

# LABOR AND EMPLOYMENT LAW

## INFORMATION MEMO

DECEMBER 12, 2024

### **The U.S. Department of Labor's Wage and Hour Division Proposes Rule to Phase Out Subminimum Wage Certificates Under the Fair Labor Standards Act**

On Dec. 3, 2024, the U.S. Department of Labor's Wage and Hour Division (WHD) released a Notice of Proposed Rulemaking to phase out the issuance of Fair Labor Standards Act (FLSA) Section 14(c) certificates that allow employers to pay employees with disabilities subminimum wages.

The proposed rule would end the issuance of new Section 14(c) certificates and would only allow certificate holders to apply for renewals for three years after the effective date. At the end of the three-year phase out period, all Section 14(c) certificates will expire and all workers that were paid subminimum wages under Section 14(c) certificates will be required to be paid at or above the minimum wage. The WHD has emphasized that this rule will not require workers to leave their places of employment or require current certificate holders to alter any additional services they provide to these employees.

The FLSA created a guaranteed, non-waivable, federal minimum wage which is currently \$7.25 per hour "except as otherwise provided." Pursuant to Section 14(c)(1) of the FLSA, the Secretary of Labor has a limited power to issue certificates that allow employers to pay subminimum wages if it is determined that the certificates are necessary to prevent the curtailment of employment opportunities for individuals with disabilities. The WHD proposed this new rule to phase out the issuance of Section 14(c) certificates because it has determined that this statutory condition is no longer met.

The WHD based this determination on several factors. First, since the FLSA was signed into law in 1938 and since the most recent substantive revisions to Section 14(c) were made in 1989, the WHD noted that there have been significant steps to promote employment opportunities for individuals with disabilities through advances in technology, community advocacy and legislation.

Second, the WHD cited the steady decline in current certificate holders and subminimum wage employees as evidence of a lack of curtailment of employment opportunities for individuals with disabilities. According to data gathered by the WHD, there were 424,000 workers paid subminimum wages under Section 14(c) certificates and 5,612 certificate holders in 2001, compared to 40,579 workers paid subminimum wages and 801 certificate holders in 2024.

Third, the WHD noted that 33 states have already prohibited or further restricted the payment of subminimum wages to individuals with disabilities.

Finally, the WHD cited several studies suggesting misuse of Section 14(c) certificates and indicating that the work done by the employees working under those certificates often lacks opportunities for advancement or does not provide transferable skills. Based on those studies, the WHD concluded that the use of Section 14(c) certificates may have the counterproductive effect of curtailing employment opportunities for individuals with disabilities.

The WHD has invited the public to comment on all aspects of the proposed rule. The public comment period will be open until Jan. 17, 2025.

If you have any questions, please contact [Subhash Viswanathan](#), any attorney in Bond's [labor and employment practice](#), or the Bond attorney with whom you are regularly in contact.

*\*Special thanks to Gavin Gretsky for his assistance in the preparation of this memo. Gavin is not yet admitted to practice law.*

