



Testimony of the Center for Disability Rights of New York State

to the

**New York State Senate Committee on Disabilities and
Committee on Labor Joint Public Hearing**

**Examining barriers to employment for individuals with disabilities in
New York and assessing the effectiveness of existing state policies in
promoting equitable employment opportunities**

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Thank you for the opportunity to provide testimony today. Employment for Disabled New Yorkers is a critical topic, and we are thrilled to be a part of the conversation. The Center for Disability Rights of New York State (CDR) is a disability-led Independent Living Center providing advocacy and services for people with all types of disabilities. While we provide services to thousands of people across the state through our Medicaid Pooled Trust, most of our other services and offices are in Rochester, Geneva, and Corning, with an advocacy office in Albany.

For policymakers, advocates, and most importantly Disabled New Yorkers – high-quality, integrated employment has long been a goal. Every year, resolutions are passed in the Legislature highlighting October as Disability Employment month which highlight the importance of employment in the Disability community. Governor Hochul has also repeatedly noted the importance of employment, implementing Executive Order 31, committing to making New York a model employer for people with disabilities and Executive Order 40, seeking to increase competitive, integrated employment among people with disabilities.

But we are a long way from achieving leadership in this area. Indeed, in Executive Order 31, the Governor noted that “...the number of peoples with disabilities living in the community who are employed is 36.9% versus 73.8% of their non-disabled peers.”

It is the continued inability to address this gap that speaks to the need for today’s hearing. For according to the American Community Survey, New York is not the leader we desire to be. In fact, we are well below the national average. In 2023 – the last year for which we have state level data, approximately 46.8% of Disabled individuals from age 16-64 were employed nationally, whereas in New York, only 41.4% were, a gap of 5.4%.¹

What is worse is that the gap is not only persistent – it is growing. Since 2011, when New York was 0.9% behind the national average, the gap has slowly, but steadily, increased. In 2014, it was 1.3%. In 2018, five years prior to our last reported date, it was 3.6%. And in 2022, the year prior to our last reported date, the gap between New York’s employment percentage and the national percentage was 5.0% (45.0% to 40.0%).

With a national disability employment average at 46.8%, it is clear that no state has figured out the equation to overcoming centuries of ableist policies, segregation, and stigma; however, among our neighbors, it seems the problem has been most vexing for New York. In 2023, all of our neighbors, except for Pennsylvania, had an average Disability employment

¹ We recognize that this number disagrees with that from Gov. Hochul’s Executive Order 31. We are unable to ascertain what source she used for the Executive Order. This is Census data from the American Community Survey, which allows for comparison across states. It can be found at www.disabilitystatistics.org.

rate above the national average. In the years previously mentioned, with the exception of 2011, when Rhode Island and Massachusetts had lower employment rates than us, it was New York with the lowest percentage in the region.

Select states compared to U.S. Disability employment %					
	2011	2014	2018	2022	2023
United States	33.4%	34.6%	37.8%	45.0%	46.8%
New York	32.5%	33.3%	34.2%	40.0%	41.4%
Connecticut	38.6%	40.3%	39.3%	44.2%	49.7%
Massachusetts	32.2%	35.2%	38.0%	43.4%	46.8%
New Hampshire	37.9%	40.2%	43.5%	46.5%	51.4%
New Jersey	35.5%	39.9%	37.7%	45.8%	49.0%
Rhode Island	31.4%	35.5%	34.8%	46.5%	47.8%
Pennsylvania	33.6%	35.4%	38.1%	44.3%	46.0%
Vermont	39.8%	36.0%	41.4%	53.0%	47.5%

New York’s below average comparison is not the result of any one administration or any one policy. It is indicative of the fact that our state is not performing in a manner that is consistent with our goals, or what the Disability Community, and all New Yorkers, have a right to expect.

And not only is New York’s employment percentage low for disabled folks, for some the prospects are even worse. Less than 1 in 3 Disabled Black men are employed. Only slightly more than 1 in 3 Indigenous Disabled women are employed. Meanwhile, while numbers are still dramatically lower than the general populace, Disabled White and Asian men and women, Disabled Hispanic and Indigenous men, and Disabled men of a race not categorized by the Census are employed at a rate higher than the statewide average.

Disability employment % by Gender and Race			
Category	Men & women	Men	Women
Overall	41.4%	40.9%	41.9%
White	42.7%	42.0%	43.5%
Black	36.7%	32.5%	40.1%
Indigenous	39.5%	45.9%	34.8%
Asian	49.2%	52.8%	45.5%
Other	40.2%	41.8%	39.5%
Hispanic (any race)	40.7%	42.0%	39.8%

Governor Hochul's Policy Statement, as outlined in Executive Order 31, set an ambitious goal.

The State of New York shall establish best practices to reduce, and eventually eliminate, the gap between working people with disabilities and working people without disabilities, as well as endeavor to increase recruitment, hiring, retention, and the career advancement of people with disabilities in the State workforce.

If New York is to realize that goal and become a leader in Disability policy, we must act beyond what we are currently doing. To do that, we must realize that increasing employment for Disabled individuals is, first and foremost, not only about employment.

Employment requires addressing systemic barriers to employment

When it comes to increasing employment opportunities for individuals with disabilities, it is critical to recognize that for many individuals, gainful and integrated employment often means overcoming more barriers and coordinating more obstacles than it does for most able-bodied individuals. Not only must the proper services and supports be in place for the individual to even consider employment, they must also overcome systemic barriers that work against them from birth.

Systemic obstacles to employment for those with disabilities, as well as potential earnings, start early. According to the State Education Department (SED), only 66% of children with a disability graduated high school in 2025, a rate 19% lower than the 85% graduation rate statewide. On the other hand, students with disabilities are almost one and a half times more likely than their non-disabled peers to drop-out of high school.

As we look at the Disabled population across the state, a lack of education is an even greater obstacle as the ACS shows that 18.0% of Disabled individuals in New York 18-64 have less than a high school degree; less than one in three (31.1%) have a high school diploma; and even fewer (28.5%) have some college or an Associate's degree. Only slightly more than one in five New Yorkers aged 18 to 64 with a disability have at least a bachelor's degree, meaning someone with a disability is 1.75 times less likely to have such a degree.

But even if someone achieves enough education for employment or becomes employed in a field where education is not a prerequisite, the system is still not set up to allow them to work. Disabled individuals must balance income levels to maintain eligibility for Medicaid, housing subsidies, transportation subsidies, and more.

Disabled New Yorkers rely on Medicaid because even when employed, the commercial health plans offered by their employers do not cover many of the services they need to remain in the community – and eligible to work. However, whereas Medicaid has eliminated asset limits for most New Yorkers, Disabled New Yorkers are still subject to the limits, meaning they must constantly not only consider how much they earn to prevent exceeding income limits, but they must also navigate any potential savings they might accrue to keep themselves poor enough to maintain those benefits.

The limited housing that will accept subsidies is further limited by housing stock that is, by and large, inaccessible, even more than thirty years after passage of the Americans with Disabilities Act (ADA).

Additionally, whatever accessible housing that takes subsidies they find must usually be on a transit line, or at least within 0.75 miles of a bus line, so that they will still qualify for paratransit services. Vehicles are expensive and a luxury most Disabled individuals cannot afford. Plus, private vehicles remain in a chicken and egg scenario, where without employment it is impossible to afford one; but for many, without a private vehicle it is impossible to gain employment.

Even in New York City, where a vast bus and subway system seemingly make public transit ubiquitous, too many subway stations are inaccessible, with buses on defined and limited routes, particularly in the outer boroughs, being the only option.

Once these benefits are balanced and transit is assured, finding employment is its own issue. While employers often will note that they are Equal Opportunity Employers, too many employers, knowingly or not, eliminate Disabled individuals before they ever apply. Needless requirements on many job postings for tasks such as “Must be able to lift 25 pounds” exclude many Disabled New Yorkers from the start, failing before entry to even consider a reasonable accommodation.

Disabled individuals too often hear policymakers speak of a desire to increase employment while glossing over, or even simultaneously cutting, the very services and supports that make such employment possible. The failure to address these structural obstacles and barriers makes such promises for work ring hollow for too many.

Of course, for many more, the opportunity to work is not the primary issue. The issue, and the question that work brings up, is what is work and is an honest hour’s work worth an honest hour’s pay is the question.

History of 14 (c) Fair Labor Standards Act

Section 14(c) of the Fair Labor Standards Act, first signed into law in 1938, authorizes employers who hold a certification from the U.S. Department of Labor’s Wage and Hour Division to pay subminimum wages to individuals with disabilities. Subminimum wages are set based on a “commensurate wage” standard, meaning the employee’s wage is decided their productivity relative to that of nondisabled workers performing similar tasks. Factors that go into determining these wages include benchmarking against nondisabled workers, identifying the prevailing local wage for comparable work, and evaluating the quantity and quality of work performed by the individual with a disability. Employers must periodically review these wages, with productivity reevaluations every six months and prevailing wage surveys annually.² 14(c) employers are both private businesses and, more commonly, nonprofit organizations providing rehabilitation or job training services.

Unlike many wage and hours provisions, wage protections under 14(c) have gotten worse since its enactment. In 1938, the law set a wage floor at 75% of the federal minimum wage; a threshold that reduced to 50% in 1966 and was removed entirely in 1986. As a result, some in this program have been legally paid pennies per hour.³ Data from the United States Government Accountability Office shows that, as recently as 2019, more than half of workers employed by organizations holding subminimum wage certificates earned less than \$3.50 per hour and about 14% earned the federal minimum wage of \$7.25 or more during this period .⁴

Historically, subminimum wage work was primarily carried out in segregated areas known as sheltered workshops, which separated individuals with disabilities from their non-Disabled coworkers. In New York, there were 112 sheltered workshops employing approximately 8,020 individuals in 2019. New York formally ended the use of sheltered workshops in 2021, signaling an important policy shift away from segregated employment settings. However, the legacy and impacts of the 14(c) system continue to shape employment experiences for individuals with disabilities. Although sheltered workshops no longer exist, approximately 20 sites are employing just over 1,200 individuals today.

² <https://www.dol.gov/agencies/whd/fact-sheets/39-14c-subminimum-wage>

³ [https://www.ilr.cornell.edu/carow/carow-policy/subminimum-wage-people-disabilities#:~:text=Section%2014\(c\)%20of%20the,holders%20to%20guard%20against%20Exploitation](https://www.ilr.cornell.edu/carow/carow-policy/subminimum-wage-people-disabilities#:~:text=Section%2014(c)%20of%20the,holders%20to%20guard%20against%20Exploitation)

⁴ <https://www.gao.gov/assets/gao-23-105116.pdf>

Vermont as a path forward

Vermont can serve as a model for integrated employment. The state started ending its sheltered workshops in 1999, completing the phaseout totally in 2005. Their approach to stop funding these spaces allowed them to stop the inflow of new individuals while also focusing on transitioning out those who were already employed in the 14(c) facilities.

Increased spending on supports and integrated employment in the state, with The National Survey of State Intellectual and Developmental Disabilities Agencies' Employment and Day Services reporting that Vermont's IDD agency spent roughly four times as much as New York on integrated employment in 2023 (22.4% of total funding compared with NY's 4.9%) allowed the state to ensure greater success.

While Vermont has arguably had a much long to improve employment outcomes for disabled individuals, their approach has proven a model of success. Within three years of the closure of the last sheltered workshop, 80% of those segregated employees receiving subminimum wage found integrated employment at an actual wage. By 2013, supported employees made on average \$9.26 an hour, \$0.50 above Vermont's minimum wage and \$2 above the national minimum wage.⁵ Further, as the statistics earlier in this testimony indicate, Vermont remains consistently above the national average in employing individuals with all types of disabilities.

In New York, the work to shift people out of 14(c) programs into integrated work of their choice is largely being done through an ACCES-VR program called Subminimum Wages to Competitive Integrated Employment pilot program, or SWTCIE.

One part of the solution – SWTCIE

The Center for Disability Rights is one of the independent living centers serving as a SWTCIE agency. SWTCIE staff work with people who have been described as having behavioral issues, called not work ready, and who communicate poorly. They work with those who are told that working in the 14(c) is all they can do. Participants get stuck in the mindset of "This is all I can do."

That is the barrier SWTCIE staff must overcome; but with the proper mindset and supports, we have found that when you take the time and give people a chance, when you work with

⁵ <https://disabilityjustice.org/wp-content/uploads/Texas-Tech-Law-Review-Winter2016.pdf>

people who are willing to take that chance with you, what they have always been told is impossible becomes possible.

This won't happen overnight, but people are warming up to the idea and changes are being made.

Those being transitioned to integrated employment through SWTCIE work with SWTCIE agencies using a tool called the fidelity scale. This scale is based on one fundamental principle, that it is the individual's fundamental right to choose what they want to do and that it is the role of SWTCIE programs to provide the necessary supports to achieve those goals.

SWTCIE program staff help facilitate the individual's choice of employment through a number of steps. It begins by meeting with the individual and as many members of their support team as possible, including ACCES-VR representatives, 14(c) staff, family, and other individual supports. In this meeting, the SWTCIE staff identify what role the individual is currently performing, their strengths, their weaknesses, and most importantly, what they enjoy.

An interview may ask:

- What is something that has made you/person proud?
- What is something you/this person is good at?
- Can you identify your/this person's strengths/limits/weaknesses?

The SWTCIE program may go with this person to places in the community that they enjoy, both to get an idea of possible employment opportunities as well as to see how they interact in different situations and get an idea of how the information they learned in the interview might be translated to other scenarios.

Once this has occurred, the SWTCIE staff work with local businesses to identify potential needs that would be a fit for the individual based on their identified choices. They work with the business to identify a need and create a potential role for the individual, then submit a proposal to the business outlining the hours, the scope of work, and how long the work tryout or work experience will last, up to a maximum of 460 hours.

Once the individual is employed, SWTCIE will maintain contact, providing continuing supports and working to identify someone also on staff at the workplace who would be willing to not only mentor the transitioning individual, but also help them integrate into the staff by sharing workplace culture, inviting them to after-hours events, and more.

At the end of the work tryout or work experience, the workplace and the individual identifies whether it was a good fit that should be continued, or if the process needs to restart. However, in an instance where a restart may be necessary, increased knowledge from SWTCIE staff combined with word of mouth through the small business community where most placements occur helps quickly identify new opportunities that are more likely to succeed.

The SWTCIE pilot is new, and growth has been slow. Further, SWTCIE takes time, with a successful placement that goes all the way through the process taking six to twelve months. However, the staff, 14(c) participants, and the business community are learning rapidly. As the program continues to roll out, a few initial successes are rapidly turning into a process that can grow exponentially. With proper funding, it presents a viable path forward out of the 14(c) model.

“SWTCIE” case example – Wegmans

The first successful placement CDR had was with an individual who was ultimately employed with the supermarket chain Wegmans. After being referred to CDR, we were able to ascertain immediately that his goal was to get a job at the grocery store.

Based on a number of provisions within the SWTCIE fidelity scale, Wegmans was not a good fit for this individual. The position was further from the individual’s housing than necessary, it did not provide a direct route for job coaching, and the schedule was not constant.

However, when it comes to the fidelity scale, what is most important is the individual’s right to choose. And for this individual, the choice of wanting to work at Wegmans was clear.

The staff at the 14-c and other programmatic supports repeatedly identified reasons why Wegmans would not be a good fit. They said the participant would be too cold. They highlighted the lack of support and protection. They told the person that Wegmans would be unhappy with their job performance. However, to their credit, this participant pushed on with the full support of CDR’s staff because that was what they wanted.

The SWTCIE staff helped research the position. The client, contrary to what others said was possible, figured transportation out primarily on their own. CDR staff advised the participant on the risks and made them aware of the potential hardships. Fully educated and with eyes wide open, this participant chose the path of adversity versus a passive one.

Wegmans itself, while interested in hiring the individual, was not interested in tryout periods, bureaucratic state processes, or other aspects of the SWTCIE program. They wanted to hire this person, and they wanted to move quickly. CDR was able to provide off-

contract job coaching, and as I sit here before you, this individual is now 5 months on the job and successful.

This shows what is possible through SWTCIE. Build and change policies. Build a network of potential employers. While it can take effort and risk from the SWTCIE staff and participant, for those who can see the idea behind the process, who are willing to “take a chance,” SWTCIE proves that anyone who wants to work not only can, they can succeed.

Policy solutions

Employment for individuals with disabilities presents a complex picture. While many look to address the notion of employment in a vacuum, it does not exist in one. Therefore, when seeking policy solutions that address employment for those with disabilities, the state must look to address the structural and systemic barriers that impacting the conversation. Some of these solutions are fiscal, some are programmatic, and many are both.

Expand SWTCIE through increased funding

For SWTCIE, it has been shown that the pilot is an effective means of increasing employment and transitioning people out of subminimum wage “employment.” To fully address the 14(c) problem in New York and move the approximately 3,000 individuals out of these settings and into employment with a real wage, more funding is necessary to bring the program to scale. CDR estimates that with an additional \$750,000 we could work to transition all individuals in the Rochester and Finger Lakes regions within two-three years. This is an ambitious goal, but with dedicated staff and 14(c) participants committed to transitioning to a higher wage, it is possible.

Study the fiscal benefits cliff and enact New York Health with long-term care

Beyond the SWTCIE program, it is address the other barriers to employment that impact 14(c) participants as well as most other individuals with disabilities. These steps will impact those transitioning to a real wage as well as those in the Disability community who are not in 14(c) but either are currently navigating employment with a disability or seeking to.

The benefits cliff, where people risk losing benefits if they earn too much, directly impacts whether people with individuals can work, how many hours they can work, how much they can earn, and whether they can accept a promotion. For programs such as food and utility assistance or Medicaid, which remains critical because employer-sponsored health insurance does not cover many of the benefits needed by those with disabilities, , the fiscal cliff is a complex patchwork of eligibility rules that people with disabilities must navigate in

order to gain and keep employment. This can discourage employees from seeking career advancement and higher wages. It also results in Disabled New Yorkers making less than their peers, and in some instances those they supervise.

Several years ago, the state passed an increase to the Medicaid Buy-In for Working People with Disabilities (MBI-PWD) that would have dramatically increased income limits for this program; however, that change is currently stalled and the income limit is stuck at just over \$64,000 per year. A simpler solution for Medicaid would be to enact New York Health, which contains a long-term care option. This will immediately solve this problem, as well as the next. For other programs, it is critical to continue to examine the root causes of the benefits cliff and develop policy solutions that address them.

Eliminate the asset test

Long-term care, including the MBI-PWD, remains the only Medicaid service with an asset test limiting how much they can save and what assets they may own. Therefore, while most New Yorkers are told to set aside savings for retirement, those with disabilities are legally prohibited from doing so. They must forgo employee benefits that match contributions to an IRA or 401(k). They cannot have a pension. They cannot even maintain anything but the smallest savings account to guard against emergencies. This means the slightest unplanned emergency can bring financial ruin and the loss of their job. New York Health with the inclusion of long-term care will solve this problem. Short of that, the state must act to remove the asset test from Medicaid entirely, ending a practice that treats those with disabilities differently than everyone else who needs the service.

Increase public transit funding to expand transportation routes and paratransit

Transportation access is also a barrier for many individuals, especially in areas with limited mass transit, particularly in upstate and rural areas. New York must take steps to expand transit lines, enabling individuals with disabilities to reach employers in places located further than three-quarters of a mile from a bus route, the legal requirement for paratransit services.

Paratransit must also be made more reliable, and allow for scheduling at less than 24-48 hour windows required by most transit authorities. Paratransit often gets people to their appointments two to three hours early, and forces them to wait two to three hours after the end, for pick-up and drop off. That is not tenable for those seeking to use the service for work. Further, the services lack of reliability means that those using it would likely be terminated rapidly due to no fault of their own. All of this relies on additional funding, and

CDR supports calls for 15% more funding for public transit in the Upstate regions, and for an additional \$25 million for paratransit services.

Eliminate structural ableism in employment policies

Finally, in many instances ableist workplace policies and a lack of support and accommodations further hinder individuals' ability to find employment. For instance, many employers list among job requirements that an individual must be able to lift 25 pounds, even if there is no portion of the job that would require such a feat, or such a task could be remedied by a reasonable accommodation pursuant to the ADA. Many other employers require in-person work but have physical office spaces that are inaccessible, either because of staircases, bathrooms, or other spaces. These rules and spaces must be seen as what they are – discriminatory, and the state must take action.

To ensure full employment for people with disabilities, eliminate subminimum wage employment, and become a National leader in this space, these issues must be addressed to fully realize the potential of Disabled workers to achieve their full potential in their careers and employment paths.