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# OHIO LEGISLATIVE SERVICE COMMISSION

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R-136-0014

**To:** The Honorable Dontavius Jarrells  
Ohio House of Representatives

**From:** Chris Edwards, Attorney  
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**Date:** January 28, 2025

**Subject:** Analysis of bill draft I\_136\_0077

## SUMMARY

- Prohibits, beginning 90 days after the bill's effective date, the Director of Commerce from issuing or renewing state licenses authorizing an employer to pay an employee with a mental or physical disability or injury at a wage lower than Ohio's minimum wage (a subminimum wage).
- Prohibits, beginning 90 days after the bill's effective date, an employer from paying subminimum wages to an employee with a disability unless, on the date that is 90 days after the bill's effective date, the employer (1) employs the employee and (2) holds a state license authorizing the payment of subminimum wages.
- Prohibits, beginning five years after the bill's effective date, all employers from paying subminimum wages to employees with disabilities.
- Requires, not later than 15 months after the bill's effective date, each employer holding a state license or federal 14(c) certificate authorizing the payment of subminimum wages to submit to the Director of Developmental Disabilities a transition plan that addresses phasing out subminimum wages and supporting employees with disabilities.
- Requires the Director and the Executive Director of the Opportunities for Ohioans with Disabilities Agency to assist employers with phasing out subminimum wages, gather information regarding the phase out, and solicit assistance in carrying out the Director's duties under the bill from various interested parties.
- Requires specified state agencies that employ or provide employment services to individuals with disabilities to coordinate to ensure state resources contribute toward the competitive, integrated employment of individuals with disabilities and to share information regarding phasing out subminimum wages.

- Requires the Employment First Task Force to review the employer transition plans, support individuals with developmental disabilities in seeking competitive employment, ensure developmental disability services that align with national models are available, and identify opportunities for improving health outcomes for these individuals.
- Requires each political subdivision that provides employment services to individuals with developmental disabilities to implement a policy that complies with Ohio's policy regarding community employment for these individuals and ensure the policy is followed whenever employment services are provided to them.
- Authorizes a nonrefundable tax credit against the income tax or commercial activity tax (CAT) for purchases made from certain nonprofit organizations that employ individuals with physical or intellectual disabilities.

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## **DETAILED ANALYSIS**

### **Minimum wage for employees with disabilities**

The bill enacts the Ohio Employment First and Greater Opportunities for Persons with Disabilities Act.<sup>1</sup> It phases out an employer's ability to pay an employee whose earning capacity is impaired by a physical or mental disability or injury at a wage lower than Ohio's minimum wage (a subminimum wage). Ultimately, beginning five years after the bill's effective date, no employer may pay a subminimum wage. The Minimum Wage Amendment to the Ohio Constitution<sup>2</sup> and Ohio's Minimum Fair Wage Standards (MFWS) Law<sup>3</sup> prescribe the minimum wages an employer must pay its employees, including employees with disabilities. The Ohio Constitution authorizes the issuance of licenses to employers permitting them to pay less than Ohio's minimum wage to employees with disabilities (a state license). Pursuant to Ohio's MFWS Law, the Director of Commerce has adopted rules regarding the issuance of these state licenses. Although the Ohio Constitution authorizes the issuance of these licenses, it allows the General Assembly to pass laws setting a higher minimum wage rate.<sup>4</sup>

#### **Phase out**

The bill, beginning 90 days after its effective date, prohibits the Director from issuing or renewing any state licenses. Beginning the same date, an employer cannot pay a subminimum wage unless, on the date that is 90 days after the bill's effective date, the employer:

- Employs an employee with a physical or mental disability or injury; and

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<sup>1</sup> Section 3.

<sup>2</sup> Ohio Constitution, Article II, Section 34a.

<sup>3</sup> R.C. Chapter 4111.

<sup>4</sup> Ohio Const., art. II, sec. 34a and R.C. 4111.06 and 4111.14(C). See also Ohio Administrative Code Chapter 4101:9-1.

- Holds an unexpired state license.

The bill extends the validity of an unexpired state license for the time period that ends five years after the bill's effective date, and an employer meeting the two criteria above may pay subminimum wages during that time period.<sup>5</sup>

## Prohibition

Beginning five years after the bill's effective date, the bill prohibits all employers from paying subminimum wages.<sup>6</sup> Thus, on and after that date, an employer must pay an employee with a disability at least Ohio's minimum wage. For 2025, Ohio's minimum wage is \$10.70 per hour for nontipped employees and \$5.35 per hour for tipped employees.<sup>7</sup>

Continuing law prohibits an employer from paying or agreeing to pay wages at a rate lower than the rates applicable under Ohio's MFWS Law. Whoever violates that prohibition is guilty of a third degree misdemeanor.<sup>8</sup>

## Interaction with federal law

With some exceptions, the federal Fair Labor Standards Act<sup>9</sup> (FLSA) requires an employer subject to the FLSA to pay an employee the federal minimum wage of at least \$7.25 per hour. One exception is that an employer may pay an employee with a disability at a rate below the federal minimum wage under certain conditions. To do so, an employer must hold a special certificate issued by the U.S. Department of Labor (known as a "14(c) certificate" and referred to as a "federal certificate" in the bill).

An employer may be subject to the FLSA, Ohio's MFWS Law, or both. The FLSA requires an employer subject to both laws to comply with the law that establishes a higher minimum wage. According to U.S. Department of Labor guidance, an employer must do so even if the employer holds a 14(c) certificate.<sup>10</sup> Ohio currently has the higher minimum wage.<sup>11</sup>

## Employer transition plans

Not later than 15 months after the bill's effective date, the bill requires each employer that holds a state license or 14(c) certificate authorizing the payment of subminimum wages to

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<sup>5</sup> R.C. 4111.06(C) and (D).

<sup>6</sup> R.C. 4111.06(E).

<sup>7</sup> R.C. 4111.06, with conforming changes in R.C. 4111.14. See R.C. 4111.02, not in the bill, and [2025 Minimum Wage \(PDF\)](#), which may be accessed by conducting a keyword "minimum wage poster" search on the Ohio Department of Commerce's website: [com.ohio.gov](http://com.ohio.gov).

<sup>8</sup> R.C. 4111.13 and 4111.99, not in the bill.

<sup>9</sup> 29 United States Code (U.S.C.) 201 *et seq.*

<sup>10</sup> 29 U.S.C. 206, 214(c), and 218, 29 Code of Federal Regulations 525.20, and [Administrator's Interpretation No. 2016-2 \(PDF\)](#), which may be accessed by conducting a keyword "Administrator's Interpretation No. 2016-2" search on the U.S. Department of Labor website: [dol.gov](http://dol.gov).

<sup>11</sup> See [2025 Minimum Wage \(PDF\)](#).

submit to the Director of Developmental Disabilities a transition plan that addresses how the employer intends to:

- Phase out subminimum wages by five years after the bill's effective date; and
- Support individuals with disabilities in pursuing competitive, integrated employment.<sup>12</sup>

## **Phase out assistance**

### **Assisting employers**

The bill requires the Director of Developmental Disabilities, in consultation with the Executive Director of the Opportunities for Ohioans with Disabilities Agency (OOD), to assist employers with phasing out subminimum wages and to:

- Identify and develop protections to ensure competitive, integrated employment for employees with disabilities while phasing out subminimum wages;
- Identify and collaborate with employees, employers, organizations, agencies, and stakeholders impacted by the subminimum wage phase out to assist them with implementing employer transition plans and creating sustainable, competitive employment;
- Collect data on employers that hold state licenses or 14(c) certificates for five years after the bill's effective date;
- Propose a plan to establish and evaluate benchmarks for measuring progress with respect to implementing the transition plans each year until subminimum wages are eliminated;
- Propose a plan to monitor and track the outcomes of employees with disabilities;
- Identify initiatives, investments, training, and services designed to improve wages, reduce unemployment rates, and provide support and sustainable work opportunities for individuals with disabilities;
- Identify and make recommendations for sustainable support, funding, and resources to assist individuals with disabilities with respect to phasing out subminimum wages, such as financing for the cost to implement and provide employment services, training, and support; and
- Ensure the employer transition plans protect the rights of individuals with disabilities under the federal Americans with Disabilities Act of 1990<sup>13</sup> and Ohio's Civil Rights Law.<sup>14</sup>

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<sup>12</sup> R.C. 4111.061(B).

<sup>13</sup> 42 U.S.C. 12111, *et seq.*

<sup>14</sup> R.C. 4111.061(C), by reference to R.C. Chapter 4112.

## Reports

By January 1 that first occurs after the bill's effective date, and annually by January 1 until five years after the bill's effective date, the Director must submit to the Governor and General Assembly a report that includes all of the information described above relating to assisting employers.<sup>15</sup>

### Requesting assistance

The Director, in consultation with the OOD Executive Director, must solicit assistance from all of the following in carrying out the Director's duties under the bill:

- The Employment First Task Force;
- Stakeholders who have expertise regarding the employment of individuals with disabilities, at least 20% of whom must be individuals with disabilities;
- Family members of individuals with disabilities;
- Organizations that advocate on behalf of individuals with disabilities;
- Providers of services to individuals with disabilities;
- Local governments;
- Business associations.<sup>16</sup>

### State agency duties

The bill requires cabinet level departments and other specified state agencies that employ or provide employment services to individuals with disabilities to:

- Coordinate and collaborate with each other to ensure that state programs, policies, procedures, and funding contribute toward the competitive, integrated employment of individuals with disabilities; and
- Share nonconfidential data and other information with each other to track progress with respect to phasing out subminimum wages.

These requirements apply to the state departments and agencies listed below:<sup>17</sup>

State departments and agencies subject to the bill				
Office of Budget and Management	Department of Commerce	Department of Administrative Services	Department of Transportation	Department of Agriculture

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<sup>15</sup> R.C. 4111.061(D).

<sup>16</sup> R.C. 4111.061(E), by reference to R.C. 5123.023.

<sup>17</sup> R.C. 4111.061(A) and (F), by reference to R.C. 121.01, not in the bill.

State departments and agencies subject to the bill				
Department of Natural Resources	Department of Health	Department of Job and Family Services	Department of Children and Youth	Department of Public Safety
Department of Mental Health and Addiction Services	Department of Developmental Disabilities	Department of Insurance	Department of Development	Department of Youth Services
Department of Rehabilitation and Correction	Environmental Protection Agency	Department of Aging	Department of Veterans Services	Department of Medicaid
Department of Education and Workforce	Bureau of Workers' Compensation	Department of Higher Education	Department of Taxation	Ohio Public Utilities Commission

### **Political subdivision compliance with Ohio policy**

The bill requires each political subdivision that provides employment services to individuals with developmental disabilities to:

- Implement a policy that complies with Ohio's policy that employment services for individuals with developmental disabilities be directed at community employment (competitive employment that takes place in an integrated setting); and
- Ensure the policy is followed whenever employment services are provided to individuals with developmental disabilities.

Under continuing law, "competitive employment" is work in the competitive labor market in which payment is at least the minimum wage but not less than the customary wage and benefits paid for the same or similar work performed by individuals without a disability. "Integrated setting" is a community setting where individuals with developmental disabilities interact with individuals without disabilities to the same extent that individuals in comparable positions without a disability interact with other individuals.<sup>18</sup>

### **Employment First Task Force**

#### **Duties**

The bill includes additional duties for the Employment First Task Force. The Task Force's purpose under continuing law is to improve coordination of the state's efforts to address the needs of individuals with developmental disabilities who seek community employment. The bill requires the Task Force to:

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<sup>18</sup> R.C. 5123.022.

- Review the employer transition plans and develop long-term strategies to assist employers in phasing out subminimum wages;
- Review and develop recommendations to transition individuals with developmental disabilities from subminimum wages and to support them in seeking competitive employment;
- Work with interagency partners to ensure developmental disability services that align with national models are available for individuals with developmental disabilities; and
- Use data available to the Department of Developmental Disabilities to identify opportunities for improving health outcomes for individuals with developmental disabilities.<sup>19</sup>

## Reports

By March 1 immediately after the bill's effective date, and by March 1 of each even-numbered year after that, the Task Force, in consultation with the Department, must submit to the General Assembly a report that includes:

- Information regarding the outcomes, best practices, and challenges with respect to individuals with developmental disabilities;
- Information regarding opportunities to support individuals with developmental disabilities; and
- Legislative recommendations for creating a better system of care for individuals with developmental disabilities.<sup>20</sup>

## Patients and residents of hospitals and institutions

The bill eliminates the ability of a hospital for individuals with mental illnesses and an institution for individuals with intellectual disabilities to pay subminimum wages to a patient or resident who volunteers to work. Thus, under the bill a patient or resident must be paid at a rate based on the value of the work performed, having reference to the prevailing wage rate for comparable work.<sup>21</sup>

## Tax credit for purchases from qualifying employers

The bill authorizes a tax credit for purchases made from nonprofit organizations that employ individuals with physical or intellectual disabilities. Businesses and individuals that purchase goods and services from such organizations can claim the credit against the income tax or commercial activity tax (CAT). The credit equals 15% of the cost of such purchases.

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<sup>19</sup> R.C. 5123.023.

<sup>20</sup> R.C. 5123.023.

<sup>21</sup> R.C. 5122.28 and 5123.87.

## Purchase requirements

To qualify for the credit, a taxpayer must purchase goods or services from a 501(c)(3) nonprofit corporation that has been certified as a **qualified vendor**. An organization can receive that certification if:

1. At least 20% of the organization's employees are individuals with physical or intellectual disabilities that cause a substantial barrier to employment, as determined by a health care provider or a federal or state agency.
2. The organization employs those individuals in an "integrated setting" – i.e., a work setting in which employees with disabilities have an equal opportunity to interact with employees without disabilities.
3. The organization provides health insurance for those employees, either by (a) offering an employer-sponsored health plan, (b) paying 75% of the employee's premiums for individual insurance, (c) paying the Affordable Care Act (ACA) employer shared responsibility payment for employees who purchase insurance through a state exchange, or, (d) if the employer is not subject to the ACA, covering at least 75% of the employee's health insurance costs through a health savings account (HSA) or similar method.

A nonprofit corporation may apply to OOD to be certified as a qualified vendor. If certified, an organization must also notify OOD if it no longer qualifies. OOD may revoke a certification if it receives that notice or otherwise determines that an organization no longer meets the requirements of a qualified vendor.<sup>22</sup>

## Credit amount

The credit equals 15% of the price of purchases made from a certified qualified vendor, subject to two limitations. First, OOD cannot issue more than \$8 million of credits per year, i.e., \$53.3 million in eligible purchases overall. Second, not more than \$500,000 of credits can be issued per year for purchases from any single vendor, i.e., \$3.3 million in eligible purchases from a vendor.

The price upon which the credit is calculated is the same price basis upon which sales taxes are calculated. The credit is nonrefundable, which means that it can only reduce a taxpayer's liability to zero. However, if the credit does exceed a taxpayer's liability, the taxpayer can carry forward any excess credit for up to four years.<sup>23</sup>

## Application procedure

To receive the tax credit, a taxpayer must apply to OOD between January 1 to 21 after the year in which the purchases are made. In the application, the taxpayer must state whether it intends to claim the credit against the CAT or the income tax.

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<sup>22</sup> R.C. 3304.45(A) and (D).

<sup>23</sup> R.C. 3304.45(B) and (C), 5747.87, 5747.98, 5751.56, and 5751.98.



OOD will review applications on a first-come, first-served basis. If OOD approves an application, it will issue a tax credit certificate to the applicant stating the amount of the credit allowed and the tax against which it can be claimed.<sup>24</sup>

### **Annual report**

The bill requires OOD to issue an annual report to the General Assembly about the tax credit program. The report must include the number of tax credit certificates issued during the preceding year, the amount of credits awarded, and any other information OOD considers pertinent.<sup>25</sup>

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<sup>24</sup> R.C. 3304.45(C).

<sup>25</sup> R.C. 3304.45(E).