

QUESTIONS AND ANSWERS FROM THE PUBLIC AND EMPLOYEES:

1. What is the Section 14 (c) of the Fair Labor Standards Act (FLSA)?

Section 14 (c) is a special provision in the Fair Labor Standards Act (FLSA). That law allows employers, after receiving a certificate from the U.S. Department of Labor, to pay commensurate wages to employees whose disability significantly impairs their productivity. This legislation does not allow an employer to pay a commensurate wage simply because a person has a disability.

2. What is a commensurate wage?

Commensurate wage rates are based on the employee's individual productivity, no matter how limited, in proportion to the wage and productivity of experienced workers who do not have disabilities performing essentially the same type, quality and quantity of work in the geographic area from which the labor force of the community is drawn. The key elements in determining commensurate rates are:

- Determining the standard for employees who don't have disabilities, the objective gauge against which the productivity of the employees with a disability is measured.
- Determining the prevailing wage, the wage paid to experienced employees who do not have disabilities for the same or similar work and who are performing such work in the area. Most Service Contract Act (SCA) contracts include a [wage determination](#) specifying the prevailing wage rates to be paid for work on the SCA contract.
- Evaluating the quantity and quality of the productivity of the worker with the disability.

All commensurate wages must be reviewed and adjusted, if appropriate, at periodic intervals. At a minimum, the productivity of hourly paid workers must be reevaluated every six months and a new prevailing wage survey must be conducted at least every twelve months.

The thousands of employers that utilize the Certificate for unique and individual cases must go out into the community and collect wage information from a minimum of three companies that are using similar methods, equipment, and experienced (not entry level) workers without disabilities. The amount of time for these three employees to perform a task (and their production numbers) is averaged to establish a standard. The work of the person with severe disabilities is then measured and evaluated according to this standard. This process occurs within the first 30 days of employment and is repeated every six months thereafter.

3. Why does Goodwill support the use of Special Wage Certificates?

The Certificate is a valuable employment tool for hiring people with significant or multiple disabilities and improving their lives. Goodwill® has a long history of supporting initiatives that increase employment opportunities for all people—including people with the most significant disabilities.

4. How would eliminating FLSA section 14 (c) affect employment opportunities for people with severe disabilities?

Today, hundreds of thousands of people with severe disabilities are employed due to the FLSA section 14 (c). Eliminating it would remove an important tool for employers and an employment option

available to people with severe disabilities and their families. Without the law, many people with disabilities could lose their jobs and it would take away their choice.

Individuals employed under section 14 (c) and their families receive access to support services including: assistive devices and technology, behavior modification, case management, daily living skills training, job coaching, occupational therapy, personal care assistance and speech therapy, to name a few.

Goodwill opposes the elimination of the Special Wage Certificate and instead, supports legislation that would strengthen the FLSA and increase enforcement of the Act, while recognizing the principles of self-determination and rights of individuals to obtain and maintain employment.

Goodwills across North America employ more than 105,000 people. Thirty thousand of these team members have disabilities. Less than one quarter of these team members with disabilities work under a Special Wage Certificate. Many of these team members are earning above minimum wages. The average wage paid by Goodwill to those under the Certificate is \$.7.47 – which is higher than the federal minimum wage of \$7.25.

5. What is Goodwill doing to promote and protect the employment rights of people with disabilities?

Goodwill supports measures to strengthen enforcement of FLSA to increase education and to preserve the principles of self-determination, informed choice, and the right of individuals with disabilities to obtain and maintain employment. We also support initiatives that would increase employment first initiatives and supported employment programs. Goodwill makes recommendations to strengthen the continued use of Special Minimum Wage Certificates by reforming the following areas:

- **Penalties and Enforcement:** Resources should be devoted to allow for more investigators and training in order to avoid misuse of the certificate.
- **Data and Recordkeeping:** Most of the data used pertaining to the certificate is from a 2001 GAO and is over a decade old. Congress should require more transparency and urge GAO to update their report.
- **Self-Determination and Informed Choice:** People with disabilities should be able to work in the environment that they chose after being made aware of all of the employment options and resources available.
- **Career Pathways/Youth Pathways:** Individuals and especially transition-age youth with disabilities should have an individualized plan for employment and receive career counseling.
- **Additional Provisions:** Only accredited nonprofit employers defined as community rehabilitation providers (CRPs) should be able to employ individuals under the certificate. This will help ensure that the employees are receiving additional supports traditionally provided by CRPs.