

Productivity – Based Client Pay Systems and Sub-Minimum
Wage Certification:

Why They Won't Go Away – And Why They Probably Shouldn't

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Revised October, 2010

From time to time, over the last fifteen years, something appears in the professional literature, disability services list serves, or training seminar literature that calls for the elimination of sub-minimum productivity-based pay systems for adult workers with developmental disabilities. The cry goes out for “Real Work at Real Wages”, as if these two concepts fit neatly together. There is often the implication that center-based work programs and group supported employment providers are profiting in some way from the low earnings involved. Those who are most prominent in criticizing the pay-for-productivity systems frequently come from academic, clinical, recreational, or other non-vocational backgrounds, and their familiarity with concepts of added value, work measurement, and relative productivity is therefore sometimes in question.

On the surface, the way most severely disabled workers are compensated for their efforts does seem unfair and exploitive, and it is certainly understandable that persons with only a passing knowledge of this complicated issue might draw the wrong conclusions. Therefore, in the interest of relieving misunderstandings, and fostering greater (not less) employment opportunity for adults with cognitive and related impairments, I have assembled the following points for consideration:

Wealth Is Created by Adding Value to Goods and Services.

The source of all wealth required to generate wages, profits, and taxes is the value added to raw materials and services through the application of skilled productive labor. For example, twenty dollars worth of lumber is converted into one hundred dollars worth of kitchen cabinets by a skilled craftsman, who then harvests eighty dollars for his own use. Or a group of automobile workers convert \$8,500 worth of steel, aluminum, plastic, and rubber into a \$25,000 automobile, thereby generating \$16,500 for wages, dividends to stakeholders, and re-investment in new equipment.

Because workers with developmental disabilities have less sophisticated skill capabilities, and slower rates of output, their ability to add value is much less than that of highly skilled non-disabled workers. Hence, it frequently happens that several work center clients are required to match the output of one non-disabled worker, while many high-value, sophisticated, and highly technical tasks (machine tool fabrication and computer systems analysis, to name just a couple) are simply beyond the

intellectual capacity of the great majority of sheltered workshop and supported employment program participants. Therefore, the ability of the typical vocational rehabilitation “industry” to add value from which to harvest payroll, overhead, and profit is rather limited to begin with, irrespective of the further considerations noted below.

Employment of Persons with Disabilities is Problematic in a Market-Driven Economy.

The propensity for people with cognitive and physical disabilities to be employed has quite a bit to do with the relative supply of, and demand for, labor at a particular pricing point. During World War II, large numbers of folks with disabilities were employed, and this explosion in employment did not require special funding, highly trained counselors, or an expensive multi-layered service system. It was the result of a critical labor shortage coupled with a rapidly expanding industrial base. When millions of soldiers returned to the workforce at the end of the war, the disabled workers, with their limited flexibility and generally lower productivity, could no longer compete. It is probably no accident that, at that point in time, the sheltered workshop movement began to accelerate.

Basic Accommodations to Disability Were Needed to Boost Employment.

The sheltered workshops were not designed to segregate cognitively impaired citizens and extract profits from their systematic exploitation. On the contrary, they were designed to shelter the disabled workers from competition. The idea was to find a way that would allow these workers to pool their efforts such that four or five disabled workers could match the output of one non-disabled worker in competing industries. Special services were authorized, and subsidies were to be provided, so that the workshops would not need to include all of their extra costs in the pricing of their products. Clients were to be provided with essentials of daily living, including food, shelter, and medical care, so that they would not need to be dependent on their earnings for necessities. The pay for productivity system, and sub-minimum wage certification, were developed to provide incentives for clients to improve their skills, earnings, and self-support, and also to allow the workshops to compete without having their overall cost for labor exceed that of their private sector competitors. As many of us know, even with this type of assistance, it has been difficult for our production shops to compete since much of our competition is now off shore, where labor costs are much lower and the regulatory load we must carry is often non-existent.

A large number of work-based programs began to use a pay-for-productivity system that incorporates the concepts of prevailing wages, industrial standards, client productivity, and commensurate wages, as permitted under sections 14(c) of Federal Labor Law and Section 1191 of the California State Labor code. Both sections allow for qualified agencies to pay wages based on actual client performance under sub-minimum wage certification. These agencies have repeatedly met the

rigorous regulations required to maintain this certification, have been inspected by State and Federal officials on numerous occasions, and are also frequently subject to accreditation standards review on a regular basis in this area.

Why Aren't All Work Services Clients Paid at Least the Minimum Wage?

There are at least three good reasons why they are not:

- 1) Contract income will not cover the cost of the higher wages. Private customers utilize work center services and products through a competitive bid process. Because of the limited productivity of developmentally disabled individuals, it frequently requires 3-6 such workers to generate the same amount of commerce as just one of their non-disabled counterparts. Therefore, if these programs were not permitted to pay based on productivity, their prices could easily be double or triple those of the private sector competition. Obviously, no customer can be expected to pay this sort of dramatic cost differential simply to assist a supplier who employs people with disabilities.

- 2) Fee for service income will not (and should not) cover the cost of higher wages. Historically, client wages have not been a legally includable part of cost statements, whose purpose is to establish fair and equitable rates of reimbursement for work centers and day centers. The Internal Revenue Service and the Federal Department of Labor have repeatedly ruled that when public monies (fees from Regional Centers, State Departments of Rehabilitation, or school systems) are used to cover client payroll, it constitutes an inappropriate use of public funds to provide an unfair subsidy to the private businesses that use the rehabilitation center's services. Client wages must be paid out of sales or contract income, not dollars intended to fund programs and pay staff.

Unfortunately, some work centers and day programs do attempt to cover their client payroll out of service fee revenue. When they do so, they inevitably draw funds away from staff support, staff training, and staff payroll. Aside from operating within a questionable compliance posture, such agencies typically begin to suffer from the understaffing, higher turnover, and poor quality of services that inevitably result.

- 3) A Blanket Minimum-Wage Policy would impair a rehabilitation program's ability to measure productivity and would remove a major incentive for clients to improve their performance. Historically, a detailed analysis of the productivity level of the program participant has been central to the rehabilitation process. Indeed, it would be difficult to imagine how one might achieve an accurate evaluation of the training and rehabilitative needs of the client without a verifiable measure of productivity and earnings.

Once assessed and evaluated, each program participant is generally encouraged to develop useful work and social behaviors and to abandon those behaviors that may have, in the past, presented barriers to higher earnings and/or further community integration.

The prospect and achievement of higher productivity and a larger paycheck provides a very strong incentive for continued progress. These positive outcomes also parallel the rewards found in normal, non-disabled workplace environments. By providing clear feedback to the individual about his/her productivity, we communicate respect for the client as well as confidence that real improvements can be made, while also providing strong positive reinforcement for vocational progress.

How Are Wages Based on Productivity Determined?

1) Jobs paid by the piece:

Each step in the process is carefully timed so as to determine the time it takes for a typical non-disabled worker to perform that particular operation. Whenever possible, several non-disabled workers are studied and their times are averaged. From this information, an industrial standard is calculated; that is to say, the number of "pieces" a typical worker can be expected to produce in an adjusted hour. This number is then divided into the prevailing community wage for this type of work to yield the client's pay per each piece of work. For example, if the non-disabled expectation for placing labels on envelopes is 418 pieces per hour, and the prevailing wage for such work is \$9.32 per hour, then the rate paid to our clients for each piece produced would be .023, or just a bit under two and one-third pennies each.

2) Jobs paid by the hour:

In many cases (landscaping, janitorial, and clean up, for example) jobs and tasks are such that establishing piece rates is not practical or advisable. In these cases, the work program establishes fair hourly rates for each client, based on that client's actual productivity.

For tasks that are related to, but incidental to piece rate work, the client's percent of productivity while on piece rated jobs is calculated and often is used to establish an hourly rate to be applied to any non-piece rate time that is worked.

For clients whose jobs do not permit any piece rate paid time, a subjective performance evaluation is made, at least every six months, using methods prescribed and permitted under Federal and State labor law. Generally, this involves establishing non-disabled standards for various portions of the

job description, assessing the client's performance against those standards, and calculating a weighted average percentage of productivity. This percentage is then applied to the prevailing wage for the job to determine the client's individual commensurate wage. For example, if a client's weighted average productivity is 78%, and the prevailing wage for the job is \$15.21 per hour, then the client's individual commensurate wage would be \$11.87 per hour.

Under both the piece rate pay system and the subjective hourly evaluation system, each client receives accurate information about his/her current level of productivity, feedback regarding recent vocational progress or lack thereof, and strong financial incentives to set and meet objectives for improved competency and output.

Can't We Just Subsidize Clients With Low Productivity?

Any move to bring all disabled workers to at least minimum wage would require a huge outlay of additional funds; probably in excess of 200 million dollars per year in California alone, and this is quite likely a very conservative estimate. The possibility of including such an added cost in customer contracts is non-existent; the already stiff competition in a tight economy would result in severe and permanent job losses for workers with disabilities. We can assume, therefore, that the advocates of the elimination of sub-minimum wage certification must be contemplating the use of public funds to finance this change, and that scenario creates its own set of daunting challenges:

Under the existing pay-for-productivity systems, more than a few California disabled workers already have more disposable income each month than do the staff who serve them. This is because, in most cases, basic living and health expenses are already covered by existing public programs. In fact, generally the first to complain when client earnings go up are family members or clients themselves who are concerned about loss of subsidized health and living expense benefits. Moreover, it would be hard to argue for rate increases for the purpose of subsidizing client paychecks when so many of our California direct service staff, laboring under rate freezes and rate reductions for several years now, have a hard time meeting their own income requirements for groceries, medical expenses, and car repairs. Finally, as taxpayers and concerned citizens, it would certainly be hard for us to justify this type of expense when other public needs, such as health care, services to people with psychiatric disabilities, and effective youth drug prevention and rehabilitation programs go woefully underfunded.

In general, within the disability services field, it is obvious that we have not spent enough time discussing the rationale and the economics of the pay-for-productivity system. Moreover, some advocates seem to be drifting into a pattern of thinking which views any established part of the

service system as archaic and obsolete simply by virtue of its age. It is important to remember that in other fields, many currently quite useful conceptual models were developed hundreds or thousands of years ago. The essential dynamics of getting airplanes off the ground, or the basic design of hand tools, are two examples that readily come to mind. Yet in our field, we seem to be driven along a linear path with the mistaken notion that each step along that path is an inevitable step forward. It is more likely that progress evolves in a cyclical fashion, with swings back and forth and frequent trips down blind alleys. It is always helpful to note that, while every good idea was once a new idea, most new ideas do not turn out to be good ideas and are eventually discarded.

With regard to the need for sub-minimum wage certification specifically, we need to ask ourselves whether the economic realities that prompted the creation of these accommodations back in mid-twentieth century are still prevalent and relevant today; and I believe that they are. Therefore, the burden should fall on those who seek to usher in a new era to explain why productivity-based pay systems are no longer needed, how they might be discarded, and how the massive required subsidies will be funded.

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