

Opinion – Guest Column

## Working for a living

The 14(c) wage program, which provides paid employment for workers with disabilities in Arkansas, is in danger of being eliminated.

By Katrina Robertson, Special to the Democrat-Gazette, October 6, 2024

Three articles, first published in The Washington Post and reprinted in the Democrat-Gazette, gave biased, misguided information about the nation's Section 14(c) of the Fair Labor Standards Act (FLSA) that permits paying people with disabilities wages below the statutory minimum.

Congress passed the FLSA in 1938 as a part of the New Deal; Section 14c initially sought to provide employment opportunities for soldiers living with extreme forms of disabilities.

There is a strong push from large organizations that are supposed to support disabled individuals, but whose actions are causing the most vulnerable of the disabled population to be harmed. These groups promote the dreamlike option that all persons with disabilities can be competitively employed, and support a bill currently in Congress called the Transformation to Competitive Integrated Employment Act (TCIEA) S.533/H.R.1263.

If this bill is enacted, it would eliminate the invaluable 14(c) wage program in every state.

The option of a 14(c) program is not just a policy issue, but a profoundly personal one. My son, Noah, relies on this program for a sense of purpose and independence, and the thought of him losing this opportunity is deeply concerning. TCIEA--and the push to eliminate 14(c) programs--is not just about policies and programs; it's about the lives and futures of individuals like Noah.

My son is 21 and resides at the Booneville Human Development Center. Noah requires constant one-on-one supervision and a team to meet his needs and keep him and those around him safe. Despite his severe intellectual and mental health disabilities, the 14(c) program has given him something he would never have had the opportunity to have: a job.

In fact, 100 percent of the residents at the Booneville Center participate in the wage program and have jobs. If you ask Noah what his

favorite thing is, he will say it's his job. He does not have any concept of minimum wage; all he knows is that he has some change in his pocket that he can use at the vending machine. He can feel productive, accomplished, and proud, often bragging about his work. The 14(c) wage program is not just a job for Noah; it provides him with dignity and purpose.

These facility-based work programs are available not only for individuals receiving residential treatment services at our state's five human development centers, but also for Arkansans living with significant and often multiple disabilities who receive services through home and community waiver programs.

These programs are often referred to as "workshops." Families with loved ones who participate in 14(c) programs know that the wage is irrelevant; they are opportunities where our family members have peers, a work family and



friends, and where they are comfortable. The programs are lifelines for the disabled community, supplying them with a strong sense of belonging, comfort, purpose, and dignity via a community that uplifts them, fostering a sense of connection and understanding that is invaluable to their well-being.

"Sheltered Workshop" once meant a safe work space for individuals vulnerable to harassment, exploitation, or abuse. It fostered personal growth and success. However, over time, it has been misunderstood to imply a segregated and restrictive environment, which is viewed as inherently abusive.

Critics argue that the certificate program sanctioning these workplaces is outdated and has not adapted from its original intent. These claims are unfounded and do not reflect what families with firsthand knowledge about 14(c) programs and the individuals the programs serve know to be true.

The U.S. Department of Labor began providing opportunities through Section 14(c) in 1938. It allowed employers to hire intellectually and developmentally disabled individuals at wages below the federal minimum and set up "workshops" to provide support for the workers. The current argument against the 14(c) program is primarily based on the assertion that paying workers with intellectual and developmental disabilities a sub-minimum wage is discriminatory. Some supporters of eliminating 14(c) may be well-intentioned, but they are not well-informed about the population this program supports.

The 14(c) program has undergone changes and continues to change the services provided, the populations it serves, and how it works to remove barriers to competitive employment. Fortunately, for most individuals with physical disabilities and many on the intellectual and developmental disabilities spectrum, there are clear, attainable pathways to more traditional employment models. We applaud these successes and the legislative and philosophical shifts that have dismantled numerous obstacles.

Yet disability is diverse; there is no singular universal access route nor set of universal barriers to overcome. Everyone's challenges are unique. Currently, 14(c) programs serve the most vulnerable within the disability community: those for whom a large-scale pathway to the general workforce is not possible.

There is an increasing availability of services and providers that assist individuals. Many holders of 14(c) certificates include these programs as part of their offerings. Since 2016, the Workforce Innovation and Opportunity Act (WIOA) has required yearly meetings with State Divisions of Vocational Rehabilitation (VR). Despite the opportunity to explore other employment and services, less than 2 percent choose to do so. A "Section 511" under WIOA also requires a second opportunity during an individual's first year of sheltered employment and mandates that individuals under 25 first seek Vocational Rehabilitation before considering sheltered employment.

WIOA aims to expand employment opportunities for individuals with disabilities and to reduce and eliminate programs which were termed "pipelines" into sheltered employment. However, the question arises: Does the removal of a successful employment option and the coercion of individuals into other options create an equally problematic pipeline?

Individuals are entitled to make informed choices regarding their service, employment, and setting preferences. This right is explicitly recognized in *Olmstead v. L.C.*, 527 U.S. 581 (1999), which asserts that individuals are entitled to choose services and living arrangements in the least restrictive environment, provided the individual does not object to the placement and the state can reasonably accommodate it.

More than 40 million people are living with disabilities in the United States. Many of these disabilities do not prevent individuals from participating in the competitive workforce that the U.S. economy runs on, but for some, there are physical and, more often, intellectual disabilities that make integrated, competitive employment an impossibility regardless of the amount of support and training an individual receives.

The 14(c) provision was introduced not to exploit these individuals, but rather to give an expanded range of options for employment. Most who benefit from the 14(c) program have very specialized needs. Some are nonverbal and exhibit challenging behaviors that can become aggressive and self-injurious. These citizens require a range of support

services including toiletry assistance, even diaper changes, medication management, and help with eating, services not typically found in employment settings; 14(c) program staff members are trained to handle these diverse requirements.

The more severe the disability and lower the cognitive functioning of an individual, the less work they can do in a set amount of time compared to the work someone without a disability can do in the same amount of time. This lower output would put participants at a disadvantage in a competitive marketplace where they must compete with people who can do more skilled labor for the same wage. Since employers must consider efficiency and cost effectiveness to keep their businesses running, simple economics would discourage an employer from hiring a person with profound disabilities. Will the new plan for "inclusion of ALL disabled individuals," which opponents of 14(c) promote, include the cost of a continuous "job coach" on the job?

Section 14c addressed the wage issue by permitting commensurate wages and allowing individuals to work at their own pace without the pressure of reaching standards that other minimum wage workers are held to. This legal provision has also worked to benefit an enormous number of people, as tens of thousands with the most significant disabilities are working for 14(c) certificate holders instead of staying at home.

If 14(c) is eliminated, the likely outcome is that participants would not make it into competitive, integrated employment, but instead would become isolated and segregated in their homes. Many states have already eliminated the 14(c) program. Yet, groups working to eliminate the program in other states have done no studies to see how successfully these individuals transition into competitive integrated employment. There is no doubt that the results of such studies would reveal that most of them are now "unemployed."

The Office of Disability Employment Policy within the U.S. Department of Labor's premise is that all individuals, including those with the most significant disabilities, can fully participate in Competitive Integrated Employment (CIE) and community life. Groups representing a different segment of the population with disabilities are engaged in lobbying, using our federal tax dollars, to persuade Congress and the administration that such a premise is an achievable goal.

They are wrong. Black-and-white solutions do not take into consideration unique circumstances, and there is no one-size-fits-all approach for the most vulnerable in the nation's diverse disabled population. Regardless of how admirable the goals of "inclusion" and "competitive integrated employment" may appear, individuals with disabilities deserve to make their own choices, and groups that promote eliminating 14(c), if successful, will have eliminated their choice, for which there is no substitute.

On Labor Day, I received a call from a worker at the Center where my son resides. None of her efforts to calm him were working, so she called, hoping I could talk him down. It didn't take long for him to bark, "They won't let me go to work today!" I chuckled and said, "Noah, it's Labor Day! You're supposed to take the day off and enjoy it!"

He settled after many stories and analogies, and I assured him he would have work on Tuesday. He still didn't understand why the workers at the Center were "at work," yet he was denied the ability to go to work. The majority of those who have jobs through 14(c) will be unable to comprehend why their jobs are taken away should 14(c) be eliminated, and, no, they will not be able to obtain different jobs.

Noah especially takes much pride in his work because he is paid based on how productive he can be. In fact, the 1986 amendment to the Fair Labor Act of 1938 provides for a "Special Minimum Wage," not a "sub-minimum wage." The 14(c) program allows any individual to work regardless of productivity level.

Our country needs a range of programs to address the diverse needs of its citizens with disabilities. Policies that affect disabled individuals should be studied and evaluated to determine which demographic they are serving and what is the likely outcome. The government should not remove programs that are successfully working to address the needs of citizens with the most severe disabilities.

Please remember that a job is more than just a wage; it's about dignity, purpose, and respect.



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Shane and Katrina Robertson are the parents of Noah, 21 (center), a resident at the Booneville Human Development Center who, despite intellectual and mental health disabilities, has a job because of the 14(c) program of the Fair Labor Standards Act (FLSA) that permits people with disabilities to be paid wages below the statutory minimum.

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