



April 1, 2015

Transitioning to Integrated and Meaningful Employment (TIME) Act (HR 188)

To phase out special wage certificates under the Fair Labor Standards Act of 1938

Summary:

On January 7, 2015, Rep. Greg Harper (R-MS-03), along with Rep. Michael Burgess, MD (R-TX-26), introduced the “Transition to Integrated and Meaningful Employment (TIME) Act” (HR 188) to phase out special wage certificates under the Fair Labor Standards Act (FSLA) under which individuals with disabilities may be employed at special minimum wage rates.

The TIME Act directs the Secretary of Labor to discontinue issuing to any new profit or non-profit or governmental entity special wage certificates, also known as 14(c) certificates, and prescribes requirements for a three-year phase-out of all 14(c) certificates.

Key Assertions of the “TIME Act”

- That the practice of paying workers with disabilities less than the federal minimum wage is an outdated provision that harkens back to a time when there were no employment opportunities for individuals with disabilities.
- That advancements in vocation rehabilitation, technology and training provide workers with disabilities with greater opportunities than in the past and the number of workers with disabilities in the national workforce has increased.
- That employees with disabilities who are provided with proper rehabilitation services, training and tools can be as productive as employees without disabilities; including individuals with the most severe disabilities.
- That even though some employers claim to provide rehabilitation and training to workers with disabilities to prepare them for competitive employment, the ability to pay less than the federal minimum wage incentivizes said employers to exploit the cheap labor provided by workers with disabilities.
- That many employers with a history of paying special minimum wage benefit from philanthropic donations and preferred bidding status on federal contracts, yet claim unsustainability of workforce and profitability should they be required to pay federal minimum wage.
- That other employers have recognized such exploitation of the workers with disabilities, such as the National Industries for the Blind (NIB), and committed to pay workers federal minimum wage,

or state minimum wage, whichever is higher, without reducing their workforce and while still maintaining profitability.

- That the Wage and Hour Division (WHD) within the Department of Labor, as noted by two reports from the Government Accountability Office (GAO), lack the capacity, training and resources to enforce compliance with the special minimum wage provision. Furthermore, that the significant appropriation necessary to improve oversight would be better spent on improving employment outcomes for people with disabilities.
- That via the rules established under Section 14(c) of the FLSA, employers determine the special wage to be paid to an employee with disabilities through a complicated methodology that unfairly establishes a productivity benchmark difficult for anyone to maintain. Furthermore, that the inability of many employers to correctly establish the wage pursuant to the rule has regularly resulted in employees with disabilities receiving even less than the special minimum wage than they should have received under the regulation.

“TIME Act” Recommendations for Transition to Fair Wages

- Effective upon enactment up the TIME Act into law; the Secretary of Labor will discontinue issuing special wage certificates under Section 14(c) to any new entities not currently holding a certificate.
- All special wage certificates held on the date of enactment shall be revoked
 - For private for-profit entities, 1 year after enactment;
 - For public or governmental entities, 2 years after enactment;
 - For non-profit entities, 3 years after enactment.

Recommendations:

As you will note from the summary points above, Reps. Harper and Burgess failed to include any alternatives or recommendations for how to better improve employment outcomes, through current appropriations levels or increased levels. Nor did they make any suggestions as to what programs, supports or services will be made available for participants in 14(c) programs as it is phased out over the three year period.

ACCSES believes that the phasing out of 14(c) certificates without alternate programs, supports or services is shortsighted and ultimately harmful to those being served by such certificates. While the intentions of the legislation for those with disabilities is well intended, the circumstances that it will create for those with the most significant disabilities has not been thoroughly considered. A ‘one-size fits all’ perspective for engaging individuals across the full spectrum of physical, developmental and intellectual disabilities is an unfeasible approach to achieving integrated competitive employment.

ACCSES therefore will send a letter of opposition to the “TIME Act” and outline the reasons why this legislation is ultimately harmful to those it purports to assist. ACCSES staff will set up meetings with key legislators and their staff and work to prevent the bill from gaining any significant traction.

Background:

ACCSES recognizes that some individuals with significant disabilities may not be able to meet standards and perform the essential functions of a job (with or without reasonable accommodation) and as a result are not currently employable at the federal or state minimum wage or prevailing wage. In order to enable

such individuals to work and receive the benefits of working, ACCSES supports the continuation of Section 14(c) of the FSLA, which allows the payment of skills-based wages that are commensurate with their level of productivity.

Not for the first time has the Section 14(c) certificate program come under attack from those purporting to have the best interests of individuals with disabilities. The following facts about the Section 14(c) program should be considered when engaging in discussions on Section 14(c).

1. Congress enacted Section 14(c) because it wanted people with the most significant disabilities who could not meet productivity standards to have an improved quality of life and enjoy the economic benefits of work (wages commensurate with their productivity) as well as the intangible benefits of work (respect, dignity, self-worth, self-esteem).
2. Section 14(c) is not some ideological construct or charity; it is real worth for people with the most significant disabilities; jobs that would not exist without this program.
3. Section 14(c) is focused on people with the most significant disabilities who want to work and be paid wages commensurate with their productivity.
4. Section 14(c) is wage protection legislation for those who cannot meet productivity standards and thus are not protected by the ADA. [ADA only protects qualified individuals with disabilities, i.e., those who can perform the essential functions of a job (meet productivity standards) with or without reasonable accommodation.]
5. Section 14(c) means that jobs and skill-based wages (wages that are commensurate with, i.e., based on productivity) will still be available for those who cannot meet productivity standards.
6. For hundreds of thousands of people with the most significant disabilities, phasing out and eliminating skill-based wages (commensurate wages) authorized by Section 14(c) will result in:
 - The denial of work opportunities and the denial of a pay check.
 - Staying at home, entering day habilitation centers (if space were available) or living in institutions.
 - The denial of the intangible benefits of work, e.g., a feeling of dignity, self-esteem, and a sense of accomplishment and pride.
 - “Cherry-picking” individuals with more moderate disabilities to the detriment of individuals with the most significant disabilities.

Current Legislative Status:

The “Transitioning to Integrated and Meaningful Employment (TIME) Act” (HR 188) continues to gain co-sponsors. However, it should be noted that though this bill is a reintroduction of similar legislation from the last Congress, not all supporters of the previous bill are signing on as supporters this time around.

The bill has not yet been scheduled for any hearing or mark-up within the committee of jurisdiction, the Committee on Education and the Workforce. Regardless, we perceive the bill as a growing threat on the 14(c) certificate program, particularly in conjunction with the work being done by the Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (ACICIEID).

Outlook:

ACCSES Government Relations staff will continue to monitor and hold meetings with key parties.