



**Letter for the Record  
National Disability Rights Network  
Before the Health, Education, Labor and Pensions Committee  
U.S. Senate**

Full Committee Hearing: Lessons Learned from COVID-19: Highlighting  
Innovations, Maximizing Inclusive Practices and Overcoming Barriers to  
Employment for People with Disabilities  
February 8, 2022

**National Disability Rights Network (NDRN)**

NDRN is the non-profit membership association of Protection and Advocacy (P&A) and Client Assistance Program (CAP) agencies that are located in all 50 States, the District of Columbia, Puerto Rico, and the United States territories. In addition, there is a P&A and CAP affiliated with the Native American Consortium which includes the Hopi, Navajo and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. Employment of people with disabilities as before the pandemic, and now after as the economy recovers, is one of the top priorities for P&A and CAP network.

**Federal Policies Impacting Employment of People with Disabilities**

Increasing employment opportunities and breaking down barriers to employment for people with disabilities has been a long held goal for the disability community as a whole. In 1990, Congress enacted the Americans with Disabilities Act (ADA) which provides a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities. 42 U.S.C. § 12101(b)(1). This landmark civil rights statute also makes clear that not only should people with disabilities be free from discrimination in the ongoing of their daily life, but also in workplace. In the Findings and Purpose section of the ADA, Congress pays particular attention to the issue of the employment of people with disabilities:

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication...and access to public services...

(7) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals  
42 U.S.C. §12101(a)

In the Findings and Purpose section of the ADA, Congress demonstrated its concern for the employment and economic self-sufficiency that comes with employment of people with disabilities and expressed a heightened concern that people with disabilities are improperly segregated in our society. 42 U.S.C. § 12101(a)(2), (3), (5) & (7).

Additionally, the Workforce Innovation and Opportunity Act (WIOA) of 2014 prioritizes competitive integrated employment (CIE), where people with disabilities work in mainstream jobs alongside, and are paid comparable wages to, co-workers without disabilities.

There is a clear statutory, legal and policy foundation for focusing on the employment of people with disabilities. Unfortunately, while stride have been made, practically speaking the ultimate goal of full participation, independent living, and economic self-sufficiency for such individuals has yet to be realized. Unfortunately, the employment rate for people with disabilities continues to be lower when compared to people without disabilities. Too many people with disabilities continue to be funneled into segregated sheltered workshops, where they are isolated from co-workers without disabilities and broader society and are legally paid pennies on the dollar under Section 14(c) of the Fair Labor Standards Act (FLSA).

Below, we outline from our perspective barriers to the employment of people with disabilities and potential policy solutions we believe the Committee should consider in order to address this problem.

### **Public Benefits as Barriers to Employment**

Despite their good intentions, several long-standing federal policies impacting people with disabilities actually serve as a barrier to employment or disincentivize full employment for people with disabilities. Eligibility limits for publicly funded federal programs tied to means testing present a significant barrier to employment of people with disabilities particularly in CIE. A number of individuals with disabilities rely on Social Security and

Medicaid to obtain long-term services and supports (LTSS) critical to living independently and maintaining health care coverage such as Medicaid.<sup>1</sup> These critical benefits are often essential to avoiding unnecessary institutionalization and potentially death. Most individuals with disabilities who come to rely on these services do not have the assets or income required to take on such medical expenses.<sup>1</sup>

These federally imposed restrictions related to income and assets serve as a major barrier for individuals with disabilities from pursuing employment because they are essentially put in the position of deciding between working up to preferred optimal hours, or accepting higher wages or putting access to publicly-funded services at risk.<sup>1</sup> As long as the maintenance of publicly-funded benefits such as Supplemental Security Income and Medicaid are contingent upon the maintenance of a low-income and assets, it will continue to be incredibly difficult to incentive people disabilities to seek better employment with higher wages in a CIE environment.

#### Recommendations:

- Congress should pass the *Supplemental Security Income Restoration Act*.<sup>2</sup>
- Pass legislation to decouple eligibility for Medicaid and Medicare from eligibility for cash benefits. The legislation should allow people with disabilities covered by Medicaid and/ or Medicare through the SSI and Social Security Disability Insurance (SSDI) programs to work and to retain their existing healthcare coverage permanently, without cost to the individual and without any complex paperwork.<sup>3</sup>

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1 MPRESSED Media. (2021, December 21). *RESOURCES FOR AoD GRANTEES*. Disability Employment TA Center. <https://aoddisabilityemploymenttacentertacenter.com/resources-for-aod-grantees/>; [https://aoddisabilityemploymenttacentertacenter.com/wp-content/uploads/2021/05/AoD\\_TA\\_Center\\_Landscape\\_Assessment\\_Final\\_without\\_Appendices\\_4.30.2021\\_508.pdf](https://aoddisabilityemploymenttacentertacenter.com/wp-content/uploads/2021/05/AoD_TA_Center_Landscape_Assessment_Final_without_Appendices_4.30.2021_508.pdf) and [https://aoddisabilityemploymenttacentertacenter.com/wp-content/uploads/2021/05/AoD\\_TA\\_Center\\_Landscape\\_Assessment\\_Appendices\\_PA\\_4.30.21\\_508.pdf](https://aoddisabilityemploymenttacentertacenter.com/wp-content/uploads/2021/05/AoD_TA_Center_Landscape_Assessment_Appendices_PA_4.30.21_508.pdf)

2 Brown Leads Senators in Introducing Historic Legislation to Update Long-Neglected Social Security Program to Ensure Older Adults & People with Disabilities are No Longer Trapped in Poverty | U.S. Senator Sherrod Brown of Ohio. (2021, June 16). Sherrod Brown. <https://www.brown.senate.gov/newsroom/press/release/social-security-program-update>

3 2021 Progress Report: The Impact of COVID-19 on People with. (2021, October 29). National Council on Disability. <https://ncd.gov/progressreport/2021/2021-progress-report>

### **Section 14(c) of the Fair Labor Standards Act**

Section 14(c) of the Fair Labor Standards Act is a provision that permits employers to pay some people with disabilities even less than the minimum wage. The continuance of this program greatly threatens the ability for all people with disabilities to work in an CIE environment. Section 14(c) is incompatible with both (ADA), which establishes economic self-sufficiency for people with disabilities as a goal, and WIOA which priorities competitive integrated employment, where people with disabilities work in mainstream jobs alongside, and are paid comparable wages to, co-workers without disabilities. By maintaining section 14(c), the federal government is doing nothing more than endorsing the perpetuation of a life of poverty and dependency for people with disabilities who are paid sub-minimum wages.

The evidence over the years has shown that full employment of people with disabilities is not only possible but probable if high expectations are set and individuals are provided the supports and services they need. We cannot assume that classes of people, including those with even the most significant disabilities, are incapable of participating in full, competitive, and integrated employment.

Recommendations:

- Congress should pass the *Transformation to Competitive Integrated Employment Act* ([H.R.2373/S.3238](#)).

### **Job Accommodations**

Under the ADA, employees with disabilities who are qualified for the job may request reasonable accommodations from their employer in order to perform the essential functions of that job and enjoy equal employment opportunities. While the ADA provides for reasonable accommodations, obtaining accommodations and related enforcement of the ADA remain a barrier to employment for people with disabilities. Human resource professionals continue to lack knowledge about expenses for providing legally-protected accommodations as well as the impact of accommodations on the development of trust and the ability of workers with disabilities to meet productivity expectations.<sup>1</sup>

Additionally, we have heard anecdotally that employers believe that they must hire people with disabilities who would otherwise be unqualified for the job and that people with disabilities cannot be terminated for cause for fear that it could trigger a lawsuit. This misunderstanding of the ADA

and reasonable accommodations almost undoubtedly prejudices employers against hiring people with disabilities. Examples of reasonable accommodations NDRN has recommended include a more flexible work schedule, time off for medical appointments and therapy, and a quieter work environment.<sup>4</sup>

The COVID-19 pandemic has increased the prevalence of accommodations as many workers have transitioned to telework and/or flexible work schedules. This underscores the need for both more education about the ADA and reasonable accommodations among employers and enforcement of the ADA in the workplace.

#### Recommendations:

- The federal government should prioritize enforcement of the Americans with Disabilities Act and Sections 501 and 503 of the Rehabilitation Act to ensure that workers with disabilities receive reasonable accommodations needed to secure or maintain employment, including accommodations needed due to the pandemic.<sup>3</sup>
- The federal government should Issue guidance on effective telework tools and highlight the benefit of telework for many people with disabilities.<sup>3</sup>

#### **Vocational Rehabilitation and Education of Students with Disabilities**

Some people with disabilities face barriers to employment beginning when they are students. Unfortunately, the systems in place to assist students with disabilities obtain meaningful and long-term employment in a CIE setting do not function as intended. The consequence of this is that students with disabilities can get funneled into segregated employment and/or public benefits after which it can become harder to transition to CIE.

For example, under WIOA, Vocational Rehabilitation (VR) Systems are required to spend 15% of their annual budgets on supporting the provision of pre-employment transition services (pre-ETS) for youth and young adults with disabilities. However, there is evidence to suggest that VR systems to

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<sup>4</sup> Blum, D. (2021, September 6). *Feeling Anxious About Returning to the Office? Here's What You Can Do*. The New York Times. <https://www.nytimes.com/2021/08/25/well/mind/return-to-office-anxiety.html>

do not consider pre-ETS is not a priority or focus for VR.<sup>1</sup>

Additionally, we have heard that some educators and transition counselors stress the importance of applying for Social Security as soon as possible rather than focusing on post-secondary education, vocation training or job development.<sup>1</sup> The underlying message here being that the student will need Social Security benefits immediately and over the long-terms because they are not able to pursue a career and become financially independent.<sup>1</sup> Students without disabilities, however, are supported in exploring career pathways and post-secondary options throughout school.

#### Recommendations:

- The federal government should conduct oversight to better understand why VR is not focusing efforts on pre-ETS.
- The federal government should increase funding for other programs that interact closely with VR such as the Client Assistance Program.