

Can A Nonprofit Pay Their Workers Less Than Minimum Wage?

10.26.17 | Linda J. Rosenthal, JD



In a quiet corner in rural Maine, disabled workers employed by a nonprofit called Skills, Inc. spend their days [“sorting items for its thrift store, cleaning area businesses, and packaging candle wicks and other goods.”](#) The workers’ pay is “based on their determined productivity level, regardless of the state’s minimum wage.” Some earn as little as \$2 to \$3 an hour.

This organization [“offers residential and day programming in Somerset and Kennebec counties to people with intellectual disabilities, and its largest source of revenue is Medicaid, which is funded with a combination of state and federal tax dollars. In tax year 2015, Skills reported \\$13.8 million in total revenue.”](#)

Halfway across the country, in a larger city, a more well-known nonprofit – Goodwill of Omaha, Nebraska – also pays about 100 [local workers with disabilities](#) less than minimum wage.

Is Sub-Minimum Wage Payment Legal?

In 1938, [Congress enacted Section 14\(c\)](#) of the Fair Labor Standards Act (FLSA).

“[\[I\]n a sort of Orwellian process,](#)” this law authorizes the U.S. Department of Labor to issue “... special minimum wage certificates permitting the holder to pay employees with disabilities a wage commensurate with their abilities, without any wage floor. The certificate-bearing employer simply administers a short ‘time study’ which measures the speed at which an employee can perform repetitively a typically rote task, such as simple assembly (or hanging clothes, as in the case of many Goodwill employees), most often in discrete ‘sheltered workshop’ settings. A formula determines the wage, which can be at or below minimum wage, and can shift significantly, as time studies of this kind are usually conducted for an employee every six months.”

Certificate-holding nonprofits are also allowed to “contract out Section 14(c) workers to for-profit companies. That leads “... to a creeping subversion of minimum wage protections for employees beyond the nonprofit world. Restaurants, retail stores and tax return processing centers are some of the common loci of Section 14(c) workers, numbering over 200,000 potential sub-minimum wage earners [as of about 2013, at least].”

Low-Wage Practice Disfavored

As recently as 2013, a Labor Department spokesperson defended the practice: “Section 14(c) provides workers with disabilities the opportunity to be given meaningful work and receive an income.”

Other defenders of the controversial provision sound the same implicit warning that workers with disabilities cannot produce value to justify a minimum wage and without Section 14(c) would be relegated to rehabilitation facilities, be homebound and without any other gainful or satisfactory outlet. Some frustrated parents support the exceptional law, believing that work at any wage is a source of occupation and sense of worth for their children with disabilities.

This law has “fallen out of favor” with many advocates for the disabled. ““People are profiting from exploiting disabled workers, it is clearly and unquestionably exploitation,” said Ari Ne’eman, president of the Autistic Self Advocacy Network. “Maine and other states have gradually moved away from the practice. New Hampshire became the first state to abolish the subminimum wage in 2015, and fewer Maine employers have been using it in recent years.”

Pine Tree Society of Bath, Maine, stopped using the subminimum wage certificates on July 1, 2017: ““We believe in discovering people’s abilities and helping them grow and live more fully,’ said Terry Berkowitz, the chief operating officer at Pine Tree Society, which serves children and adults with disabilities. ‘We just felt like the subminimum wage doesn’t ... align well with that general philosophy.’”

The Real Outrage

Today, Skills, Inc. is the only Maine nonprofit paying disabled workers a sub-minimum wage. But the more compelling part of the controversy that thrust this small nonprofit into the unwelcome glaze of media scrutiny is the “stunningly high” level of compensation for the organization’s top executives.

As the Bangor Daily News explains for its readers: “It quadrupled a former manager’s salary between tax years 2006 and 2013, ultimately paying him \$569,844 in tax year 2013, according to the nonprofit’s tax documents filed with the Internal Revenue Service. It was an increase of almost \$260,000 over the previous year. In that time, Skills also more than doubled its then-CEO’s salary, paying him a high of \$217,596 in tax year 2013. The nonprofit’s tax year runs from July 1 to June 30.”

Similarly, in the Omaha Goodwill case, the level of executive compensation is one of several factors that has landed that organization in hot water in recent years. The Omaha World-Herald reported in late 2016 that “CEO Frank McGree made a cool \$933,444 in 2014, which is not only out of scale with other local agencies but also with other Goodwill operations. This was while more than 100 workers with disabilities were being paid a sub-minimum wage under Section 14(c) of the Fair Labor

Standards Act....”

Conclusion

With or without the added obscenity of lavish salaries for the executives supervising workers making \$2-3 an hour, we believe the continued use of this sub-minimum wage certificate is worth a serious discussion in the philanthropy community.

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