by a physical or mental disability including blindness, mental illness, developmental disabilities, cerebral palsy, alcoholism and drug addiction.” Section 14(c) is only applicable when the disability impairs the worker’s earning or productive capacity. Thus, a worker’s status as an individual with a disability alone is insufficient to warrant a subminimum wage certificate.

To obtain a certification, employers needed to apply to the Wage and Hour Division prior to paying the subminimum wage and submit supporting documentation. Employers were also required to notify each disabled worker of the terms of the certificate. The FLSA authorized the Secretary of Labor to issue the certificates only where such certificates were “necessary to prevent the curtailment of opportunities for employment.” In other words, DOL issued certificates only where it deemed necessary to prevent the restriction of suitable employment opportunities for specific disabled workers where the employer sought subminimum wage payments.

In 2023, however, DOL’s comprehensive review of Section 14(c) revealed that many stakeholders, such as employers, workers with disabilities, disability rights advocates, and service providers, emphasized that the payment of subminimum wages was outdated, discriminatory, and no longer needed.

In response, DOL plans to ease the issuance of new Section 14(c) certificates beginning on the effective date of the final rule. The proposed rule would also institute a three-year phase out plan for employers with existing certificates.

DOL will accept public comments on the proposed rule until January 17, 2025. The incoming Trump administration has authority with respect to whether the rule is finalized or not. Employers should review their pay policies to maintain compliance with federal and state minimum wage rules.

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