

# Activists align to stop sub-minimum wage pay for persons with disabilities

By Jennifer Johnson  
Metro Editor

Paychecks amounting to less than \$1 for a week's worth of work and instances of employees being paid pennies an hour for their labor are just some of the reasons activists from all over the country, including Beaumont, are crying foul and calling for a boycott of organizations paying the sub-par wages.

Beaumont's RISE – Resource, Information, Support and Empowerment Center has seen an influx of workers with disabilities sporting check stubs detailing wages that wouldn't pay for a cup of coffee, Gracie Jackson told The Examiner. Jackson, a RISE independent living specialist and president of the Golden Triangle Chapter of the National Federation of the Blind, said the problem is a national trend wherein businesses are allowed to pay workers with disabilities a rate below minimum wage.

"It's not only immoral, it's heart-breaking," Jackson said. "Clients have informed me they have been paid, for a week's work, five cents, 86 cents. (Name withheld) has told me he had to save about 10 checks to get about \$15."

## Will work for pennies

Workers with disabilities are paid the wages through a waiver provided under Section 14(c) of the Fair Labor Standards Act (FLSA), which, according to the Department of Labor, "authorizes employers to pay special minimum wages – wages less than the Federal minimum wage – to workers who have disabilities." The exception is only granted to workers whose earning or productive capacity is impaired by a physical or mental disability, including those relating to age or injury. Disabilities that may affect productive capacity, according to the DOL, include blindness, mental illness, mental retardation, cerebral palsy, alcoholism and drug addiction.

A report penned by Domestic Social Policy Division of Labor economics specialist William G. Whittaker for Congress in 2005 examined the Section 14(c) exemption law he was able to trace back to his roots in the 1933-1935



**Freedom of Information requests submitted to Goodwill Industries revealed 64 of the agency's 165 stores pays wages less than minimum wage – one worker receiving \$1.44 an hour, others earning even less.**

National Industrial Recovery Act.

"Under the NIRA, a productivity-based sub-minimum wage, arranged through a system of certificates, was established for persons with disabilities. In competitive industry, such workers were payable at 75 percent of the industry minimum. In sheltered workshops, there was no wage floor," Whittaker wrote.

After the NIRA was declared unconstitutional in 1935, the special wage waiver was incorporated into the 1938 FLSA and has remained virtually unchanged for the last 60-plus years other than there is now no floor on the wages that can be paid under the certification.

"The option of paying lower wages, some argue, encourages employers more readily to hire the disabled and to spend the time to deal with their presumed idiosyncrasies," he stated. "Some argue that the sub-minimum wage option inflicts an additional burden: the disabled worker must prove that he is sufficiently productive to merit at least the minimum wage; a worker without a recognized disability is presumed to be worth at least the FLSA minimum."

Former Assistant Secretary of Labor Donald Elisburg was one of many critics of the system, in particular the method of appealing unfair labor practices perpetuated against persons with

disabilities, stating before a legislative panel that the "system for challenging workshop abuses ... is a study in futility." He characterized procedures for workers to get heard through the DOL as "not only not helpful" but also "useless."

"Congress has created a law that is not speedy, is extremely technical, permits below minimum wages to be paid to people whose only disability is that they are blind, insists that individuals pursue a claim on their own behalf, and then must pay legal fees even if the employer is at fault," Elisburg said.

He stated his doubt that the guarantees of Section 14(c) "can be enforced by any agency" and "to suggest that a worker earning \$2.05 an hour can afford legal counsel is likewise ludicrous."

Multiple agencies have lobbied to have Section 14(c) amended or struck out of the FLSA altogether, but employer lobbyists have maintained the status quo despite legislative proposals by several Congressional and House representatives. The United States General Accounting Office (GAO) also produced a report against Section 14(c) citing the DOL "has not effectively managed the special minimum wage program to ensure that 14(c) workers receive the correct wages." The GAO also noted that "in past years," the DOL had "placed a low priority on the program (and) lacks the data it needs to

\$ 2.96
\$ 4.52
\$ 1.44
\$ 3.65

manage the program and determine what resources are needed to ensure compliance by employers." GAO concluded that the DOL "has not done all it can to ensure that employers comply with the law" and "has provided little training to its staff" that would enable them to work with the several program participants.

## Lesser-class worker

The DOL estimates roughly 300,000 workers are paid under the Section 14(c) waiver certification at thousands of businesses nationwide. In Southeast Texas, multiple entities hold the waiver certification including Goodwill Industries and Spindletop MHMR. The Golden Triangle Opportunity Center in Beaumont also holds the certification but multiple attempts to contact anyone at the agency only produced unanswered calls and a vacant portable-style building.

Spindletop Intellectual and Developmental Disabilities Community Services Director Johnny Todd said workers paid under the FLSA exemption at Spindletop are not paid an hourly wage but on a per-piece basis charted by a time study comparing the worker with the disability to a worker without disability.

"We follow the Department of Labor guidelines," Todd said. "Once we determine what the productivity is, we pay on the piece rate." Some of the per-piece work done for Spindletop, Todd said, is the manufacturing of tags and industrial wipers used in refineries, carpet cutting for pallets and sending mailings for local businesses.

"The system is set up so that you are paid on your ability to produce," Todd said, stating that some workers are paid more than the minimum wage. Most workers are paid much less, he said, adding that the lower end of the wage rate has no cutoff point.

Spindletop has between 80 and 90 employees paid on a piece rate, according to the agency's records.

Former Spindletop chief operating officer and current executive director of



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