

LABOR DEPARTMENT SEEKS TO END LOWER MINIMUM WAGE FOR WORKERS WITH DISABILITIES: 6 THINGS EMPLOYERS NEED TO KNOW

Insights
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The federal government wants to phase out the lower minimum wage that employers can pay to certain workers with disabilities, according to a proposal that the U.S. Department of Labor (DOL) just announced. Supporters of the lower minimum wage say it creates employment opportunities for more people with disabilities, while opponents argue that it builds more barriers to workplace inclusion. The DOL's long-anticipated proposal released on December 3 notes that, while workers with disabilities still face significant barriers, employment opportunities have changed dramatically since the law was first established in 1938 and last updated in 1989. The Department says the lower minimum wage is no longer necessary. What can employers expect now that this rule change has been proposed – and what should we expect once the new administration is in place? Read on for answers to your top six questions.

1. What rules currently apply?

The Fair Labor Standards Act (FLSA) permits employers to pay wage rates to workers with disabilities below the \$7.25 federal minimum wage when their disability impairs their earnings or productive capacity. To do so, employers must apply to the DOL for a Section 14(c) certificate. The rule applies to workers whose earning capacity or productivity is diminished by a physical or mental disability, such as blindness, mental illness, developmental disabilities, cerebral palsy, alcoholism, or drug addiction. The disability must actually impair the worker's earning or productive

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capacity for the work being performed, according to the DOL.

The DOL's Wage and Hour Division manages [the application process](#) and makes the determination on whether to issue a 14(c) certificate. Notably, there is no set minimum wage for workers with disabilities. Instead, the rate is determined based on a number of factors, such as the worker's individual productivity. [You can read more about the criteria here](#). Certificates are issued only as "necessary to prevent curtailment of opportunities for employment."

A Government Accountability Office report showed that over half of the workers it reviewed in the program between 2019 to 2021 were earning less than \$3.50 an hour – and 5% earned 25 cents an hour or less.

The proposed rule says this program is no longer necessary due to "the profound legal and policy developments that have vastly expanded employment opportunities and rights for individuals with disabilities since the Department last substantively updated regulations governing section 14(c) in 1989, and even more so since the Department first promulgated regulations upon enactment in 1938."

2. How would the new rule impact employers that utilize 14(c) certificates?

The DOL's proposed rule would phase out the lower minimum wage for workers with disabilities by:

- Ceasing to issue new certificates beginning on the effective date of the final rule; and
- Allowing employers with valid 14(c) certificates to continue operating under the program for up to three years after the effective date of the final rule.

"With this proposal, the department expects that many workers currently paid subminimum wages under Section 14(c) will move into jobs that pay full wages, which will improve their economic wellbeing and strengthen inclusion for people with disabilities in the workforce," said Acting Secretary of Labor Julie Su.

Notably, many states and cities have already banned or are phasing out subminimum wages for workers with disabilities. Participation in the federal program has dropped

significantly from about 424,000 workers in 2001 to less than 41,000 in 2024.

3. Can employers provide feedback on the proposal before it's finalized?

Yes. Employers and other members of the public have until January 17 to [submit a comment](#) to the DOL. The Department is specifically requesting comment as to whether it would be appropriate to grant an extension for existing section 14(c) certificate holders who demonstrate a need, and if needed, the scope, structure, and length of that extension.

Employers should note that the DOL is also seeking comments on the potential costs and impacts of the proposed rule.

4. How might upcoming changes in the White House affect the rulemaking process?

This proposed rule comes during the last full month of President Biden's administration, and the comment period ends just three days before President-elect Trump takes office. This timing raises questions as to whether the rule will ultimately be finalized.

It's hard to predict what the new administration will do. While we expect the Trump DOL to ease burdens on employers, [the Department may focus on more controversial issues](#), including rules on independent contractors, joint employers, and [overtime pay eligibility](#). Moreover, [Trump's surprising pick to lead the DOL](#), Lori Chavez-DeRemer, is viewed as pro-labor, which means she may be more inclined to support the rule phasing out 14(c) certificates.

5. Will Republican-led states challenge the rule in court as exceeding the DOL's authority?

Maybe. But state-level legislation to eliminate subminimum wages for workers with disabilities has generally had some bipartisan support – and we wouldn't be surprised to see states focus their resources instead on the rules mentioned above.

You should note, however, that some lawmakers argue that eliminating the lower wage would create more barriers. "These special minimum wages allow workers with disabilities to receive compensation commensurate to their

productivity, and the FLSA requires employers to adjust these wages periodically," according to [a letter sent to the DOL](#) by several members of Congress, including Rep. Virginia Foxx, R-N.C., and Rep. GT Thompson, R-PA.

"Special minimum wages expand employment opportunities for individuals with disabilities to work and broaden options to transition into other types of employment," they said.

6. What should you do now?

Employers don't have to take any immediate actions, since this rule is just a proposal and may be altered after the comment period or even dropped altogether by the incoming administration.

For now, if you utilize the program, you may want to start gathering information about the 14(c) certificate holders in your organizations and assess the potential impact on your employees, budget, and operations.

Conclusion

We will continue to monitor developments from the DOL's Wage and Hour Division, so make sure you are subscribed to [our Insight System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Wage and Hour Practice Group](#).