



Disability Law Center's Self-Advocacy Materials

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Employment

This document is designed for people with disabilities.

The information is about your legal rights and how to advocate for yourself as a resident in Massachusetts.

Contact us to request this information in an alternative format.

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Funding

DLC receives funding from government grants, private foundations, and individual contributions. For details about our funding and programs, please visit our website:

<https://dlc-ma.org>



Your Right to Fair Wages and Your Right to Work in the Community

You Will Learn About:

- Fair Wages
- Working in the Community
- Other Resources

This document includes general information about legal issues and is intended to be used for informational purposes only. These informational materials should not be taken as legal advice, and do not create an attorney-client relationship. The outcome of any particular matter will depend on a variety of factors. For specific legal problems you would need to contact an attorney.

Fair Wages

What Is A Minimum Wage?

The minimum wage is the lowest amount that workers can be paid per hour, in most situations. There are two minimum wage amounts. The first is under Massachusetts law, and that is currently \$11.00 per hour. The second is under federal law, and that is currently \$7.25 an hour, and has not increased since July 2009.

You have the right to receive the higher of these two amounts, so for most people working in Massachusetts, that is \$11.00 per hour.

However, sometimes employers or agencies that hire people with disabilities get special permission from the government to pay less than the minimum wage.

When Can I Be Paid Less Than Minimum Wage?

Under both federal and state law, employers of people with significant disabilities may sometimes get special permission to pay less than the minimum wage. Some employers can ask for this permission when the worker with a disability is not as productive as workers without disabilities.

The employer cannot simply say that the worker has a disability. The employer must show that this disability affects the worker's productivity.

The employer also must send special paperwork to the federal and state government to get permission to pay subminimum wages. As part of this paperwork, the employer decides what the job would pay if the employee had no disabilities. This is called the "prevailing wage."

How Are My Wages Decided?

First, an employer can pay a small amount of money for each task that the worker completes. For example, this might mean an object that is assembled, labeled or packaged. This is called a "piece rate." You would then be paid based on how many pieces you finish during the hours worked.

The second way is through an hourly wage decided based on how fast and how well the worker works. To do this, the employer studies the worker's work every six months. For example, let's say an employee with disabilities takes twice as long to complete the work well, compared to an employee without disabilities. The employer would pay this employee one half of the "prevailing wage."

How Can I Find Help With My Wages?

The rules around paying workers subminimum wages are very complicated. Employers also frequently violate these rules. You may need help to figure out if your wages are correct.

If you need legal representation or advice, please call the Disability Law Center (DLC) at 1-800-872 9992, from 9:00 am to 5:00 pm, any day except Wednesday. In many cases, we can look at your wages and hours and determine if you are being paid fairly or not. We can also help answer questions about how an increase in your wages may or may not affect disability benefits.

Unfortunately, we cannot help everyone who calls us. If DLC cannot provide you with either legal representation or advice, we may refer you to other advocates or to government agencies.

You also have the right to file a complaint directly with the government. For example, you can file a complaint for a violation of the federal labor laws here:

<https://www.dol.gov/whd/howtofilecomplaint.htm>.

If the government investigates your complaint, they will keep your information confidential and will not tell your employer that you filed a complaint.

Working in the Community

Do I Have a Right to Work in the Community?

Many workers with disabilities want to work in an integrated setting in the community. This means they want to have a regular job in a store, office, business, school, hospital, animal shelter, day care center, restaurant or factory. They do not want to work at a facility that is just for people with disabilities. They also do not want to work as part of a work crew that is just people with disabilities.

The Americans with Disabilities Act helps protect your rights. You should be allowed to work in the most integrated setting that is appropriate for you, if this is what you want. Most workers with disabilities are able to work in the community. Some work with supports and services, such as help from a job coach.

How Can I Get Help Finding A Real Job In The Community?

If you have a service coordinator or case manager, you should ask this person for help finding a real job in the community at real wages.

You can also raise this issue as part of your Individual Support Plan (ISP). There is more information on ISPs in the “Individual Support Planning” document on DLC’s website.

You may also use the ISP process if you are not getting out into the community enough during time spent in day habilitation or in a Community Based Flexible Supports (CBFS) program.

Other Resources

Where Can I Find More Information?

More information about the rights of workers paid subminimum wages is here:

<https://www.dol.gov/whd/workerswithdisabilities/workers.htm>

More background about subminimum wages can be found in the “All About Sheltered Workshops, Group Supported Employment, And Sub-Minimum Wages In Massachusetts” document on DLC’s website.