

# Subminimum Wage Certificates

*A report prepared jointly by*

The Department of Labor & Industries

And

The Department of Social and Health Services



*Transforming Lives*

*2022 Annual Report to the Legislature*

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# Executive Summary

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## Introduction

The 2021 Washington State Legislature ended the practice of allowing workers with a disability to earn less than minimum wage if their employer had a certificate from the Department of Labor & Industries (L&I). Engrossed Substitute Senate Bill 5284 also eliminated new certificates for any employer in Washington State after July 31, 2023 and phases out existing certificates. Active certificates, as of July 31, 2023, remain in effect until the listed expiration date. The Legislature also directed L&I to notify employers, employees, legal guardians, or other authorized representatives of their certificate's expiration date and allow employers to request a one-time, one-year extension.

L&I and the Department of Social and Health Services (DSHS) are also directed to update the Legislature annually on the remaining certificates for these workers. This is the second of those annual reports.

## 2022 Status Update

As of June 30, 2022 there were 126 active subminimum wage certificates issued to employers of workers with a disability. Each worker must have their own certificate. These certificates are held by six employers.

DSHS has notified all subminimum wage certificate holders of the new law and services offered by the department. Based on DSHS records, 40 clients employed under a certificate contacted the DSHS Developmental Disabilities Administration (DDA) for assistance with individual employment, assistive technology, and community inclusion.

All DSHS DDA clients are referred to DSHS Division of Vocational Rehabilitation (DVR). During Fiscal Year 2022, 84 workers employed under a subminimum wage certificate were referred to DSHS DVR to receive career counseling, information, and referral services based on their payment of a subminimum wage. This figure includes all 40 clients referred from DDA. By DSHS DVR records, of the 84 referrals received, 77 individuals were provided with DSHS DVR career counseling, information and referral services for subminimum wage workers. At this time, DSHS DVR does not have information to indicate if these clients continued employment after their certificates expired.

The two agencies executed a data sharing agreement that allows a comparison of the workers receiving services through DSHS DDA and those who are working under a subminimum wage certificate issued by L&I until all subminimum wage certificates expire.

# Introduction

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Washington’s Minimum Wage Act was first passed in 1959, requiring most workers be paid at least minimum wage for all hours worked. It allowed several exceptions, specifically authorizing the Department of Labor & Industries (L&I) to issue certificates so certain employers could pay less than minimum wage to learners, apprentices, messengers, and workers with a disability.

Following the passage of Washington’s Minimum Wage Act, L&I enacted rules to administer and enforce the statute in 1960. Those rules allowed employers to request certificates to pay less than minimum wage to workers with a disability. These rules were untouched until 2017—then amended to use “people-first” language during regulatory clean-up efforts stemming from Initiative 1433.

The next change to the regulatory environment for workers with a disability in Washington came in 2019 when the Legislature restricted any state agency from paying such workers less than the minimum wage under a certificate. Existing certificates for these employees expired June 30, 2020.

The 2021 Washington State Legislature extended these restrictions to all employers of workers with a disability and prohibited L&I from issuing new certificates after July 31, 2023. Certificates are typically issued for a two-year period. For example, a certificate issued just prior to the last date certificates may be issued, July 30, 2023, could continue until July 30, 2025. Under the law, employers may also request a one-time, one year extension for certificates for workers eligible for services from DSHS Developmental Disabilities Administration (DDA). Therefore, the last date that a worker may continue to be paid less than minimum wage is July 30, 2026 – but only if that worker continues to work under a valid certificate and is eligible to receive services from DDA.

The law further requires L&I to notify employers, employees, legal guardians, and/or other authorized representatives of the expiration date for each certificate and the employer’s right to request extension. L&I must provide this notification to the parties 90 days prior to the expiration of each certificate.

Finally, L&I must coordinate with DSHS to report to the Legislature on the remaining certificates for workers with a disability. The agencies must report how many workers with a disability had certificates that are expired, lost their jobs, and requested DSHS services. They must also report how many workers continue to be employed after the expiration date of their certificate. That information is below.

The two agencies will continue to report annually until all remaining certificates expire.

# 2022 Discussion and Update

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Under ESSB 5284 from the 2021 session, the Legislature directed L&I and DSHS to prepare an annual report until all remaining certificates for workers with a disability expire. The annual report must contain three key components:

1. The number of certificates remaining;
2. The number of individuals working under a certificate who have contacted DSHS DDA to receive individual technical assistance or other services, and a list of services provided; and
3. The number of individuals who continue to be employed after the expiration date of their certificate, and a description of any services or assistance provided to these individuals by DSHS DDA or DVR.

The two agencies offer the following information in response to the legislative requirement.

- As shown in Figure 1 below, as of June 30, 2022 there are 126 active certificates issued to employers of workers with a disability. These certificates are held by six employers. There are 65 DDA individuals with an active certificate earning subminimum wage.
- During FY 2022, 84 employees working under a certificate for subminimum wage employment were referred to DSHS DVR to receive career counseling, information and referral services. Upon referral from an entity employing individuals at subminimum wage, DSHS DVR is required, under the Workforce Innovation and Opportunity Act of 2014, to provide these services to people with disabilities (or their representative), regardless of age or employment at subminimum wage so they may pursue competitive integrated employment if they wish to do so.
- All subminimum wage DDA clients are referred to DSHS DVR. By DSHS DVR records, of the 84 referrals received, 77 individuals were provided with DSHS DVR career counseling, information and referral services for subminimum wage workers. At this time, DSHS DVR does not have the information to indicate if these clients continued employment after their certificates from L&I expired. Individuals can sign a refusal of services form, not participate due to extenuating circumstances, or participate in a career counseling information and referral for services session but not complete the required documentation.
- A current data sharing agreement between L&I and DSHS has been executed. This allows the agencies to match DSHS DDA clients to L&I's active certificates until they expire.
- DSHS documented that 40 DDA individuals contacted DDA for technical assistance or services between July 2021 and July 2022. All requests have been acted upon. DDA has

also contacted all DDA subminimum wage certificate holders in relation to the passage of ESSB 5284 and services offered by DDA.

- While 65 active subminimum wage DDA clients currently remain, there are 99 DDA clients who no longer earn subminimum wage but had in prior periods. Here is what they are doing now. Note that the following percentages will total more than 100 because some clients fall into more than one category:
  - About 38% are making Washington State minimum wage or higher (some of these individuals are also utilizing other programs such as Community Integration or DVR).
  - With the support of DDA and/or DVR, about 13% are looking for paid employment.
  - Close to 22% of individuals are involved in Community Inclusion (some clients are earning wages and involved in this program).
  - About 9% decided to declare retirement from employment and day services.
  - About 26% are no longer making sub-minimum wage and do not have active open DDA funded Employment or Day services.
    - Some of these individuals were not getting support from DDA for employment supports when they were making sub-minimum wage.
    - There are some who have moved out of state or are currently in the hospital for health reasons.
    - Some workers are not actively engaged in services and are doing so out of an abundance of caution in relation to COVID – 19 or not able to comply with CDC guidelines around wearing masks and social distancing in the community, but hope to return to employment and or day services as COVID-19 restrictions and prevalence, decline.

Figure 1 below shows the number of workers with active subminimum wage certificates from L&I, as well as the number of employers holding those certificates for FY 2022 and FY 2021. As shown, the number of active certificates was reduced by 48 (27%) year over year, with 5 fewer employers holding those certificates.

**Figure 1: Number of Active Certificates for Workers with a Disability**

Fiscal Year	Number of Certificates Remaining	Number of Employers With Certificates
2022	126	6
2021	174	11

Source: L&I Employment Standards Program

## Conclusion

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In future reports, L&I and DSHS will report jointly information regarding subminimum wage certificates for workers with a disability. Fiscal Year 2022 represents a significant decrease in the number of active subminimum wage certificates issued by L&I, progressing toward the goal of Engrossed Substitute Senate Bill 5284 phasing out and eliminating subminimum wage certificates in Washington State by July 31, 2023.