Inclusion Australia

# Wage equity and more choices in employment for people with an intellectual disability

## Research review

Inclusion Australia and People with Disability Australia

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pwda PEOPLE WITH DISABILITY AUSTRALIA

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# Introduction

Inclusion Australia and People with Disability Australia commissioned a brief review of the evidence available about the experiences of people with an intellectual disability working in sheltered workshops, also known as Australian Disability Enterprises (ADEs).

This review looks at the impact and experiences of people with an intellectual disability working for sub-minimum wages, transitions to open and self-employment, and what works to support people in open and self-employment.

# Contents

# People with an intellectual disability in employment

Australia has one of the lowest employment participation rates for people with disability in the OECD and that rate is even lower for people with an intellectual disability.

Only 39% of people with an intellectual disability are in the labour force (including people looking for work). People with an intellectual disability are much less likely to have full-time work.

More than 20,000 people with disability, most of whom have an intellectual disability, are employed in around 600 ADEs across Australia.

Currently, ADEs pay as little as $2.36 per hour for work under the Supported Wage System and $3.50 per hour under the Fair Work Commission findings.

The Australian Bureau of Statistics revealed that:

- People with an intellectual disability were less likely to be employed full-time (12%) than people with other types of disabilities (32%) and the population without disability (55%).
- Around 34% of people with an intellectual disability found it difficult changing jobs or getting a preferred job, and
- about 38% felt they were restricted in the type of job they could get.

Data published by the NDIA in December 2019 on type of paid employment for participants with intellectual disability shows that for participants aged 25 and over, 15% are in open employment with full award wages, 13% are in open employment with less than award wages and 72% are employed in Australian Disability Enterprises. Younger NDIS participants with intellectual disability (aged 15-24) are far more likely to be in open employment (on part or full wages) than employed by an ADE (NDIA, 2019, p.35).

# The impact on and experiences of people with an intellectual disability working in ADEs

People with an intellectual disability want to work for the same reasons as other people; the social benefits of being with other people, to learn skills and get job satisfaction, and to earn a wage.

They can experience barriers to open and self-employment employment and often have little or no choice about where they work. People with an intellectual disability can experience discrimination in open employment.

Many people with an intellectual disability work in ADEs because they were offered no other choice.

People with an intellectual disability in Australia have talked about what they get from employment. They say:

> *[I work] because I want to get out of my home, I want to do something … I just wanted to do something and mix in with other people… Just to earn some money … and just live (34-year-old woman, urban, working in an ADE) (Meltzer et al., 2016, p.42).*

### No choice

Melzer et al said that people with an intellectual disability often felt their employment choices were constrained, or that other people made decisions about work for them. Some ended up working in the first place where they did work experience, regardless of whether they liked it. Work experience for students at special schools is often in an ADE.

> *"My teacher put me in this plant nursery. I pretty much got shoved into this without knowing it at first."*
>
> *"Mum said 'Take the option you've got."*

### Types of work at ADEs

Different ADEs offer different types of work, such as packaging, making furniture and craypots, dismantling machinery, working in plant nurseries, sorting donated goods for recycling and cleaning. Often the amount of work available depends on work contracts the ADE has secured, and there's no choice about the type of work.

People with an intellectual disability who work in ADEs package materials used by airlines, like headphones and snacks, furniture sold at large outlets like Bunnings, and provide services such as laundry for big tourism centres.

Meltzer et al asked workers in different kinds of employment settings what they liked and disliked about their job. People had very similar likes, regardless of the work setting. Those in an ADE said they liked the relationships with other people, getting paid, having something to do and that they enjoy the work tasks.

When it came to dislikes about their job, people in ADEs said that they disliked conflicts with colleagues or with staff/managers, and physical discomfort when they are working. Another dislike was boredom. People said they need more of a challenge and want more variety of work.

## Discrimination and abuse

There is evidence that some people have had negative experiences in open employment and therefore prefer different settings (Simplican et al., 2014, citing Hall, 2009; Meltzer et al., 2016), though negative experiences are also reported in ADE settings (Meltzer et al., 2016).

There is significant evidence to suggest that individuals in segregated environments are much more vulnerable to abuse. There have been extensive examples of bullying, physical assaults and sexual abuse in segregated employment settings (Frohmader and Sands, 2014., Australian Cross Disability Alliance).

## Social benefits

Many people find social benefits from being at work. People with disability report that the relationships they form at work are the main factor that attaches them to their ADE and is the primary reason they want to stay (Meltzer et al., 2016). People with an intellectual disability report enjoyment of 'sheltered workshop' settings with a range of fun activities and friendships that are more likely to extend beyond the workplace (Lysaght et al., 2017).

Families often support ADEs because they are concerned that their son or daughter with a disability will be socially isolated if ADEs are closed. However, International examples show that closing segregated work settings does not have to lead to social isolation. Inclusive employment and community participation can lead to better outcomes for people with disabilities.

One Australian study of people with an intellectual disability found that ADEs and social enterprises were felt to be more supportive of workers with intellectual disability and offer greater job stability than open employment. This study also identified that a small number of research participants employed in ADEs held more skilled and supervisory roles whereas those in open employment did not (Meltzer et al., 2016).

## Moving to open employment?

The evidence shows that group-based services, such as segregated employment in ADEs, are often an unsuccessful pathway to open employment for people with an intellectual disability. According to the Department of Social Services (DSS), less than 1% of ADE participants transition to open employment in any given year.

There is evidence that early placement of young people with an intellectual disability into segregated day programs and sheltered employment options reduces their later economic participation (Cocks & Harvey, 2008). There is strong evidence that once in segregated employment settings, such as ADEs, few transition out into open employment. In 2014, less than 1% of those employed in an ADE transitioned to employment in the mainstream labour market (Australian Government, 2015; AFDO, 2018).

Similarly, National Disability Services suggests that less than 5% of people with disability transition to open employment from day services or supported employment settings in Australia (NDS, 2017).

Some studies have demonstrated that there are few structured skill development opportunities within sheltered and segregated employment settings and that time spent working in such settings

does not promote later employment in open employment (Akkerman et al., 2016; Cimera, Wehman, West, & Burgess, 2011; Dague, 2012; Hemphill & Kulik, 2017; Soeker et al., 2018). Similar issues have been found with day services or community access programs (Thoresen et al., 2018).

However, there is evidence that some people with an intellectual disability have been supported via their ADE employers to transition into open employment (Meltzer et al., 2016). An Australian study found that ADEs did frequently offer opportunities for vocational training as part of employment, but that skill development opportunities in mainstream settings were more available in open employment (Meltzer et al., 2016).

### Economic impact of working in ADEs on people with an intellectual disability

Data published by the NDIA in December 2019 on type of paid employment for participants with intellectual disability shows that for participants aged 25 and over, 15% are in open employment with full award wages, 13% are in open employment with less than award wages and 72% are employed in Australian Disability Enterprises. (National Disability Services, 2017)

It is legal to pay as little as 12.5% of the relevant minimum hourly rate of pay to employees covered by the Supported Employment Services Award. The Fair Work Commission in 2019 determined that the minimum wage under the Supported Wage System should be $3.50 an hour. From 1 January 2021, employers must also pay superannuation contributions for employees with a disability. The rate is either 9.5% of their ordinary time earnings or $15 per week, whichever is the greater.

The Supported Wage System (SWS) often results in people with disability being paid below minimum wage:

> *"They treat people unfairly and with little pay, and it takes away their confidence. Staff just tell them to get over it or tell them off" (23-year-old man, regional, working in an ADE). (Meltzer et al)*

Many people working in ADEs are paid just enough, per fortnight, so as not to affect their Disability Support Pension. This is currently $180 a fortnight. Some people are worried about losing their pension, and say this is why they work in an ADE. But people who earn more than $180 a fortnight are better off, as they keep 50c for each extra dollar they earn.

It costs some people more to go to work in an ADE than they get in the sub-minimum wages they earn. Inclusion Australia receives many reports from people with an intellectual disability about the cost of getting to and from work exceeding their earnings.

Meltzer et al noted that:

> *"Overall, people with disability highlighted that they place a high value on being paid, regardless of employment type, because pay is linked to material wellbeing and to participating and being treated as an equal in relationships and in society."*

Some people said that earning less than other workers undermined this.

Inclusion Australia interviewed 32 people as part of a qualitative analysis on a range of issues including employment for an omnibus submission to the Disability Royal Commission. This included 13 self-advocates with intellectual disability, 10 people with a family member with intellectual or cognitive disability, and 14 paid disability advocates.

The qualitative analysis showed that people with an intellectual disability wanted more opportunities to break into open employment, and more support to move between jobs once they gained open employment.[1]

The high-level findings, of the study included:

- People with an intellectual disability saw a connection between the low quality of education they had received and their poor outcomes in employment
- People with an intellectual disability reported discrimination in their treatment at work and with respect to the wages that they were paid
- People with an intellectual disability wanted more support to train for and gain access to open employment, as well as support to find additional hours of work while in open employment
- People with an intellectual disability wanted ADEs to be reformed so that they helped clients gain the skills needed for open employment.[1]

Calum (22), wanted to train as a cabinet maker, but wasn't able to access pre-apprenticeship classes in his special school. He tried to catch up in TAFE, but without support fell further behind and dropped out. He said:

> *'They need to change the system because…we can still work normal. We're different, but we still got the capacity to be working like other people.'*

# The importance of open employment

Real jobs for real wages provide people with an intellectual disability the financial independence and choices available to other Australians. They also contribute to the sustainability of the NDIS.

The right to earn an income from work freely chosen and on an equal basis with others is outlined in Article 27 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD), which Australia has signed. The Australian Human Rights Commission has criticised Australia's continued maintenance of the Australian Disability Enterprise (ADE) system as inconsistent with its obligations under Article 27 of the CRPD as well as its obligations under the International Covenant on Economic, Social and Cultural Rights.

Researchers emphasise the importance of Australia's commitment to the UNCRPD when it comes to better outcomes with employment and career opportunities (Smith, Rhodes, Pavlidis, Alexander and McVilly 2018). They say that statements about employment in the UNCRPD and in the NDIS Act "should form the reflective framework for any new policy directions undertaken in disability employment in Australia".

They also emphasise the importance of legislation to effect change, saying that their experience is consistent with overseas experience, in that without legislation, "provider transformation and true client choice and control will be piecemeal, and not produce the employment dividends so significant to individuals in society, a society that defines individuals by their valued roles in the employment setting."

As part of the Everyone Can Work project, Inclusion Australia commissioned the Swinburne Report to summarise evidence on a range of topics identified by an advisory group of people from all around Australia, including people with lived experience of disability and employment, an academic, representatives from organisations and a representative from a DES provider. The purpose of the advisory group was to provide feedback on the development of the website and the workshops.

The Swinburne Report found there is clear evidence of programs which are successful in increasing employment for people with an intellectual disability, but that examples of these programs in Australia are limited and often temporary, despite good results.

Features of effective programs include:

- a high level of job customisation
- a process of proactively seeking job opportunities
- on-the-job training mixed with work experience
- time un-limited support in the workplace
- employment brokers or vocational specialists who work across services.

There is strong evidence for significant benefits from employment for people with an intellectual disability. Outcomes that are widely evidenced in the research literature are:

- economic benefits (increased income and better standard of living)
- increased quality of life or wellbeing
- improved mental health

- improved physical health
- reduced risk of poverty
- increased social participation, including opportunities for friendships
- increased social support
- increased skill development
- increased sense of social worth, feeling valued and increased social status, and
- the provision of purpose, structure and meaning to daily life

(Holwerda et al., 2013; Honey et al., 2014; Blick et al., 2016; Simplican et al., 2014, Emerson et al., 2018; Carter et al. 2017; Meltzer et al. 2016; Riesen et al. 2015; Nevala et al. 2019).

Speaking about young people with an intellectual disability in the USA, Carter et al. (2017) said:

> *a good job contributes to a sense of accomplishment, self-worth, and independence; it gives young people a place to share their strengths and gifts in valued ways; it fosters new friendships and access to social supports; and it provides resources and connections that increase community involvement and contributions (p.365).*

Research suggests that having a job in young adulthood is linked to improved socioeconomic status 6-7 years later (Honey et al, 2014).

Working even a small number of hours per week can generate significant outcomes. A recent large-scale study of people with and without disability in the UK (16–65-year-olds) found that working 8 hours a week 'generates significant mental health and well-being benefits for previously unemployed or economically inactive individuals' (Kamerade et al., 2019, p.1). This study found that people do not require full time employment to achieve these benefits.

While there is evidence that having a job leads to positive outcomes, there is also evidence that not having one leads to negative outcomes. There is strong evidence that a lack of employment greatly increases and contributes to the high relative poverty risk for people in Australia (Honey et al., 2014). The relationship between unemployment and poor health is also well established in the literature (Emerson et al., 2018; Kavanagh et al., 2013).

People with disability working in non-segregated settings report their quality of life higher than those working in sheltered employment (Beyer et al., 2010). There is also Australian research that shows the quality of life of families who work in open employment improves compared with other settings (Foley et al 2014).

There is also evidence that people with an intellectual disability prefer employment in non-segregated settings (Wehman et al., 2018) and that open employment and social enterprises are viewed as less segregated than ADE settings by Australians with intellectual disability (Meltzer et al., 2016). People with an intellectual disability have reported that the main motivation for moving from an ADE to open employment was better pay, to work with people without disability and increased opportunities for social interaction (Meltzer et al., 2016).

# People with an intellectual disability moving from segregated to open employment

In Australia, there is evidence that nearly all people with an intellectual disability who work in an ADE will stay there for the rest of their working lives. Very few people with an intellectual disability will move into open and self-employment.

There is good evidence and experience about how to make this transition work better, and what support people with an intellectual disability need to work in open and self-employment.

The evidence says that:

- Systems supporting people with an intellectual disability must have an expectation of 'employment first'.
- People with an intellectual disability can move to open employment from any other setting with the right support.
- ADE providers also need support to make sure they have the commitment, knowledge and skills to help their workers transition to open employment.
- On the job training – a 'place then train' approach works better for people with an intellectual disability than pre-employment training.
- Support to move to open employment should be person-centred and focus on the interests, skills, experience and attributes of each individual.
- Customised employment is helping many people with an intellectual disability to work in open employment or own their own micro-enterprise.
- Changes to the NDIS in 2020 gives people the choice to choose a range of well supported employment options rather than just working in an ADE long term.

Research in the United States has shown the importance of making sure systems prioritise employment as a primary outcome for adults with intellectual disability. This fosters a consistent set of expectations and supports across services, families and individuals (Hall et al., 2018).

People can move into open employment from any other setting, aided by a set of supportive practices (Smith, McVilly, McGillivray, & Chan, 2018). Ways to support people with an intellectual disability to move out of segregated employment or day service settings and into open employment include:

- Focus on the vocational aspirations and the potential strengths of people with disability, based on what people with disability want (Smith, McVilly, McGillivray, & Chan, 2018; Soeker et al. 2018). This might utilize a Discovery approach that is an in-depth exploration of the interests and capabilities of the job seeker with disability. This process is based on building trust and getting to know job-seekers with intellectual disability (Hall et al. 2018).
- Provide opportunities to explore and move to, and between, higher skilled and better paid work (Smith, McVilly, McGillivray, & Chan, 2018).
- Provide opportunities to explore vocational options, including those that have a relatively higher social value/status than those commonly inherent in ADEs (Smith, McVilly, McGillivray, & Chan, 2018). Expanding options can include looking for task and interest matches with employers, rather than waiting on job openings (Hall et al., 2018).

- Make available work tasks that foster skills development relevant to open employment (Soeker et al., 2018).
- Support development of relevant social skills including spending time planning for transportation to and from work (Hall et al., 2018).
- Plan the supports that will be needed in the workplace, such as communication and technology supports (Hall et al., 2018).
- Utilise individualized and tailored person-centred approaches including Customised Employment practices, within ADEs and day services (Smith, McVilly, McGillivray, & Chan, 2018; Thoresen et al. 2018).
- Utilise opportunities in Social Enterprises to explore the vocational aspirations of people with an intellectual disability. Components could include a range of entry level positions, job rotation options and opportunities for promotion and career paths (Smith, McVilly, McGillivray, & Chan 2018).
- Support parents and families to gain knowledge of the employment service system, approaches that support employment, along with the influence of their own expectations and the value of their own social networks (Hall et al., 2018).

As well as the above, it is also necessary to work with ADE providers, at all levels of the organisation, to ensure they have the commitment, knowledge and skills to help their workers transition to open employment. Smith, Rhodes, Pavlidis, Alexander and McVilly 2018 sets out their experience with ADEs seeking to do this using a customised employment approach. They also note the importance of informing everyone involved, including the workers, their families, schools and career advisors as part of the process. They found that holding community forums where anyone could ask questions helped to allay any fears and concerns.

A specific skill-set is required to assist a person with intellectual disability most appropriately to find ongoing and meaningful employment. It is Inclusion Australia's experience that this skill set includes the following:

- A focus on the vocational aspirations and strengths of the person with disability, and an understanding of what they want from work.
- An understanding of intellectual disability as differentiated from other types of disability.
- An appreciation for a 'place then train' approach rather than a reliance on pre-placement learning.

The research shows that placement in a job, then on-the-job training, results in higher rates of open employment outcomes. This finding is directly due to the difficulty people with an intellectual disability have with generalising and transferring skills to new settings and tasks.

There is a distinctive set of support practices that correlate with high rates of open employment outcomes. The most efficient and effective form of employment support is to help an individual find a job, which provides benefits to the employer and the jobseeker, together with explicit on-the-job training so that the individual can meet the job standards required by the employer. As noted by Paul Cain (Inclusion Australia) in 2015, '[work placement with explicit training of actual job tasks is the basis of the highest performing transition-to-work and open employment outcomes.

The evidence for these practices has been emerging and available since the 1970's. In our opinion, the biggest barrier to increasing the number of people with an intellectual disability in open employment is the failure of government to insist that funded programs use evidence-based practice that is specific to people with an intellectual disability.

There are a small number of specialist DES providers who achieve excellent results by using a person-centred approach. A person-centred approach means that support is based around the individual (rather than in a group) and is based on the skills, experience and attributes of the individual. An example of this includes individual travel training which is designed to increase the confidence and ability of DES participants to travel to and from work.

Another area of promising practice is in peer mentoring. Peer mentoring brings together individuals with things in common and draws on the mentor's own experience to offer support to the mentee. This could be a program largely staffed by volunteers so it could be self-sustaining, but appropriately resourced to provide quality training and support for those volunteers. Evidence shows that people with an intellectual disability respond positively to ongoing support, and mentoring could play a big role in this.

New NDIS line items in the NDIS Price Guide 2020-21, which came into place in July 2020, represent an investment in capacity building that is flexible enough to be used at school (e.g. to support a casual job), for people leaving school and for older people wanting to try open employment for the first time.

These important changes allow ADEs to support a person towards an open employment goal. Also, the new Supports in Employment item enables people who need high levels of support to be able to receive this in any setting, not just in an ADE as was previously the case. These changes are of particular benefit to people with an intellectual disability who have been previously deemed to have a work capacity of seven hours or less. It gives them the choice to choose a range of well supported employment options rather than just working in an ADE long term.

Individualised funding through the NDIS offers the opportunity to implement person-centred approaches to finding and keeping a job. One evidence-based approach which is available is called customised employment. Customised employment focuses on the skills that each person has to offer rather than trying to get an existing job. Participants need to have both long-term and short-term employment goals in their NDIS plan to implement customised employment supports.

The customised employment process includes four main steps: discovery, job creation, customised support and on-the-job training. Customised employment can be a very successful approach people with high support needs, including those who have experienced low expectations because of their disability.

Some people with an intellectual disability and their families report that it requires a lot of knowledge and preparation to be ready to ask for this new kind of employment support in the participant's NDIS plan.

However, for business models to change and for innovation to work, organisations will need time to implement these changes, which involve a change of culture, systems and significant staff training and support.

# Evidence for fair wages

- A real wage is important to everyone, including people with an intellectual disability.
- The United Nations Convention on the Rights of Persons with Disability enshrines the right of people with disability to an income that is on an equal basis with others.
- People with an intellectual disability earn substantially more in open employment than in segregated settings such as ADEs.
- People with disability can legally be paid much less than other Australians. Australia's Supported Wage System (SWS) allows employers to pay productivity-based wages, which can be as little as 12.5% of the relevant minimum wage rate.
- Many other countries require employers to pay workers with disability the same minimum wage as other workers or are phasing out their sub-minimum wages systems.

### The importance of real wages

People have jobs to earn money. Working provides financial benefits to employees, and also provides social participation opportunities. While the importance of social engagement and acceptance as part of the workplace should not be under-estimated, for most people the primary reason they work is financial. This must also be considered the primary goal for people with disability, including people with an intellectual disability.

The right to earn an income from work freely chosen and on an equal basis with others is outlined in Article 27 of the UNCRPD.

In Australia, researchers reviewing the evidence on outcomes of employment for people with disability generally, note:

There is abundant evidence on the social and economic benefits of work for people with disability and their families. People who work contribute to society, gain financial independence, enjoy a better standard of living, experience improved physical and mental wellbeing, have expanded social networks and have opportunities to develop their career, demonstrate and expand their skills and knowledge (ARTD Consultants, 2016, p.2).

Australia is one of only three countries in the world with a Supported Wage System (SWS).

The SWS allows employers to pay wages to a person with disability based on an external assessment of how productive they are in their job. The SWS is covered by the Supported Employment Services Award 2020. This means people with disability can legally be paid much less than other Australians.

The Australian Human Rights Commission has expressed concern that the SWS may be discriminatory and provide inadequate wages. It is not an effective tool to incentivise employment of people with disability.

Inclusion Australia's qualitative study of a representative sample of its members, developed for the omnibus submission to the Disability Royal Commission, found that people with an intellectual disability reported discrimination in their treatment at work and with respect to the wages that they were paid:

*Ted, (56) whose wages were cut by $10 per hour when his productivity was re-assessed, said, "The other people were getting normal wages and there's things they can't do that I can do…If I did not agree with it I would have lost my job, so that's pretty rough."*

*Nick (32), was concerned about the underpayment of people working in ADEs, saying, "The award wages, I think that, you know, it needs to be a big issue around people with disabilities getting proper wages because what they receive now is absolutely ridiculous. They don't get a fair go…It's not right. This is Australia. It's not fair."*

## International research and experience

A range of international research shows that people with an intellectual disability can be successfully employed in competitive, integrated positions and substantially increase earnings in comparison to segregated work or day support programs.

The International Labor Organization follows changes to labour laws around the world, and publishes summarised data. It provides information, such as that below about wages. It also documents which countries have legislation and subsequent practices to increase the employment of people with disabilities. One set of data shows that 103 countries set quotas for the employment of people with disabilities. For example, in France, enterprises with more than 20 employees are obliged to have at least 6 per cent of workers with disabilities on staff. Over half of these countries also have antidiscrimination laws. Australia, with no quota system, is not on these lists.

### United Kingdom

In the UK, workers with disabilities must be paid the minimum wage. People classed as "workers" (with and without disability), must be at least school leaving age to get the National Minimum Wage (NMW). They must be 23 or over to get the National Living Wage (a higher rate). Contracts for payments below the minimum wage are not legally binding. The worker is still entitled to the National Minimum Wage or the National Living Wage.

According to Burchard and McKnight, in their 2003 paper: *Disability and the National Minimum Wage: A Special Case?*

> *"The vast majority of disabled employees earning less than the NMW before it was introduced did not lose their jobs following its introduction (if there was an effect it was very small). The NMW, therefore, led to an increase in the wage of these low paid disabled employees, and increase in their earnings and, depending on the interaction with any benefit/tax credit receipt, an increase in their net income."*

This study supported the continuation of disabled employees under the NMW legislation and improving the enforcement of the Disability Discrimination Act. In addition, they recommended that disabled employees with 'very low intrinsic levels of productivity' be supported through supported employment programs. They also said that government policy "would be better targeted at correcting the low levels of skill and education among the disabled population, which is most often the root cause of low wages and high rates of non-employment.

Despite workers with disability in the UK having the right to receive at least the National Minimum Wage, the TUC in 2017 calculated that there was a disability pay gap of £1.50 an hour compared

with non-disabled employees. This equates to a significant average annual pay gap of £2,730 a year. TUC said, “New rules to make bosses reveal gender pay gaps have been successful at shining a light on the problem. We’d like the government to consider a similar law requiring employers to publish their disability pay gap, along with the steps they will take to close it.

The 2017 Equal and Human Rights Commission disability pay gap report found that the rate of disabled people employed was 35% compared with 63% of non-disabled people. This does not distinguish between learning (intellectual). Disability and other types of disability. However, other research has found, just 6% of adults with learning disabilities are in paid work in the UK, yet around 65% say they would like a job.

### United States

People with disability in the US are also less likely to work, and they also earn much less than other workers. 18.7% of people with disability were employed in 2017 compared with 65.7% of people without disability. The median pay of men with a disability in 2017 was just 48 cents in the dollar compared with men without disability.

Again, the data makes no distinction between people with an intellectual disability and other types of disability. However, we know that people with an intellectual disability working in sheltered employment in the US earn extremely low wages.

This is because Section 14 (c) of the 80-year-old Fair Labor Standards Act permits employers to apply for a certificate from the Department of Labor to pay such low wages. It is estimated that around 450,000 American workers with disability earn an average of just $2.15 an hour as a result of this exemption. In comparison, the US federal minimum wage is $7.25 although many cities and states have introduced higher minimum wages.

The fact that a worker may have a disability is not in and of itself sufficient to warrant the payment of a sub-minimum wage if his or her productivity is not reduced.

The US Commission on Civil Rights produced a report on sub-minimum wages in 2020. Its recommendations included:

- The phase out of sub-minimum wages.
- Expanded capacity for supported employment programs.
- More stringent reporting and accountability for 14 (c) holders during the phase-out period.

The Commission on Civil Rights had a number of issues with the sub-minimum wage including:

- Subminimum wages have at times contributed to segregation of persons with disabilities because some employers use separate work centres such as sheltered workshops.
- People who were once assumed to be capable of only working for sub-minimum wages in a sheltered workshop have transitioned to and excelled in competitive integrated employment.
- The people who had been interviewed as part of the report who had transitioned out of subminimum wages were adamantly against the 14 (c) program.

The Transformation to Competitive Integrated Employment Act was introduced in 2021 with the aim of ending sub-minimum wages for people with disability. The Act aims to phase out sub-minimum

wages in all states within six years. This needs to be done by changing each state's relevant legislature. Since 2015 and up to early 2022, 16 states plus the District of Columbia are known to have taken action to end, phase out, or restrict 14 (c) programs and the subminimum wage. 30 states also now have Employment First programs that prioritise competitive integrated employment.

### France

French workers with disability are entitled to the national minimum wage. Lower wages for the same or similar position are considered to be discriminatory. However, workers with disability can register to give their employer the right to obtain a wage subsidy from the State.

### New Zealand

Employers in New Zealand can apply to a Labour Inspector for an exemption permit if the worker and employer both agree that there is a good reason why a worker should be paid less than the minimum wage. Labour Inspectors will issue a minimum wage exemption only if they think it is reasonable and appropriate to do so and the disability really prevents workers from earning the minimum wage.

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