

New House Bill 1924 Champions Disabled Workers in Virginia

Sarah Cuba, Assistant Data Scientist



On April 12th of this year, Governor Glenn Youngkin signed House Bill (HB) 1924, which, as of July 1st, outlawed the practice of hiring and paying workers with disabilities less than minimum wage.¹ Those employers with a special certificate authorized under the federal Fair Labor Standards Act to pay certain employees with disabilities less than minimum wage prior to July 1, 2023, will be grandfathered in and given until July 1, 2030, when their authorization ends, to raise pay for these workers to Virginia's minimum wage.

The History of Subminimum Wages

Minimum wage laws exist in the U.S. in order to ensure that workers are compensated fairly for their time and efforts. However, Section 14(c) of the Fair Labor Standards Act of 1938 created a loophole in federal minimum wage law that allows employers to pay disabled workers less than the minimum wage if they acquire a 14(c) certificate from the Department of Labor.² In a 2023 study published by the U.S. Government Accountability Office, since August 2019 most workers under 14(c) make less than \$3.50 per hour, which is less than half of the federal minimum wage of \$7.25, and less than one-third of Virginia's \$12 minimum wage.² Disability rights advocates have fought for years to close this loophole, and now, Virginia has become just the 14th state to outlaw it.³

Disability in Virginia

According to the Centers for Disease Control and Prevention, approximately one in four adults in Virginia (24 percent) have a disability.⁴ Disabilities can include difficulties with mobility, cognition, independent living, hearing, vision, or self-care.⁴ Though disability is highly stigmatized, people living with disabilities can have full, meaningful lives that include employment and careers. Currently over 4 percent of workers in Virginia have a disability, and as the workforce ages, this number will continue to increase.⁵ However, only 34 percent of disabled adults aged 21-64 in Virginia are employed.⁵ Some argue that allowing employers to pay disabled workers subminimum wages leads to increased employment opportunities and an improved quality of life, but is this true?

1. See Virginia's Legislative Information System, "HB 1924 Minimum Wage; Employees with Disabilities." Accessed on July 19, 2023: <https://lis.virginia.gov/cgi-bin/legp604.exe?231+sum+HB1924>

2. See the U.S. Government Accountability Office "Subminimum Wage Program: DOL Could Do More to Ensure Timely Oversight." Accessed on July 19, 2023: <https://www.gao.gov/products/gao-23-105116#:~:text=Publicly%20Released%3A%20Feb%2024%2C%202023,less%20than%20%243.50%20an%20hour>

3. See The Association of People Supporting Employment First "2023 State Legislative Watch", accessed on July 19, 2023: <https://apse.org/state-legislation/>

A 2020 report by the U.S. Commission on Civil Rights detailed how people with disabilities who worked under Section 14(c) testified to Congress that they experienced harm to their dignity through being paid subminimum wages and were not treated as equal members of their communities.⁶ The report also found that 14(c) workers often, “remain in the program for decades with little movement to other or different jobs, contrary to the program’s purpose of skill-building, preparing and/or increasing work readiness, and transitioning people with disabilities to mainstream employment.”⁶ From a financial standpoint, subminimum wages are shown to exacerbate the already high rates of poverty found among disabled workers.⁷ Given these findings, the passage of House Bill 1924 offers adults with disabilities the chance to work at a living wage in integrated environments that supply them with opportunities for growth and success.



Hiring Workers with Disabilities

Virginia employers may be wary of hiring workers with disabilities due to fears of increased costs from worker compensation claims or implementing accommodations. However, according to the Virginia Department for Aging and Rehabilitative Services, it has been shown that there is no difference in worker compensation claims between employees with or without disabilities.⁵ In regards to accommodations, only 44 percent of disabled employees require accommodations, and 73 percent of companies report no additional cost to implement necessary accommodations.⁵ For accommodations that require additional expenditures on the part of the employer, the costs average about \$400-\$600 per employee.⁵ The Internal Revenue Service also offers three different tax benefits to incentivize small businesses to hire workers with disabilities:

The *Disabled Access Credit* gives small businesses that spend money to implement accessibility in their workplace a non-refundable tax credit for every year that they incur access expenditures.

The *Architectural Barrier Removal Tax Deduction* allows businesses to claim a tax deduction of up to \$15,000 a year for expenses they incur by removing architectural and transportation barriers to increase accessibility.

The *Work Opportunity Tax Credit* gives tax credits to employers who hire qualified individuals from target groups, including people with disabilities.⁸

In conclusion, the passage of HB 1924 represents a historic victory for the rights of workers with disabilities in Virginia. The bill also requires the Department for Aging and Rehabilitative Services and the Department of Behavioral Health and Developmental Services to prioritize efforts to support individuals with disabilities who desire to transition from subminimum wage employment to competitive integrated employment and submit a report by May 1, 2024 to the Governor and the General Assembly on the number of individuals with disabilities employed in subminimum wage employment and the movement of individuals from subminimum wage employment to competitive integrated employment. As the Commonwealth’s workforce ages, championing equal and accessible work environments will benefit more workers and allow for more diverse and innovative workplaces.

4. See the Centers for Disease Control and Prevention, “Disability & Health U.S. State Profile Data for Virginia (Adults 18+ years of age)” accessed on July 19, 2023: <https://www.cdc.gov/ncbddd/disabilityandhealth/impacts/virginia.html>

5. See the Virginia Department for Aging and Rehabilitative Services “Frequently Asked Questions”, accessed on July 19, 2023: <https://www.dars.virginia.gov/drs/business-services/faq.htm>

6. See page 219 of the U.S. Commission on Civil Rights 2020 Statutory Enforcement Report “Subminimum Wages: Impacts on the Civil Rights of People with Disabilities”, accessed on July 19, 2023: <https://www.usccr.gov/files/2020/2020-09-17-Subminimum-Wages-Report.pdf>

7. See Maroto, M., & Pettinicchio, D. (2023). Worth Less? Exploring the Effects of Subminimum Wages on Poverty among U.S. Hourly Workers. *Sociological Perspectives*, 66(3), 455–475. <https://doi.org/10.1177/07311214221124630>, accessed on July 19, 2023

8. See the Internal Revenue Service “Tax Benefits for Businesses Who Have Employees with Disabilities” accessed on July 19, 2023: <https://www.irs.gov/businesses/small-businesses-self-employed/tax-benefits-for-businesses-who-have-employees-with-disabilities>