

States Lead Way To End Disabled Workers Subminimum Wage

By Irene Spezzamonte

Law360 (May 13, 2026, 7:01 PM EDT) -- A Pennsylvania state lawmaker's plan to phase out the subminimum wage for disabled workers is the latest move in a wave of states that have ended or are working to eliminate the policy, despite the federal government going in the opposite direction, attorneys said.



Under a Pennsylvania state legislator's planned bill, employers would be prohibited from paying the subminimum wage to workers with disabilities. (AP Photo/Vadim Ghirda)

In a memo last week, Democratic state Rep. Sean Dougherty said he intends to introduce a bill to amend the state's minimum wage law to prevent employers from paying workers with disabilities below the state minimum wage. Currently, employers that hold a federal Section 14(c) certificate under the Fair Labor Standards Act can pay workers with physical or mental disabilities at rates below the federal minimum wage of \$7.25 per hour.

At the sunset of President Joe Biden's administration, the DOL **proposed a rule** that would end the 14(c) program, which was established in 1938, the year the FLSA was enacted. However, in July of last year, the DOL under President Donald Trump **withdrew the rule**, saying that keeping the program in place would prevent unemployment from soaring among disabled workers.

The DOL's move hasn't stopped states from continuing to enact their own laws. Over the past decade or

so, more than a dozen states have sought to end the subminimum wage for disabled workers within their own borders.

That move is "heartening," Eve Hill, a partner with worker-side Brown Goldstein & Levy LLP and former deputy assistant attorney general for the civil rights division of the U.S. Department of Justice, said.

"The states are really taking the lead here and recognizing that this is an unfair situation for people with disabilities, and that it doesn't benefit people with disabilities, it harms them, by saying to the world that they are worth less than nondisabled people," Hill said.

The DOL did not immediately respond to requests for comment Wednesday.

Dougherty told Law360 that the memo is a precursor to a bill he's drafting that he says is necessary because "all workers deserve a living wage, and this fundamental right extends to those with mental and physical disabilities as well."

"Under current state law, workers classified with a disability can make as little as \$4 an hour despite fulfilling the same work requirements as fully integrated workers," he said.

Pennsylvania would join a host of other states, including California, Delaware and Georgia, that **have passed legislation** to end the subminimum wage for disabled workers.

Hill said that a problem with the 14(c) program is that it does not fully integrate disabled workers with other employees. For example, workers with disabilities are often employed in so-called sheltered workshops away from employees without disabilities and perform repetitive tasks like disassembling things and shredding paper, Hill said.

"They're not given the kinds of jobs that people in the real world have, so it's not really preparing them for those jobs," Hill said. "It's just warehousing them for day, after day, after day."

Worker-side attorney Camron Dowlatshahi, a partner at MSD Lawyers, said that the changes several states have implemented to move away from a subminimum wage system for disabled workers are "long overdue."

"These subminimum wages ... can create enough of an ambiguity that now employers are using it as a sword to employ people at unlivable wages," Dowlatshahi said. "That's really why states have abolished this. Because it can be used really nefariously."

As more states nix the subminimum wage for disabled workers, employers need to make sure that they keep an eye on compliance, Jamie B. Dokovna, a shareholder at management-side firm Becker & Poliakoff, said.

"As states pass their own laws, and particularly with businesses that operate in multiple states ... what may apply in one state doesn't necessarily apply in the other," Dokovna said.

Dokovna added that as more and more states rescind the subminimum wage for disabled workers, employers need to address how their businesses would change operationally as they try to integrate workers with disabilities with nondisabled workers.

"A lot of times these workers work in particular areas where they're able to do specific kinds of work, and if you eliminate the program, or the state has eliminated the program, what do you do with those workers?" Dokovna said.

Robert I. Gosseen, a management-side attorney at Schwartz Sladkus Reich Greenberg Atlas LLP, said that employers have nothing to lose when the subminimum wage for disabled workers comes to an end.

Employers, as members of society, have the ability to increase productivity also among disabled workers, and paying them a livable wage not only achieves that goal, but also gives those workers the dignity they deserve, Gosseen said.

"If you want to be productive, don't we want them to have an opportunity to have barriers removed, to be able to be promoted to better job titles?" Gosseen said.

Gosseen said that what is particularly telling about the states' efforts to end the subminimum wage for disabled workers is that those that have done so include both liberal and conservative states.

"The states are moving in where the federal government, frankly, should have moved to do away with [the] subminimum wage," Gosseen said. "I'm at a loss to understand why the federal government is acting this way."

--Editing by Bruce Goldman.

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