CHAPTER 6

Subminimum Wages

Editor's Note

2022 Act No. 209, preamble and Section 3, provide as follows:

"Whereas, Section 14(c) of the Fair Labor Standards Act of 1938 authorizes employers, after receiving a certificate from the United States Department of Labor's Wage and Hour Division, to pay special minimum wages that are less than the federal minimum wage to workers who have disabilities, for the work being performed; and

"Whereas, Section 14(c)(1) defines a 'worker with a disability' as an individual whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury; and

"Whereas, in 2020, more than two thousand nine hundred South Carolinians with disabilities were employed in settings in which they could be paid a subminimum wage; and

"Whereas, South Carolina continues to have one of the highest unemployment rates for persons with disabilities in the country. Now, therefore, [text of Act]."

"SECTION 3. (A) For the purposes of this SECTION:

"(1) 'Competitive employment' means employment in a competitive labor market that is performed on a full‑ or part‑time basis in an integrated setting and for which an individual is compensated at or above the minimum wage but not less than the customary wage and level of benefits paid by the employer for comparable work performed by an individual without a disability.

"(2) 'Disability' means a physical or mental impairment that substantially limits one or more of an individual's major life activities, or a record of a physical or mental impairment, of being regarded as impaired, or of any condition that would be considered a disability under the Americans with Disabilities Act.

"(3) 'Integrated setting' means an employment setting in which individuals with disabilities interact with individuals without disabilities, with the exception of those who are providing services to employees with disabilities, to the same extent that individuals without disabilities in comparable positions interact with other persons.

"(4) 'Task force' means the South Carolina Task Force on Eliminating the Subminimum Wage.

"(B) The South Carolina Task Force on Eliminating the Subminimum Wage shall be comprised of the following:

"(1) one member from Disability Rights South Carolina;

"(2) one member from the South Carolina Developmental Disabilities Council;

"(3) one member from Able SC;

"(4) one member from the South Carolina University Center for Excellence in Developmental Disabilities;

"(5) two members who are currently authorized to pay a subminimum wage appointed by the Director of the South Carolina Department of Disabilities and Special Needs;

"(6) two members who are current or former employees with a disability who are or were paid a subminimum wage appointed by the Director of the South Carolina Department of Disabilities and Special Needs;

"(7) the Director of the South Carolina Department of Employment and Workforce, or his designee;

"(8) the Director of the South Carolina Department of Health and Human Services, or his designee;

"(9) the Director of the South Carolina Department of Disabilities and Special Needs, or his designee;

"(10) the Director of the South Carolina Vocational Rehabilitation Department, or his designee; and

"(11) the Director of the South Carolina Commission for the Blind, or his designee.

"(C) The task force shall be responsible for the following duties:

"(1) developing a plan to phase out the use of the subminimum wage by August 1, 2024;

"(2) identifying and developing protections for disabled subminimum wage employees to maintain competitive employment while phasing out the use of the subminimum wage;

"(3) identifying and collaborating with employees, employers, organizations, agencies, and stakeholders impacted by the phase out of the subminimum wage on how to implement the plan and create sustainable, competitive work opportunities for employees with disabilities;

"(4) proposing a plan to establish and evaluate benchmarks for measuring progress for each year of the phase out;

"(5) proposing a plan to monitor and track the outcomes of employees with disabilities;

"(6) identifying initiatives, investment, training, and services designed to improve wages, reduce unemployment rates, and provide support and sustainable work opportunities for persons with disabilities;

"(7) identifying and making recommendations for sustainable support, funding, and resources for eliminating the subminimum wage, including the cost of implementing and providing ongoing employment services, training, and support for employees with disabilities and the cost of paying a minimum wage or more to employees with disabilities in integrated settings;

"(8) ensuring that the plan protects the rights of persons with disabilities and follows Americans with Disabilities Act protections for employees and prospective employees with disabilities; and

"(9) reporting on or before August first of each year to the Governor and the General Assembly on the benchmarks and results of the outcomes described in the above duties until the subminimum wage has been phased out, at which time the task force is dissolved.

"(D) The task force may utilize the staff of the South Carolina Senate and House of Representatives for clerical or related assistance, as approved and designated by the President of the Senate and the Speaker of the House of Representatives, as appropriate. The task force members may not receive compensation and are not entitled to receive mileage, subsistence, or per diem as provided by law for members of boards and commissions."

**SECTION 41‑6‑10.** Employers; community rehabilitation programs; hospital patient care workers at regional centers.

 Employers, community rehabilitation programs, and hospital patient care workers at regional centers shall not use Section 14(c) of the Fair Labor Standards Act of 1938 to pay disabled employees a subminimum wage. No individual with a disability may be paid less than the federal minimum wage.

HISTORY: 2022 Act No. 209 (S.533), Section 1, eff May 23, 2022.

Code Commissioner's Note

At the direction of the Code Commissioner, pursuant to the authority to codify permanent law, the provisions of Section 1 and Section 2 of 2022 Act No. 209 were codified as Section 41‑6‑10 and Section 41‑6‑20, respectively.

**SECTION 41‑6‑20.** Department of Disabilities and Special Needs; report.

 Beginning on January 1, 2023, and annually thereafter, the Department of Disabilities and Special Needs shall submit a report to the General Assembly concerning the payment of a subminimum wage in South Carolina. The report shall:

 (1) identify all providers in this State that maintain a Section 14(c) certificate;

 (2) identify which of those providers pay a subminimum wage;

 (3) identify which of those providers used to pay a subminimum wage but have stopped that practice;

 (4) identify which of those providers that stopped paying a subminimum wage did so due to an increase in the federal minimum wage; and

 (5) provide data regarding the success in obtaining minimum wage employment of individuals with severe intellectual disabilities as compared to individuals with mild or moderate intellectual disabilities.

HISTORY: 2022 Act No. 209 (S.533), Section 2, eff May 23, 2022.

Code Commissioner's Note

At the direction of the Code Commissioner, pursuant to the authority to codify permanent law, the provisions of Section 1 and Section 2 of 2022 Act No. 209 were codified as Section 41‑6‑10 and Section 41‑6‑20, respectively.