



# 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>



## All About Sheltered Workshops, Group Supported Employment And Sub-Minimum Wages In Massachusetts

### You Will Learn About:

- Background on Sub-Minimum Wages
- Sub-Minimum Wages In Massachusetts
- Integrated Work Settings

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.

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## Background on Sub-Minimum Wages

In 1938, with the passage of the Fair Labor Standards Act, Congress created an exception for subminimum wages to be paid to certain people with disabilities, “to the extent necessary to prevent curtailment of opportunities for employment.” While originally subminimum wages were limited to 75% or 50% of the federal minimum wage, there is no longer any such floor.

More background on the history of Section 14(c) of FLSA can be found at:

[http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1211&context=key\\_workplace](http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1211&context=key_workplace)

Seventy-eight (78) years later, many people with disabilities are still trapped in this antiquated and segregated employment system. Their workweek is spent in one of three types of places. Some go to “sheltered workshops,” usually doing rote light assembly work, in segregated settings, sponsored by nonprofits that contract with outside companies.

Sheltered workshops are typically found in highly segregated environments, such as work areas within the facility of a developmental disabilities vendor, located within an office park. While the Department of Developmental Services (DDS) states that it has officially eliminated sheltered workshops, DLC’s monitoring indicates that approximately 130 workers in four sites of two vendors remain in state-approved sheltered workshop positions. Other sheltered workshops are now considered to be “community based” after adopting only cosmetic changes, while still paying subminimum wages. Sheltered workshops and subminimum wages are entirely prohibited in other states, including New Hampshire, Maryland and Alaska.

Other people with disabilities are paid subminimum wages in “group supported employment” settings. This includes “enclaves”, work teams organized by nonprofits that travel to businesses to do janitorial work, housekeeping, landscaping, etc. Still other individuals in group supported employment are placed alone or in groups within for-profit businesses operated by either nonprofit vendors or the private sector, doing work comparable to workers without disabilities, while being paid pennies on the dollar. DLC has seen employers in Massachusetts pay as little as 12 cents an hour, substantially less than the minimum wage in China and other low wage countries.

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## Sub-Minimum Wages in Massachusetts

In past years, we have found a significant number of large entities and national and global corporations benefiting from subminimum wage labor of Massachusetts workers with disabilities. These included: 3M, Whole Foods, Harvard University, Sodexo, Smith and Wesson, Milton Roy, CVS, Walgreens, Marshalls, Hasbro, Best Western Hotel, Hampton Inn, and many other manufacturing facilities, hospitals, hotels and businesses. Their work has included everything from manufacturing and assembly line work to working in horse stables and cleaning golf clubs. Federal and state and local governmental agencies have benefited as well, such as the U.S. Army, DDS, DCAM, etc.

Subminimum wage workers in Massachusetts are paid grossly unfair wages based on a piece rate, or based upon hourly wages. While U.S. DOL regulations seek to limit how the prevailing and hourly wage and piece rates are set, those requirements are rarely enforced. Oversight by both state and federal labor agencies is minimal and largely ineffective. By way of example, the wages below are examples from a U.S. DOL document recently submitted by one nonprofit vendor, whose certificate seeking to pay subminimum wages was approved:

DD		Janitorial	\$2.69
DD		Office Help	\$5.00
DD		Activity Aide	\$2.64
Autism		Material Handling	\$2.49
MR		Automotive	\$2.35
MR		Janitorial	\$3.58
MR		Activity Aide	\$5.71
ADHD		Janitorial	\$3.27
ADD		Office Help	\$2.34
Autism		Janitorial	\$2.00
MR		Janitorial	\$3.27
MR		Janitorial	\$3.90
MR		Janitorial	\$1.58
MR		Packaging/Assembly	\$3.96
ID		Program Aide	\$9.00
MR		Janitorial	\$2.62
Mild MR		Activity Aide	\$2.07
ID		Packaging/Assembly	\$2.57
MR		Automotive	\$2.61
MR		Janitorial	\$1.00
MR		Packaging/Assembly	\$2.36
ID		Customer Service	\$5.00
Fragile X		Maintenance	\$4.00
Aspergers		Program Aide	\$2.18
Autism		Material Handling	\$2.27
DD		Program Aide	\$3.00
MR		Customer Service	\$2.00
MR		Janitorial	\$1.93
DD		Kitchen Aide	\$2.00
Fragile X		Kitchen Aide	\$7.61
MR		Office Help	\$2.05
Schizophrenia		Automotive	\$4.71
Fragile X		Janitorial	\$2.23
MR		Store Clerk	\$1.50
Autism		Store Clerk	\$1.91
MR		Janitorial	\$1.54
MR		Packaging/Assembly	\$3.00
MR		Packaging/Assembly	\$1.00
Mild MR		Program Aide	\$3.30
MR		Store Clerk	\$6.43
MR		Packaging/Assembly	\$1.25
MR		Packaging/Assembly	\$3.26
MR		Office Help	\$3.11
MR		Janitorial	\$2.00
PDD		Kitchen Aide	\$2.76
MR		Clerical	\$2.00
MR		Automotive	\$3.17
MR		Janitorial	\$2.51
DD		Janitorial	\$2.43
MR		Packaging/Assembly	\$1.50
Autism		Janitorial	\$5.00
MR		Janitorial	\$2.28
MR		Packaging/Assembly	\$4.00
MR		Store Clerk	\$3.50
MR		Customer Service	\$2.71

DD		Packaging/Assembly		\$3.00
MR		Maintenance		\$4.40
Down Syndrome		Janitorial		\$3.48
MR		Store Clerk		\$1.50

In this system, everyone benefits except the employee with a disability, who rarely transitions into competitive integrated employment. Large corporations get labor at subminimum rates. Nonprofit developmental disability vendors get paid both by the state Department of Developmental Services and also (either directly or through for-profit subsidiaries) by corporate clients who receive the benefit of subminimum wage labor. The employees of the nonprofit vendors, of course, are paid competitively.

Only the worker with a disability is left out. It is time to stop funding these stigmatizing and exploitative workplaces, part of the “soft bigotry of low expectations” and pull up this tangled system of self-interest, by root and branch. As Dr. Mark Mauer of the National Federation of the Blind (NFB) said, “Americans with disabilities are now calling upon our fellow citizens to realize that the soft bigotry of low expectations is condemning workers with disabilities to near-slave labor, and that the system that arises from these low expectations must be abolished.”

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## Integrated Work Settings

Like everyone else, people with disabilities should be able to work in integrated settings in the community, rather than in segregated work programs. People should also be paid at least the state and federal minimum wage, to recognize the dignity and inherent value of all human labor done earnestly and in good faith. The job settings for people with disabilities should recognize, as all other job settings do, that there are other measurements for value in the workplace besides individual productivity. These include attitude, attendance, timeliness, teamwork, willingness to accept feedback, personal effort, and depth of commitment to the job and the employer.

In addition, when jobs are identified based on person-centered planning, rather than employer convenience, workers with disabilities can be extraordinarily productive. With adequate supports (including job coaches, individualized job matching or job carving), the vast majority of people with disabilities can succeed in competitive integrated employment. Those individuals who do not work in competitive integrated settings, perhaps because of age or disability, should have the opportunity to be part of other integrated social and recreational programs, volunteer work, etc.

Subminimum wages are part of an antiquated, stigmatizing, segregated work system and are an obstacle to providing people with disabilities opportunities for financial independence and meaningful community integration.