

The Sub-Minimum Wage: APSE Takes a Stand

By David Hoff, Co-Chair,
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A special minimum wage, known as the sub-minimum wage, has existed for individuals with disabilities under federal law since 1938. This provision allows employers to pay less than the minimum wage mandated for other workers. A series of recent events have placed the sub-minimum wage under increased scrutiny, and as a result, the APSE Board has issued a statement calling for the phase-out of the sub-minimum wage.

In February 2009, it was discovered that 21 men with intellectual and developmental disabilities had been working in a turkey processing plant in Atalissa, Iowa for 20-to-30 years at well below minimum wage. The employer, Henry's Turkey Service, started moving the men from Texas to Iowa in the 1970s, where they worked at a plant owned by West Liberty Foods, one of the nation's largest turkey processors. The men were earning as little as 37 cents per hour gutting turkeys.

The employer housed these individuals in a cockroach-infested, 106-year-old "bunk house" with no central heating, taking their wages and Social Security SSI checks in return. Reacting to this discovery, Mary Faithful, executive director of Advocacy, Inc. in Texas told the *Houston Chronicle*, "I was really, really stunned and pretty horrified. This situation is deplorable. It's really slave labor."

Senate Hearing

At a Senate hearing held in March 2009, Senator Tom Harkin of Iowa expressed his concerns over the sub-minimum wage. "This is a situation that is ripe for abuse," said Senator Harkin.

"The Atalissa case and others like it raise significant questions about how these wages are determined, how accurately these sub-minimum wages reflect the productivity of these workers, and who is actually checking to make sure that workers with disabilities are being compensated fairly and correctly."

During his testimony at the Senate hearing, Curtis Decker, executive director of the National Disability Rights Network, noted that if the sub-minimum wage "did not exist, is it something Congress and the disability community would devise today? I believe the answer to that question is a resounding 'no.'"

Concerns About Wage Aren't New

However, questions over the proper use of sub-minimum wage are not new. Over the last several years there have been increasing concerns regarding both the oversight and practices of employers holding 14(c) sub-minimum wage certificates. These include:

- ❖ A March 2001 U.S. Department of Labor (DOL) Inspector General's report that was highly critical of DOL's oversight of 14(c);
- ❖ A September 2001 Government Accountability Office report that came to similar conclusions; and
- ❖ Increased findings by the DOL that 14(c) certificate holders have underpaid workers, requiring the payment of back wages.

Despite these criticisms, in the wake of the recent scandal at Henry's Turkey Service, DOL officials admitted that holders of 14(c) certificates are still subjected to only *minimal* oversight and *few* potential penalties. Senator Harkin has indicated that he is considering introducing legislation that would tighten rules for companies employing

individuals with disabilities, including possibly eliminating the sub-minimum wage.

APSE Discusses the Issue

In the wake of these developments, the Executive Board of APSE began considering whether APSE should take an official position regarding the sub-minimum wage. In determining a course of action, there was considerable discussion that any changes aimed at reducing or eliminating reliance on sub-minimum wage must avoid any sort of unintended consequences that would damage efforts to expand community employment.

Discussions included a strong recognition that changes to the sub-minimum wage, in and of themselves, were not going to result in expansion of community employment. Therefore, any revisions must be part of comprehensive systems changes. Acknowledging the sensitivity of this issue, and the fact that many APSE members work for organizations that use sub-minimum wage, significant efforts were made to get input in various ways:

- From APSE members and chapters, via discussions at the APSE National Conference in Milwaukee on June 30-July 2;
- A membership survey; and
- Ongoing input from APSE chapter delegates and presidents.

APSE Issues Statement

After significant deliberation, the APSE Executive Board, assisted by the APSE Public Policy Committee, issued a statement in October calling for the phase out of the sub-minimum wage by 2014. A full copy of the statement is available at: www.apse.org/publications/positions.cfm.

In issuing this statement, the board emphasized that phase-out of sub-minimum wage must be accompanied by:

- a) Technical assistance to service systems and service providers that currently rely on sub-minimum wage, in order to move individuals into employment in the community at minimum wage or higher;
- b) Adequate funding for community employment services, including long-term supports as needed; and

c) A national effort to improve the overall quality of community employment outcomes both in terms of individual outcomes (wages, hours, diversity of employment), and system outcomes (efficiency and effectiveness).

The APSE Board noted that it has been consistently demonstrated that individuals with even the most significant disabilities can work successfully in the community at minimum wage or higher. The board additionally emphasized that strictly using productivity rates, as a basis for wages is an out-moded notion, since productivity is just one of many criteria used to evaluate employee performance in today's workplace.

From the board's perspective, the real reason 425,000 individuals are still earning sub-minimum wage — is that the jobs they are performing are a bad match for the individual's skills, abilities, and interests. This is a notion that the board feels is reinforced by the sub-minimum wage regulations. A blanket assumption of sub-minimum wage for all types of work is not permitted, and the regulations specifically note there may be other types of work or other employment settings where an individual is entitled to the minimum wage.

Summary

The board felt it was important for APSE, as an organization that supports integrated community employment for people with disabilities, to take a strong stand on this issue. With the recent attention paid to the issue of sub-minimum wage, we felt that it was important that APSE make clear its position on the issue. The policy we came up with is one that was the result of considerable deliberation over several months, and is consistent with the values APSE has stood for since its inception more than 20 years ago.

I also want to strongly emphasize that as the statement indicates, phase-out of sub-minimum wage, while a step in the right direction, must be accompanied by the comprehensive system and programmatic changes we have recommended. It is only through such an effort that we can make employment for all individuals with disabilities in the community at minimum wage or higher a reality. ■

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