

Subminimum Wage Certificates

A report prepared by

The Department of Labor & Industries

and

The Department of Social and Health Services



Transforming Lives

2024 Annual Report to the Legislature

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Executive Summary

Introduction

The 2021 Washington State Legislature ended the practice of allowing workers with a disability to earn less than minimum wage. Engrossed Substitute Senate Bill (ESSB) 5284 also eliminated new certificates issued by the Department of Labor & Industries for any employer in Washington State after July 31, 2023, and phases out existing certificates.

Certificates that were active as of July 31, 2023, remain in effect until the listed expiration date. The Legislature also directed L&I to notify employers, employees, legal guardians, or other authorized representatives of their certificate's expiration date and allow employers to request a one-time, one-year extension.

L&I and the Department of Social and Health Services (DSHS) are also directed to update the Legislature annually on the remaining certificates for these workers. This is the fourth of these annual reports.

2024 Status Update

As of June 30, 2024, there were 54 active subminimum wage certificates issued to employers of workers with a disability. Each worker must have their own certificate. These certificates are held by four employers — a 14% reduction in certificates from the prior reporting period.

DSHS has notified all subminimum wage certificate holders of the law and the services DSHS offers. Based on DSHS records, 14 clients with current subminimum wage certificates were contacted by the DSHS Developmental Disabilities Administration (DDA) for assistance with individual employment, assistive technology, and community inclusion which help an individual connect to their community.

According to DSHS Division of Vocational Rehabilitation (DVR) records, during fiscal year 2024, no referrals were received for DSHS DVR career counseling, information, and referral services for subminimum wage workers.

The two agencies executed a data-sharing agreement that allows a comparison of the workers receiving services through DSHS DDA and those who are working under a subminimum wage certificate issued by L&I. The data-sharing agreement ends with the expiration of the last subminimum wage certificate.

Introduction

Washington’s Minimum Wage Act, passed in 1959, required most workers be paid at least minimum wage for all hours worked. The law allowed several exceptions, specifically authorizing L&I to issue certificates so certain employers could pay less than minimum wage to learners, apprentices, messengers, and workers with a disability.

In 1960, L&I enacted rules to administer and enforce the law. Those rules allowed employers to request certificates to pay less than minimum wage to workers with a disability. These rules were untouched until 2017, when the law was amended to use “people-first” language during regulatory clean-up efforts stemming from Initiative 1433.

The next change to the regulatory environment in Washington for workers with a disability came in 2019, when the Legislature restricted state agencies from paying such workers less than the minimum wage under a certificate. Existing certificates for these employees expired June 30, 2020.

The 2021 Washington State Legislature extended these restrictions to all employers of workers with a disability and prohibited L&I from issuing new certificates after July 31, 2023. Certificates are typically issued for a two-year period. For example, a certificate issued just prior to the last date certificates may be issued, July 30, 2023, could continue until July 30, 2025. Under the law, employers may also request a one-time, one-year extension for certificates for workers eligible for services from DSHS DDA. Therefore, the last date that a worker may continue to be paid less than minimum wage is July 30, 2026 — but only if that worker continues to work under a valid certificate and is eligible to receive services from DDA.

The law further requires L&I to notify employers, employees, legal guardians, and/or other authorized representatives of the expiration date for each certificate and the employer’s right to request extension. L&I must provide this notification to the parties 90 days prior to the expiration of each certificate.

Finally, L&I must coordinate with DSHS to report to the Legislature on the remaining certificates for workers with a disability. The agencies must report how many workers with a disability had certificates that are expired, lost their jobs, and requested DSHS services. They must also report how many workers continue to be employed after the expiration date of their certificate. That information is below.

The two agencies will continue to report annually until all remaining certificates expire.

2024 Discussion and Update

Under ESSB 5284 from the 2021 session, the Legislature directed L&I and DSHS to prepare an annual report until all remaining certificates for workers with a disability expire. The annual report must contain three key components:

1. the number of certificates remaining;
2. the number of individuals working under a certificate who have contacted DSHS DDA to receive individual technical assistance or other services, and a list of services provided; and
3. the number of individuals who continue to be employed after the expiration date of their certificate, and a description of any services or assistance provided to these individuals by DSHS DDA or DVR.

The two agencies offer the following information in response to the legislative requirement.

- As shown in Figure 1 on page 4, as of June 30, 2024, there were 54 active certificates issued to employers of workers with a disability. These certificates are held by four employers. There are no DDA-eligible individuals earning subminimum wages; however, there are 54 DDA-eligible individuals who hold active subminimum wage certificates.
- During FY 2024, DSHS DVR received no referrals for career counseling, information, and referral services for subminimum wage workers. Upon referral from an entity employing individuals at subminimum wage, DSHS DVR is required — under the Workforce Innovation and Opportunity Act of 2014 — to provide these services to people with disabilities (or their representative as appropriate), regardless of age, who are employed at subminimum wage in order to provide such individuals the opportunity to pursue competitive integrated employment, if they wish to do so.
- No DDA clients remain in subminimum wage employment. According to DSHS DVR records, no referrals were received for DSHS DVR career counseling, information, and referral services for subminimum wage workers.
- For the 54 individuals DDA is tracking in this process, six clients have seen a reduction in their waiver service hours. Of that six, five saw a reduction in service hours for supported employment. Some clients have also gained waiver service hours in one program or another in this time. Two clients saw an increase in employment support hours. A reduction in hours is not a reflection of a lack of support, but a change in an individual's person-centered plan.
- DSHS documented that 14 DDA individuals contacted DDA for technical assistance or services between July 2023 and July 2024. All requests have been acted upon. In addition, DDA has contacted all DDA subminimum wage certificate holders in relation

to the change in the law related to subminimum wage certificates in 2021 and services offered by DDA.

- While there are 54 DDA individuals with active subminimum wage certificates, there are no DDA individuals earning subminimum wages. Here is what they are doing now (Note that the following percentages are an approximation and will total more than 100% because some clients fall into more than one category):
 - 46% are making Washington State minimum wage or higher (employment with the support of DDA and/or DVR).
 - 20% are actively seeking gainful employment with the support of DDA Supported Employment services.
 - 17% of individuals are involved in DDA Community Inclusion. Community Inclusion services help an individual connect to their community.
 - 16% of individuals are involved in both DDA Community Inclusion and Supported Employment services. Community Inclusion services help an individual connect to their community, and Supported Employment services help an individual find and maintain a job.
 - 28% are no longer making less than minimum wage and do not have a DDA-funded Supported Employment or Community Inclusion service.
 - Some of these individuals chose to retire from services.
 - Some of these individuals passed away or moved out of state.

Figure 1 shows the number of workers with active subminimum wage certificates from L&I as well as the number of employers holding those certificates.

Figure 1: Number of Active Certificates for Workers with a Disability

| Fiscal Year (July 1 through June 30) | Number of Certificates Remaining | Number of Employers With Certificates |
|--------------------------------------|----------------------------------|---------------------------------------|
| 2024 | 54 | 4 |
| 2023 | 63 | 7* |
| 2022 | 126 | 6 |
| 2021 | 174 | 11 |

Source: L&I Employment Standards Program

*Note: The law allowed new certificates to be issued up until July 30, 2023, and then authorizes a one-year extension following that date.

Below is a summary of what services the 54 DDA clients with active subminimum wage certificates in July of 2024 are receiving. Please note that clients may appear in multiple status categories.

Figure 2: DDA Client Data with Subminimum Wage Contracts July 2023 - July 2024

| Status | Goodwill | Tahoma Associates | Yakima Specialties | Columbia Industries |
|---|----------|-------------------|--------------------|---------------------|
| DDA Clients With Subminimum Wage Certificates | 26 | 22 | 5 | 1 |
| DDA Clients Earning Subminimum Wage | 0 | 0 | 0 | 0 |
| DDA Clients Earning Minimum Wage or Better | 15 | 9 | 1 | 0 |
| DDA Clients Receiving Community Inclusion Services | 4 | 4 | 1 | 0 |
| DDA Clients Receiving Individual Employment Services | 4 | 3 | 0 | 0 |
| DDA Clients Receiving Concurrent Services | 8 | 0 | 1 | 0 |
| DDA Clients Receiving Group Supported Employment Services | 6 | 8 | 0 | 0 |
| DDA Clients No Longer in Service (clients either retired, moved or passed away) | 4 | 7 | 3 | 1 |
| DDA Clients Who Contacted DDA for Services | 10 | 4 | 0 | 0 |
| DDA Clients Whose DDA Employment Support Hours Increased | 1 | 1 | 0 | 0 |
| DDA Clients who experienced reduction of any kind in waiver services | 3 | 3 | 0 | 0 |

Source: Department of Social and Health Services

Conclusion

In future reports, L&I and DSHS will continue to jointly report information regarding subminimum wage certificates for workers with a disability. Fiscal year 2024 represents another significant decrease in the number of active subminimum wage certificates issued by L&I, progressing toward the Legislature’s goal of phasing out and eliminating subminimum wage certificates.