

Open in app ↗

Sign up

Sign in

Medium

Search

Write



Subminimum Wage: A Tale of Policy Failure and... Social Entrepreneurship?

Section 14(c) of the FLSA, which established subminimum wage, is a policy that ensures people with disabilities remain in poverty.

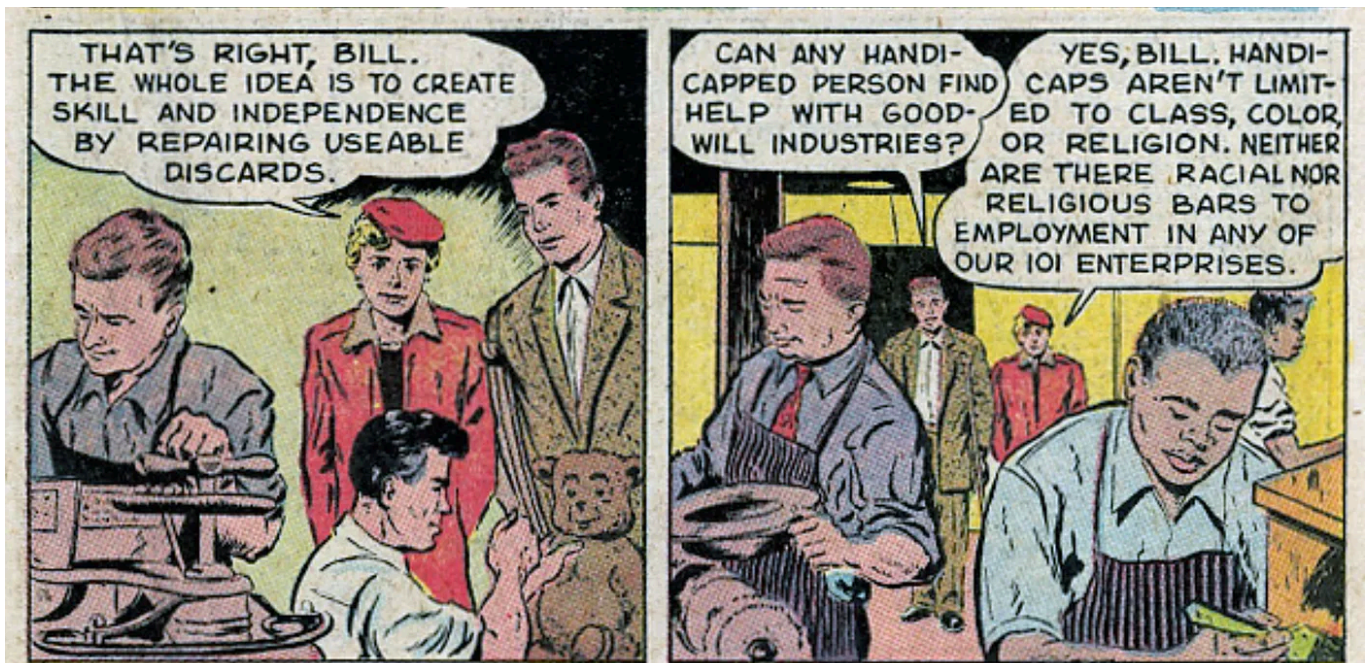


Center for Racial and Disability Justice · Follow

10 min read · Nov 21, 2023



12



This photo is from a section of Goodwill Industries a Good Life, which was a promotional comic produced by Goodwill in the 1950s. The full comic tells the story of a minister who started Goodwill Industries by collecting

people's items for redistribution. The left side of this section of the comic reads "That's right, Bill. The whole idea is to create skill and independence by repairing useable discards." The right side is a conversation between two people. One person asks "Can any handicapped person find help with Goodwill Industries?" and the other responds "Yes, Bill. Handicaps aren't limited to class, color, or religion. Neither are there racial nor religious bars to employment in any of our 101 enterprises." Photo: My Comic Shop

By Kate Caldwell

The U.S. Department of Labor (DOL) has been holding a series of stakeholder engagement sessions or "listening calls" to hear from the disability community and others about their experiences with subminimum wage. When joining the calls, I was disheartened by the amount of misinformation I heard. People shared their personal experiences and stories that resulted not from a need for the continuation of a failed program, but rather from a lack of options — being forced to choose between something and nothing. I would like to share with you some facts, history, and observations about subminimum wage that are left out of the conversation by those who want to maintain this outdated and dehumanizing practice.

Failed from the Start

In 1938, Section 14(c) of the Fair Labor and Standards Act (FLSA) established that employers could pay workers with disabilities subminimum wage. This was one of the last pieces of President Roosevelt's New Deal policies to fall into place. FLSA was a landmark piece of labor rights legislation that created many important worker protections, but it was also one marked by a history deeply rooted in racism and ableism. While at the time the FLSA established a federal minimum wage for most workers, it included a subminimum wage provision for "substandard" workers. The goal was to provide training for wounded veterans to gain skills that they could then take on to better work. We see this echoed in early documents that acknowledge subminimum wage

jobs were not considered good jobs; they were supposed to be temporary. From the beginning, it was never intended that disabled workers would stay in subminimum wage work, but rather transition to jobs where they would be paid better elsewhere. Yet, only 5% of workers who are paid subminimum wage go on to competitive integrated employment. At some point in time these segregated work arrangements, known as “sheltered workshops”, shifted from serving disabled veterans toward warehousing those with intellectual and developmental disabilities (I/DD). A recent report showed that 90% of 14(c) workers have I/DD. Instead of being a temporary measure, people with disabilities have been tracked and trapped into subminimum wage and federally subsidized sheltered workshops that exploit them.

Section 14(c) of the FLSA never worked as intended. It was a failed policy from the start which never met its goals. We knew by the 1940s and certainly by the 1960s that subminimum wage was not working. It is long past time that it should be phased out so that we can instead fully embrace policies and practices that have proven to be effective. Continuing to hold on to archaic policies such as this prevents innovation and the creative-destructive process our economy relies upon. To make way for new approaches we need to phase out those that are not achieving their intended goals.

Restricting Choice

In the DOL stakeholder sessions, I kept listening to people talk about the importance of choice and why maintaining 14(c) programs allows individuals to have a “choice.” However, this program only serves to maintain an illusion of choice. Choice can only exist when there is more than one viable option to choose between. Anytime that I hear someone say the only choice is to work in a sheltered workshop or else they would be sitting at home with nothing to do, it is clear that it is not an actual choice.

When the choice is between doing something and nothing, there is only one option to choose from.

Over the years, I have spoken with countless people with disabilities working in a variety of settings. Any time I ask someone working in a sheltered workshop if they would prefer to continue working as they are or to be paid a competitive wage to do the same or similar work, without fail they choose to be paid better *every* time even (and sometimes especially) if it involves doing more work.

Misuse of Social Entrepreneurship

Social entrepreneurship provides the perfect lens through which to critique subminimum wage. It also happens to be one of my areas of expertise. Social entrepreneurship is defined as the creation of a business that has not only a profit-generating mission but also a social mission that is central to the business itself. Many social entrepreneurs start businesses because of their personal experience with disadvantages or unmet needs they see in their community. The mission of a social enterprise cannot be to simply employ a person with a disability, as that would be self-employment. There needs to be something innovative and change-oriented about it.

We have seen gains as a result of Employment First policy and legislative efforts to eliminate the subminimum wage provision in 16 states now. Over the last decade, employer participation in 14(c) decreased by half. However, these initiatives have provoked subminimum wage providers to find other ways of continuing not to pay disabled workers. I have seen many instances where providers try to hide subminimum wage under the guise of “social entrepreneurship.” The language is much the same as that which originally underpinned Section 14(c). Providers claim they are providing skills-based

training to employees with disabilities. Profits from the “social enterprise” go back into the service provider agency while employees continue not to be paid. The expectation is that the opportunity to learn and develop skills is payment enough. Because disabled workers are believed to be benefiting from the services of the provider, profit is instead used to offset their bottom line. To be clear, this mindset is not a modern one. This was the same justification institutions gave over a century ago when they demanded individuals living there work to offset the costs of their care. This came to be known as “institutional peonage”.

The peonage cases brought into question over one hundred years of involuntary servitude by institutionalized individuals with disabilities. Their century of labor, unpaid but nonetheless regarded as worthy, is all but forgotten. Instead, today, over 400,000 individuals with intellectual disabilities spend their days in sheltered workshops where their potential for employment is measured in daily, piece-by-piece, year after year, and remunerated at subminimum wages that nondisabled employees would not tolerate [1].

Resident laborers were coerced to work in the institutions themselves as well as in their farms, gardens, and generating products that were sold in the community among other “industries.”

One could argue that social entrepreneurship led directly to the disability employment crisis we see before us today — one predicated on the exploitation of disabled people. Goodwill Industries is held up internationally as a prime example of social entrepreneurship and heralded as one of the original social enterprises. From the very beginning, its success came at the expense of disabled workers. It is not an accident that Goodwill was an early adopter of the sheltered workshop model under Section 14(c). In fact, a representative from Goodwill Industries was one of six members

on the *First National Sheltered Workshop Committee* appointed by President Roosevelt. Goodwill seized the opportunity provided by Section 14(c) of the FLSA to extend the practice of institutional peonage to the business sector and called it “social entrepreneurship.” Ever since, Goodwill has been the leading sheltered workshop provider in the U.S. and has enriched themselves handsomely while paying disabled workers poverty wages. While creating a business to train and employ disabled workers *could* potentially be social entrepreneurship, paying workers subminimum wages undermines any mission centered on disability employment.

Convergence of Failures

Recognizing that Section 14(c) was unfair, there was an effort to modify it in 1965 so that minimum wage would be extended to disabled workers. When this failed, it was followed by Public Law 89–601, which established a floor for subminimum wage that could be no less than half of the federal minimum wage. Meanwhile, a number of lawsuits, the *peonage cases*, were brought against institutions on behalf of resident laborers in the 1970s under the 13th Amendment, arguing that residents have a Constitutional right to be free from involuntary servitude [1].

By the 1980s, the Government Accountability Office (GAO) found the 1966 Amendment to the FLSA had not resulted in any change, with fewer than 17% of workers being paid wages that met the floor. Further, the Assistant Secretary for Employment Standards at the time admitted the 14(c) program was not being properly regulated. The Amendment was thus reversed, and a new Amendment passed in 1986 establishing that 14(c) pay be “commensurate.” This Amendment jeopardized institutions that relied upon patient laborers since they now needed to apply for a certificate to act as a subminimum wage provider. Rather than pay disabled workers to continue

working, institutions chose instead to replace them with non-disabled workers.

The devaluation of the labor of “resident workers” left an imprint that indelibly marked individuals with intellectual disabilities and/or mental illness as incapable of meaningful and productive contributions — unworthy of full economic reward. This brand permeated the consciousness of professionals, families, and the individuals themselves, and influenced the inadequate development of alternatives to their exploitation when the practice of involuntary servitude was called into question [1].

The idea that subminimum wage workers in sheltered workshops cannot be expected to do work worthy of being paid a competitive wage is actually a recent one. The reasoning people are giving in support of Section 14(c) today is backwards and goes against the historical record. It was only when legal decisions and amendments to the law were made that restricted employers’ ability to continue paying workers subminimum wages that the value of their work came into question [1]. Stakeholders were convinced that the choice was between working for little-to-no pay or doing nothing at all. Thus, the illusion of choice was born. The harm that has been perpetrated here impacts the disability community on multiple levels, resulting from a convergence of societal and policy failures. The shift in disability employment research and policy towards competitive integrated employment pushed back against this stigma [2, 3].

Time to Make a Real Choice

According to a recent report from the U.S. GAO, today, the majority of sheltered workshops (51%) pay disabled workers less than \$3.50 per hour. Only 14% of Section 14(c) workers earn at or above the federal minimum

wage, and those who are earning more are engaged in different types and locations of work. Higher wages tend to be offsite with the support of job coaches (50%), paid hourly (74%), and in states where the minimum wage is higher than the federal minimum wage (87%). Lower-wage workers tend to be found in congregate settings (61%) where individuals are paid at a piece rate (81%). Paying by piece rate is not industry standard, has a negative effect on health and safety, and has been referred to as “sweatshop wages”. The practice is unfair, inequitable, and inhumane. I say this as someone who worked in a factory — I clocked in and clocked out. I was paid for my time not my performance because I am a human being, not a mindless automaton. So too are people with I/DD. To insinuate that any person’s time is not as valuable as another’s is immoral. To make this judgment based solely on whether they have a disability is, by definition, discriminatory.

Two-thirds of employers are violating the FLSA and Section 511 of the Rehabilitation Act of 1973, as amended by Title IV of the Workforce Innovation and Opportunity Act (WIOA). Of these employers, 70% had prior violations; a trend which has continued unabated since the 1980s. The most common type of violation was, yet again, failure to pay the proper commensurate rate (84%) and providers not having a 14(c) certificate or allowing it to lapse but still paying workers subminimum wages. In all, between 2012 and 2021 over \$15 million in unpaid back wages was found to be owed to more than 73,500 disabled workers. The problems we see in Section 14(c) today are the same problems we have seen since its’ inception, revealing that it has been and continues to be a failed policy. It is beyond time to move on.

Bolstered by state-level initiatives, there are encouraging policy efforts at the federal level to move the needle on subminimum wage. Notably in March of 2022, the Department of Education released \$167 million in grants to state

agencies as part of their *Subminimum Wage to Competitive Integrated Employment* (SWTCIE) initiative to help phase out subminimum wage that is indicative of a whole-of-government approach to ending this antiquated practice. Currently, there are two bills in the House and Senate aimed at ending subminimum wage. The first is the Transformation to Competitive Integrated Employment Act (S.422 & H.R.1263). If passed, the Act would phase out subminimum wage practices over a five-year span by helping employers transition to competitive integrated employment. The second is the Raise the Wage Act of 2023 (S.2488 & H.R.4889). If passed, the Act would raise the federal minimum wage to \$17 an hour and, in so doing, gradually raise and then eliminate subminimum wage by 2027.

Entrepreneurship and social entrepreneurship have the potential to play a critical role in advancing disability employment policy, but only when it is disability-led. Unlike self-employment, entrepreneurship and social entrepreneurship are both an employment strategy and an anti-poverty strategy, which is how they have been used in other disadvantaged communities. Section 14(c) is a policy that ensures people with disabilities under it will remain in poverty. Further, Goodwill's approach to social entrepreneurship exploited disabled workers because it saw them merely as passive recipients of services within a charity model of disability, not as an active driving force in their own liberation.

You will be able to follow the progress of current bills and see upcoming policies and legislation using the new CRDJ Tracker, coming soon! Preview included below.

CRDJ POLICY TRACKER**H.R.1263 - Transformation to Competitive Integrated Employment Act**

Rep. Scott, Robert C. "Bobby" [D-VA-3] 2/28/2023 House - Education and the Workforce

H.R.4889 - Raise the Wage Act of 2023

Rep. Scott, Robert C. "Bobby" [D-VA-3] 7/25/2023 House - Education and the Workforce

S.533 - Transformation to Competitive Integrated Employment Act

Sen. Casey, Robert P., Jr. [D-PA] 2/27/2023 Senate - Health, Education, Labor, and Pensions

S.2488 - Raise the Wage Act of 2023

Sen. Sanders, Bernard [I-VT] 7/25/2023 Senate - Health, Education, Labor, and Pensions

Preview of the CRDJ Policy Tracker, which includes the title "CRDJ Policy Tracker" at the top and then reads "H.R.1263 — Transformation to Competitive Integrated Employment Act Rep. Scott, Robert C. 'Bobby' [D-VA-3] 2/28/2023 House — Education and the Workforce; H.R.4889 — Raise the Wage Act of 2023 Rep. Scott, Robert C. 'Bobby' [D-VA-3] 7/25/2023 House — Education and the Workforce; S.533 — Transformation to Competitive Integrated Employment Act Sen. Casey, Robert P., Jr. [D-PA] 2/27/2023 Senate — Health, Education, Labor, and Pensions; S.2488 — Raise the Wage Act of 2023 Sen. Sanders, Bernard [I-VT] 7/25/2023 Senate — Health, Education, Labor, and Pensions"

. . .

[1] Beckwith, R. (2016). *Disability servitude: From peonage to poverty*. Springer.

[2] Caldwell, K. (2018). Supported employment. In T. Heller, S. P. Harris, C. Gill, & R. Gould (Eds.), *Disability in American life: An encyclopedia of concepts, policies, and controversies*. Santa Barbara, CA: ABC-CLIO.

[3] Caldwell, K. (2018). Customized employment. In T. Heller, S. P. Harris, C. Gill, & R. Gould (Eds.), *Disability in American life: An encyclopedia of concepts, policies, and controversies*. Santa Barbara, CA: ABC-CLIO.

Dr. Kate Caldwell is the Director of Research & Policy of the Center for Racial and Disability Justice at Northwestern Pritzker School of Law

The Northwestern Pritzker Law Center for Racial and Disability Justice (CRDJ) is a first-of-its-kind center dedicated to promoting justice for people of color, people with disabilities, and individuals at the intersection of race and disability.

Learn more about CRDJ by visiting the [Center for Racial and Disability Justice webpage](#).

Subminimum Wage

Disability

Poverty

Workshop

Disability Rights



Written by Center for Racial and Disability Justice

Follow




7 Followers

Promoting justice for people of color, people with disabilities, and individuals at the intersection of race & disability at Northwestern Law School.

More from Center for Racial and Disability Justice




 Center for Racial and Disability Justice

Giving Voice to People with Lived Experience of Mental Health...

Dr. Daniel Fisher talks about the crucial need to allow people with mental health condition...

Sep 11, 2023  5




 Center for Racial and Disability Justice

33 Years and Still So Much Work Must be Done: A Reflection on the...

On July 26, 2023, the Americans with Disabilities Act turned 33, but disabled peop...

Jul 27, 2023




 Center for Racial and Disability Justice

People With Psychiatric Disabilities Must Have Significant Input on...

Kathy Flaherty discusses the importance of centering the voices of people with lived...

Sep 11, 2023  3



 Center for Racial and Disability Justice

Police Violence Remains One of the Biggest Threats to the Lives of...

Disabled people of color are disproportionately impacted by police...


Aug 9, 2023



See all from Center for Racial and Disability Justice

Recommended from Medium




 Karolina Kozmana

Common side effects of not drinking

By rejecting alcohol, you reject something very human, an extra limb that we have...

Jan 21  42K  1118



 Unbecoming

10 Seconds That Ended My 20 Year Marriage

It's August in Northern Virginia, hot and humid. I still haven't showered from my...

 Feb 16, 2022  83K  1137

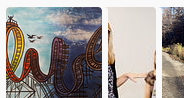


Lists



Work 101

26 stories · 158 saves



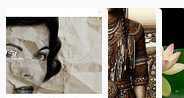
My Kind Of Medium (All-Time Faves)

90 stories · 438 saves



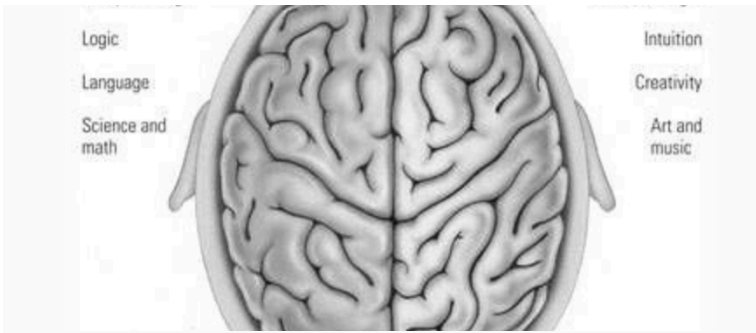
Interesting Design Topics

257 stories · 682 saves



Medium's Huge List of Publications Accepting...

334 stories · 3192 saves



Software Development Engineer Mar. 2020 – May 2021

- Developed Amazon checkout and payment services to handle traffic of 10 Million daily global transactions
- Integrated Iframes for credit cards and bank accounts to secure 80% of all consumer traffic and prevent CSRF, cross-site scripting, and cookie-jacking
- Led Your Transactions implementation for JavaScript front-end framework to showcase consumer transactions and reduce call center costs by \$25 Million
- Recovered Saudi Arabia checkout failure impacting 4000+ customers due to incorrect GET form redirection

Projects

NinjaPrep.io (React)

- Platform to offer coding problem practice with built in code editor and written + video solutions in React
- Utilized Nginx to reverse proxy IP address on Digital Ocean hosts
- Developed using Styled-Components for 95% CSS styling to ensure proper CSS scoping
- Implemented Docker with Seccomp to safely run user submitted code with < 2.2s runtime

HeatMap (JavaScript)

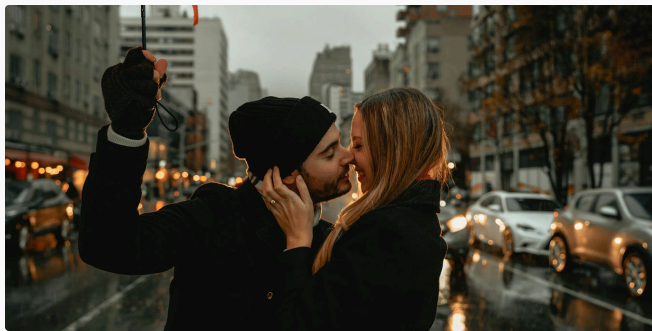
- Visualized Google Takeout location data of location history using Google Maps API and Google Maps heatmap code with React
- Included local file system storage to reliably handle 5mb of location history data
- Implemented Express to include routing between pages and jQuery to parse Google Map and implement heatmap overlay

Sufyan Maan, M.Eng in ILLUMINATION

What Happens When You Start Reading Every Day

Think before you speak. Read before you think. — Fran Lebowitz

★ Mar 11 🖱️ 28K 💬 643



Michelle Teheux in Minds Without Borders

We Could Learn a Lot About Sex From the Dutch

My Dutch relative's views shocked me, but I immediately realized she was right

★ Jul 17 🖱️ 24K 💬 288

Alexander Nguyen in Level Up Coding

The resume that got a software engineer a \$300,000 job at Google.

1-page. Well-formatted.

★ Jun 1 🖱️ 15.4K 💬 231



Brian S. Hook in Age of Empathy

How I Lost My Job As A Tenured Professor

Where Does An Expert In A Dying Field Go Next?

★ 6d ago 🖱️ 9.6K 💬 230

See more recommendations