

Subminimum Wage Certificates

A report prepared by

The Department of Labor & Industries

and

The Department of Social and Health Services



Transforming Lives

2023 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 if their employer had a certificate from the Department of Labor & Industries (L&I). Engrossed Substitute Senate Bill (ESSB) 5284 also eliminated new certificates for any employer in Washington State after July 31, 2023, and phases out existing certificates. Active certificates, 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 second of those annual reports.

2023 Status Update

As of June 30, 2023, there were 63 active subminimum wage certificates issued to employers of workers with a disability. Each worker must have their own certificate. These certificates are held by seven employers. This is a 50% reduction from the prior reporting period.

DSHS has notified all subminimum wage certificate holders of the new law and services offered by the department. Based on DSHS records, 19 clients employed under a certificate contacted the DSHS Developmental Disabilities Administration (DDA) for assistance with individual employment, assistive technology, and community inclusion.

All DSHS DDA clients are referred to DSHS Division of Vocational Rehabilitation (DVR). During fiscal year 2023, 50 workers employed under a subminimum wage certificate were referred to DSHS DVR to receive career counseling, information, and referral services based on their payment of a subminimum wage. According to DSHS DVR records, of the 50 referrals received, 44 individuals were provided with DSHS DVR career counseling, information, and referral services for subminimum wage workers. At this time, DSHS DVR does not have information to indicate if these clients continued employment after their certificates expired.

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.

Following the passage of Washington’s Minimum Wage Act, L&I enacted rules to administer and enforce the statute in 1960. 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 in Washington to the regulatory environment for workers with a disability came in 2019, when the Legislature restricted any state agency 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 Developmental Disabilities Administration (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.

2023 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 below, as of June 30, 2023, there are 63 active certificates issued to employers of workers with a disability. These certificates are held by seven employers. Of the 63 individuals who hold certificates, 20 are DDA individuals earning subminimum wage.
- During FY 2023, 50 employees working under a certificate for subminimum wage employment were referred to DSHS DVR to receive career counseling, information, and referral services. 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), regardless of age or employment at subminimum wage so they may pursue competitive integrated employment if they wish to do so.
- All subminimum wage DDA clients are referred to DSHS DVR. According to DSHS DVR records, of the 50 referrals received, 44 individuals were provided with DSHS DVR career counseling, information, and referral services for subminimum wage workers. At this time, DSHS DVR does not have the information to indicate if these clients continued employment after their certificates from L&I expired. Individuals can sign a refusal of services form, not participate due to extenuating circumstances, or participate in a career counseling information and referral for services session but not complete the required documentation.
- For the 111 individuals DDA is tracking in this process, 17 clients have seen a reduction in their waiver service hours. Of that 17, 13 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. Eleven 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.

- In 2022, there were seven different employers for DDA clients earning subminimum wages. As of July 2023, there is only one employer still paying DDA clients subminimum wages as other certificate holders are currently not paying their employees subminimum wage.
- The DDA subminimum wage project position ended July 2023 and supported DDA clients transitioning out of subminimum wage employment since July 2022. This position is no longer funded.
- A current data-sharing agreement between L&I and DSHS has been executed. This allows the agencies to match DSHS DDA clients to L&I's active certificates until they expire.
- DSHS documented that 19 DDA individuals contacted DDA for technical assistance or services between July 2022 and July 2023. All requests have been acted upon. DDA has also contacted all DDA subminimum wage certificate holders in relation to the passage of ESSB 5284 and services offered by DDA.
- While 20 active subminimum wage DDA clients currently remain, there are 91 DDA clients who no longer earn subminimum wage but had in prior periods. 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:
 - 57% are making Washington State minimum wage or higher (employment with the support of DDA and/or DVR).
 - 13% of individuals are involved in DDA Community Inclusion services. Community Inclusion services assist a client to connect to their community. Some Community Inclusion clients are also earning wages with the support of DDA and/or DVR.
 - 4% decided to declare retirement from Employment and Community Inclusion services.
 - 19% are no longer making subminimum wage and do not have active open DDA funded Employment or Community Inclusion services.
 - Some of these individuals were not getting assistance from DDA for employment support services when they were making subminimum wage.
 - There are some who have moved out of state or are currently in the hospital for health reasons.

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. As shown, the number of active certificates was reduced by 63 (50%) year over year.

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

Fiscal Year	Number of Certificates Remaining	Number of Employers With Certificates
2023	63	7*
2022	126	6
2021	174	11

Source: L&I Employment Standards Program

*Please note, the law allows new certificates to be issued up until July 30, 2023 and then authorizes a one-year extension following that.

Below is a summary of what services the 53 DDA clients with active subminimum wage certificates in July of 2023 are receiving. Please note that clients may appear in multiple status categories.

Figure 2: DDA Client Data with Subminimum Wage Contracts as of July 2023

Status	Tahoma Associates	Yakima Specialties	Goodwill of Columbia
DDA Clients With Subminimum Wage Certificates	22	5	26
DDA Clients Earning Subminimum Wage	20	0	0
DDA Clients Earning Minimum Wage or Better	0	0	14
DDA Clients Job Searching with DDA or DVR Services	0	0	1
DDA Clients with DDA Community Inclusion Services	0	2	7
DDA Clients No Longer in Service (clients either retired, moved or passed away)	2	3	5

Source: Department of Social and Health Services

Figure 3: DDA Client Data with Subminimum Wage Contracts as of July 2023

Employer	No Active Employment or Community Inclusion Services	Contacted DDA for Services	DDA Clients whose DDA Employment Support Hours Increased	Experienced Reduction of Any Kind in Waiver Services
Goodwill of Columbia	6	11	2	8
Kitsap Applied Technologies	1	0	0	1
Tahoma Associates	2	0	6	0
Yakima Specialties	7	5	2	5
Columbia Industries	0	2	0	1
Boost Collaborative	0	1	0	1
Lillie Rice Center	1	0	1	1
Total	17	19	11	17

Source: Department of Social and Health Services

Conclusion

In future reports, L&I and DSHS will report jointly information regarding subminimum wage certificates for workers with a disability. Fiscal year 2023 represents a significant decrease in the number of active subminimum wage certificates issued by L&I, progressing toward ESSB 5284’s goal of phasing out and eliminating subminimum wage certificates.