

LIVING ON A DIME AND LEFT BEHIND

How a Depression-Era Labor Law Cheats
Texas Workers with Disabilities



As part of a national effort to examine the treatment of people with disabilities in sheltered workshops, DRTx initiated an investigation to better understand how sheltered and subminimum-wage work impacts Texans with disabilities.

In Texas

There are nearly 10,000 individuals in Texas sheltered workshops being paid subminimum wages according to the latest DOL figures. Two-thirds of the 14(c) organizations in Texas do not pay minimum wage or above to a single one of their employees.

Disability Rights
TEXAS

Our research found:

Currently, about 109 Texas employers have 14c certificates

- Including 'Business' and 'School Work Experience Programs' certificate holders
- Both 'non-profit' and 'for-profit'

U.S. Department of Labor
Wage and Hour Division
Federal Office Building, 14th
101 South Street, New York, NY
10004, New York

**CERTIFICATE AUTHORIZING SPECIAL MINIMUM WAGE RATES
UNDER SECTION 14(c) OF THE FAIR LABOR STANDARDS ACT**

Certificate Number: 86-43227-P-234

Employer Name: CORPUS CHRISTI STATE SCHOOL
Address: P.O. BOX 1807
CORPUS CHRISTI, TX 78401

Date of Issuance: 06/28/2012

Employer's Business: PHYSICAL EDUCATION FACILITY

Employer's Address: CORPUS CHRISTI, TX 78401

The certificate authorizes the employment of workers with disabilities in accordance with the requirements of 29 CFR Part 1626, which is part of the Rehabilitation Act of 1973.

This certificate will remain in effect until the certificate is cancelled by the Department of Labor, either by the Department of Labor or by the employer. The certificate will remain in effect until the certificate is cancelled by the Department of Labor, either by the Department of Labor or by the employer. The certificate will remain in effect until the certificate is cancelled by the Department of Labor, either by the Department of Labor or by the employer.

Please contact the following Wage Specialist should you have any questions regarding the issuance of this certificate:

Name of Wage Specialist: [Redacted]

For the Director and for purposes of the Department's regulations for further information:

NOTICE TO EMPLOYERS WITH DISABILITIES PAID AT SPECIAL MINIMUM RATES

The Fair Labor Standards Act (FLSA) provides that workers with disabilities whose disabilities prevent them from performing the type of work being done in the establishment may be employed at a wage rate below the minimum otherwise required by the FLSA. Such employment is permitted only under conditions prescribed by the Department of Labor and must be subject to the provisions of the Rehabilitation Act of 1973, particularly 29 CFR 1626. Such wages are subject to the "special minimum wage rates" of the FLSA. This certificate has a number authorizing the employment of workers with disabilities. Workers with such disabilities are not subject to the minimum wage provisions of the FLSA. For purposes of 29 CFR 1626, a worker with a disability is defined as an individual whose earning or productive capacity is significantly lower than that of a worker without a disability, due to a physical or mental impairment. Such workers are not subject to the minimum wage provisions of the FLSA. The Department of Labor will be happy to address an employer's questions, including those regarding the issuance of this certificate, by telephone or by mail. For a list of offices of the Department of Labor that will be happy to address an employer's questions, including those regarding the issuance of this certificate, please contact the nearest office of the Department of Labor. The Department of Labor will be happy to address an employer's questions, including those regarding the issuance of this certificate, by telephone or by mail. For a list of offices of the Department of Labor that will be happy to address an employer's questions, including those regarding the issuance of this certificate, please contact the nearest office of the Department of Labor.

Wage and Hour Representative: [Redacted]

The National Certification Program Number: 86-43227-P-234

Date: 06/28/2012

From the Job: [Redacted]

For: [Redacted]



Some are paid as little as a penny an hour

- Nationally more than half the workers earned below \$2.50 an hour
- 44 of the 76 Texas organizations reporting wage information pay less than \$.50 per hour
- 18 Texas organizations report that they also serve as the Representative Payee agency

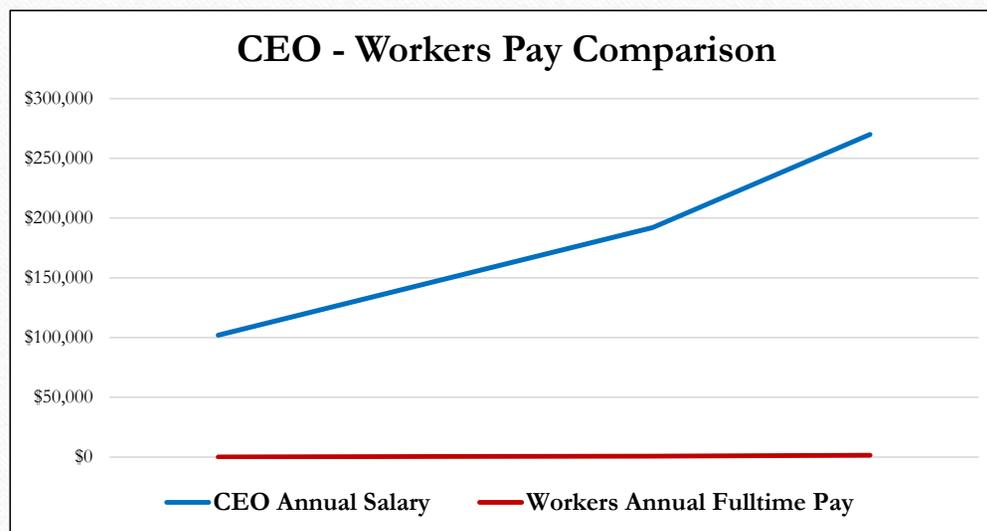


State Use Contracts

- Texas law supports 14(c) organizations by requiring state agencies to purchase the products and services produced by workers being paid subminimum wage.
- Approximately **160** Community Rehabilitation Programs have contracts under the **State Use Program** throughout the state... **12** pay subminimum wages

CEO Pay/Workers Wages

We found a huge difference between the pennies being paid to the workers with disabilities and the hundreds of thousands being paid to the organizations' CEOs.



Findings



Three critical and overarching concerns:

- Texas has systematic problems regarding fair wages, employment growth, and vocational opportunities for people with disabilities.
- Texans with disabilities in sheltered workshops are not being paid fairly.
- By relying on the sheltered workshop system, Texas is putting people with disabilities at risk of unnecessary segregation, isolation, and exploitation.

Recommendations

- ✓ Phase out of the subminimum-wage and sheltered-work system, and move toward fully competitive integrated employment;
- ✓ Provide more job training and development in Texas programs;
- ✓ Overhaul day habilitation services; and
- ✓ Remove barriers to hiring individuals with disabilities in state agencies.



Next Steps: Advocacy.... Together



- Identify more advocate groups and provide education on issues to counter 14(c) certificate holders efforts
- Challenge Texas Workforce Commission in new role overseeing DARS and State Use program to implement changes
- Legislative initiative to establish the recommended 5-year transition plan
- Explore changes to state agency rules:
 - Rep Payee and workshops
 - HCBS settings rules to eliminate segregated settings for waiver participants
 - Separate residential providers from sheltered workshop operations in ICFDD
- Funding needed for recommended training (ABLE Act, SSI income limitations, etc.)
- Reforms to day habilitation services likely need legislative fix

Subminimum Wage Report Overview

Texas statistics highlighted in report:

- **109 - 14(c) certificate organizations** pay subminimum wages in Texas.
- Approximately **10,000 individuals are in sheltered workshops** paying subminimum wages in Texas; **66% of the organizations that reported their wages pay 100% of their workers subminimum wages.**
- **44 of the 76 organizations** that reported their wages pay **less than \$.50 per hour.**
- **18 of the 72** reporting organizations also serve as the **Representative Payee** for their workers.
- Approximately **160** Community Rehabilitation Programs have contracts under the **State Use Program** throughout the state; **12 pay subminimum wages.**

DRTx monitored twelve organizations during their investigation in: Brookshire, Brownwood, El Paso (2), Ft. Worth (3), Lubbock, Lufkin, San Antonio (2) and Victoria. A total of 1,830 individuals were reported as working at these organizations.

Findings

During the investigation, three critical and overarching concerns were found:

- Texas has systematic problems regarding fair wages, employment growth, and vocational opportunities for people with disabilities.
- Texans with disabilities in sheltered workshops are not being paid fairly.
- By relying on the sheltered workshop system, Texas is putting people with disabilities at risk of unnecessary segregation, isolation, and exploitation.

DRTx Recommendations

- Phase out of the subminimum-wage and move toward fully competitive integrated employment;
- Provide more job training and development in Texas programs;
- Overhaul day habilitation services; and
- Remove barriers to hiring individuals with disabilities in state agencies.

Related Developments

- 14(c) certificate holders' campaign to protect their ability to pay subminimum wages
- Texas Workforce Commission will now oversee Vocational Rehabilitation and State Use program
- Legislative interest in establishing the recommended 5-year transition plan

Upcoming Advocacy Focus

- Expand advocacy groups providing education on these issues
- Explore changes to state agency rules
 - Rep Payee and workshops
 - HCBS settings rules should support eliminating segregated settings for waiver participants
 - Separate residential providers from sheltered workshop operations in ICFDD
- Expand use of employment supports (ABLE Act, SSI income limitations, etc.)
- Reform day habilitation services with a legislative fix