

Disability Rights Nebraska

Protection and Advocacy for People with Disabilities

**Testimony on LB 834
Before the Business and Labor Committee
Nebraska Legislature**

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Good afternoon Senator Hansen and members of the committee. For the record my name is Brad B-R-A-D Meurrens M-E-U-R-R-E-N-S and I am the Public Policy Director for Disability Rights Nebraska, the designated Protection and Advocacy organization for people with disabilities in Nebraska. I am here today in strong support of LB 834.

First I want to thank Senator Hunt for introducing this legislation. While the 14c exception to the Fair Labor Standards Act provides federal permission to pay people with disabilities less than minimum wage, LB 834 is an attempt to fix a long-standing “loophole” in Nebraska law that implements this wage discrimination and permits employers in Nebraska to pay certain people with disabilities less than minimum wage. This loophole is targeted directly at, and only at, people with disabilities working in “a program of rehabilitation”. Because Nebraska law does not consider these individuals as employees, they are not protected by Nebraska minimum wage laws and can be paid less than minimum wage. Nebraska would rather they receive a wage that is “consistent with his or her health, efficiency, and general well-being”. Which begs the question: How do we translate that into a wage? The language is so general and obtuse as to be ineffective and would open the door to workers with disabilities receiving pennies—as long as the employer thinks that is “consistent” with their assumptions of the individual’s “health” or “general well-being”. The US Commission on Civil Rights reports that the national average wage under this program from 2017-18 was \$3.34/hour (no tips)--\$53.44 per week¹-- or as was relayed in *The Reader* newspaper² perhaps as low as 87 cents per hour. Which then begs the next question: Would any of us in this room want to work for such an amorphous wage?

This 14c exception and the language repealed by LB 834 only apply to people with disabilities, and only because they have a disability. Even when employees without disabilities are not as productive as their co-workers with disabilities, they receive minimum wage because they are not included in the 14c federal exception or Nebraska law. So it’s really not always about productivity, but always (by definition) about a person’s disability.

States are already moving to erase this remaining bastion of disability discrimination. According to the Association of People Supporting Employment First (APSE), 10 states have enacted legislation to eliminate the subminimum wage for people with disabilities and others are in varying states of legislative

¹ United States Commission on Civil Rights (2020). *Subminimum Wages: Impacts On The Civil Rights Of People With Disabilities*. See page xii. Available at <https://www.usccr.gov/files/2020/2020-09-17-Subminimum-Wages-Report.pdf>

² Leah Cates, “Get Hired Lose Insurance Benefits”, *The Reader*, August 2021, available at <https://omahajobs.com/blog/get-hired-lose-insurance-benefits/>

action^{3,4}. APSE also notes that the number of people with disabilities working under 14c Certificates has declined substantially over the last few years, further indicating the time has come, and is rather overdue, for a change.⁵

A number of agencies in Nebraska have switched from a subminimum wage model, meaning that it can be done with minimal disruption. Some data that I received from a colleague who contacted over 20 providers indicates that of those 20, only a few agencies in this state are paying subminimum wage. Most ended that practice *years* ago. According to the federal reports of 14c certificates requested and granted through the US Department of Labor, the largest subminimum wage employer in Nebraska is paying 160 people with disabilities a subminimum wage (despite having an *annual revenue of \$16 million*)⁶; the “review of 20” puts the number at 47 people.

You will hear that if we pay people with disabilities in these programs a minimum wage, businesses will shut down. But the evidence does not bear that out and begs the question: if your business model is dependent on paying people with disabilities subminimum wage, is that really a good business model? What does this portray about the value of our citizens with disabilities? And further, is the Nebraska legislature okay with such a business model? What about those individuals and their families who want to make minimum wage—we should not let a few individuals or agencies hold them back.

Building a robust and effective jobs placement/support schema is not mutually exclusive with repealing the subminimum wage. Rather, the idea that we need to build job placement *before* repealing the subminimum wage language distracts from the central issue: is it acceptable to pay people with disabilities in these programs less than the minimum for everyone else? You can change the policy of the state to not to pay subminimum wage and simultaneously develop job placements, even work on enacting an effective Employment First program. Some states have worked to phase out their subminimum wage while building job resources for persons with disabilities. Even with a “phase out”, at least there is a repeal date. Businesses can pass along the cost in their contracts. Regardless of efforts to build a system for job placement, this state statute would still need to be repealed, lest Nebraska *continue* its legal *endorsement* of discriminatory wages for certain Nebraskans with disabilities.

³ Association of People Supporting Employment First, “2021 State Legislative Watch”, available at <https://apse.org/wp-content/uploads/2022/01/FINAL-2021-State-Legislative-Activity.pdf>

⁴ Lisa Kimbrough, “States Move to Repeal Subminimum Wages”, *Multistate*, May 27, 2021, available at <https://www.multistate.us/insider/2021/5/27/states-move-to-repeal-subminimum-wages>

⁵ Association of People Supporting Employment First, “Trends and Current Status of 14c”, updated October 2021, available at https://apse.org/wp-content/uploads/2021/10/10_20_21-APSE-14c-Update-REV.pdf

⁶ See Dunn and Bradstreet “Business Directory” at https://www.dnb.com/business-directory/company-profiles.mid-nebraska_individual_services_inc.1b625b824e7bbf7d1990a39d4dc2dbc2.html