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Institute Brief: Minimum Wage Increase: A Guide for Disability Service Providers (UPDATED 2009)

David Hoff
University of Massachusetts Boston, david.hoff@umb.edu

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THE INSTITUTE BRIEF

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Minimum Wage Increase: A Guide for Disability Service Providers

On July 24, 2009, the federal minimum wage increased to $7.25 per hour, the final phase of a series of increases resulting from federal legislation passed in 2007. In addition, a number of states have recently increased the minimum wage beyond federal requirements. Given that many individuals with significant disabilities earn wages at or near the minimum wage, they are likely to be impacted by these changes. The increased minimum wage is a welcome opportunity for many individuals to increase their income from working. However, questions may arise regarding the increase in minimum wage, and service providers are encouraged to assist and guide the individuals they support to deal with any concerns they may have. There are additional issues that service providers also must consider, particularly if they pay consumers for work. The purpose of this fact sheet is to help guide service providers in this process. Updated information on the current minimum wage can be found at ***www.dol.gov/dol/topic/wages/minimumwage.htm***

This issue of *The Institute Brief* is a product of the Institute for Community Inclusion (ICI) at the University of Massachusetts Boston, with input from the State Employment Leadership Network (SELN). This issue was written by David Hoff.

For more information contact David Hoff: 617.287.4308 (v); 617.287.4350 (TTY); david.hoff@umb.edu

www.communityinclusion.org

This publication will be made available in alternate formats upon request.

What's the difference between national and state minimum wages and which one applies?

The federal government establishes the national minimum wage, which is the minimum pay rate for hourly employees nationally. In addition, states can establish their own minimum wage rates. When the federal and state laws have different minimum wage rates, the higher rate applies. Some states have minimum wage rates that are significantly higher than the national rate. A list of state minimum wages can be found at: ***www.dol.gov/esa/minwage/america.htm***

Do all employers have to pay the federal minimum wage?

While many employees are covered by the Federal Labor Standards Act (FLSA) and subject to the federal minimum wage requirements, there are some employees who are not. As the exemptions are narrowly defined, employers should check the exact terms and conditions for each by contacting their local U.S. Department of Labor Wage and Hour Division office (listing available at: ***www.dol.gov/esa/contacts/whd/america2.htm***). The following are examples of employees exempt from both the minimum wage and overtime pay requirements: executive, administrative, and professional employees, outside sales employees, and certain skilled computer professionals. Additional categories and details regarding employees who are covered and not covered are available at: ***www.dol.gov/compliance/guide/minwage.htm***

Note: Even if an employee is not covered under the federal minimum wage law, they may be covered under your state's minimum wage law.

Impact on public benefits for consumers

Concerns regarding the impact of wages from employment on public benefits, such as Social Security Disability Insurance (SSDI), Supplemental Security Income (SSI), Medicare, and Medicaid, are an ongoing issue for many individuals and families. The increase in minimum wage is potentially going to increase this concern. Service providers are encouraged to be anticipatory and pro-active regarding the increase in the minimum wage to address concerns over impact on benefits. Via program and agency communication mechanisms (meetings, newsletters, informal conversations, etc.), it is important to stress the following:

» The increase in minimum wage is a welcome opportunity for individuals earning less than the new minimum wage to increase their income through wage payments.

» If there are concerns regarding the impact of increased income on public benefits an individual receives, these can be addressed.

» The agency or program will assist individuals and their families to fully understand the impact of increased income on their public benefits and guide them in any steps necessary to ensure they maintain necessary benefits while enjoying the benefits of the increased minimum wage.

» The solution to the increase in minimum wage should not be to request a reduction in work hours or to voluntarily stop working.

Given how complicated benefit issues are, service providers are urged to avail themselves of expertise currently available regarding the impact of income on public benefits. If the program has not already done so, it is strongly recommended that the agency link with the **Work Incentives Planning and Assistance (WIPA)** project that serves their area. The WIPA projects (formerly known as Benefit Planning Assistance & Outreach or BPAOs) are funded by the Social Security Administration, and have Community Work Incentives Coordinators (CWICs) who are experts on benefit issues. These CWICs are available to assist individuals and their families in accurately determining the impact of increases in income on benefits, and how to use work incentives to ensure that individuals maintain their access to necessary public benefits. CWICs can work in conjunction with disability providers on these issues to ensure there is accurate and consistent information provided. To find out which WIPA program serves your area, go to: ***https://secure.ssa.gov/apps10/oesp/providers.nsf/bystate***.

What will be the impact of the minimum wage increase on consumer benefits?

Calculating the impact of wage increases on public benefits can be complicated. The information below is provided as a basic guideline to get started. There are other publications and materials available that discuss these issues in much greater length (see the ***Social Security Red Book - www.ssa.gov/redbook***, and the resource section at the end of this publication). If a consumer has concerns about the impact of wages on benefits, as noted above, it is strongly recommended they consult with their local WIPA. The following offers some general guidelines for providers and consumers.

Impact on cash benefits

If the individual receives cash benefits from SSDI: If the consumer receives a check through Social Security Disability Insurance (SSDI), they need to determine if their income will increase to more than the Substantial Gainful Activity (SGA) amount, which is $980 in 2009 ($1,640 if you are blind). If so, there is a possibility that they will no longer receive a Social Security check. However, make sure the consumer does not automatically assume their SSDI check will stop, as this may not be the case. If the loss of this check is of concern, they should contact their local WIPA program, to determine if and when their SSDI check may stop, and whether there are ways they can use work incentives (such as Impairment Related Work Expenses – IRWE, or Blind Work Expenses - BWE), to keep them eligible for an SSDI check.

If the individual receives cash benefits from SSI: If the consumer receives a check through Supplemental Security Income (SSI), under section 1619(a), the individual can earn above the SGA. For every $2.00 increase in monthly income, the consumer's monthly SSI check will be reduced by $1.00. Although their SSI check will be less, their overall monthly income will increase.

Impact on medical benefits

Even if cash benefits end as a result of increased wages, this does not mean medical benefits will end.

Medicare—If monthly income increases above the SGA amount so that the consumer no longer receives a SSDI check, they will still continue to be eligible for Medicare medical insurance for 7 years. At the end of this time period, they can then purchase Medicare hospital insurance for a monthly premium. If the consumer cannot afford to pay this premium, they may be eligible for state assistance under the Qualified Disabled and Working Individuals (QDWI) program.

Medicaid—Most people on SSI are typically covered under Medicaid. Even when a consumer stops receiving an SSI check, they can still keep their Medicaid coverage until their income exceeds the annual "threshold" amount under what is known as 1619(b). This threshold amount varies quite a bit state-by-state. In 2009, the threshold ranged from approximately $23,000 to $54,000. A full list of state thresholds is available at ***www.ssa.gov/disabilityresearch/wi/1619b.htm***. In addition, many states will allow individuals who earn more than the threshold, to purchase Medicaid for a relatively low cost through what is known as "Medicaid Buy-In". A chart of the status of Medicaid Buy-In in each state is at: ***www.uiowa.edu/~lhpdc/work/map.html***. You should contact your state Medicaid office for the most up-to-date information for your state regarding the Medicaid Buy-In.

Other benefits

If the consumer receives other public benefits (such as subsidized housing or food stamps), these may be impacted by increases in wages. The impact on these other benefits can be discussed with staff from your local WIPA project, or other benefits experts, as well as personnel at the program from which the individual receives benefits (such as the public housing authority).

Remind and assist consumers to report income changes

If a consumer's income increases as a result of the minimum wage increase, remind them that they need to report the change in income to Social Security and any other public benefit programs that require them to report income changes. Service providers are encouraged to assist consumers in this process as necessary. Ultimately, the individual or their payee, not the service provider that supports them, is responsible for reporting income changes. However, if an individual decides they do not want to report their increases in income, remind them that through the federal government wage reporting systems, public benefit programs do eventually receive information on wage increases. If the consumer fails to report changes in income, they could end up paying money back to Social Security or other public benefit programs, for benefits to which they were not entitled.

Impact on consumer wages paid by agency

If your program or agency pays consumers directly as a result of subcontracts with businesses (such as a work crew or enclave, or sheltered workshop) you will need to adjust pay rates for any individuals making less than the new minimum wage. For individuals receiving sub-minimum wage under Section 14 (c), wage rates will need to be adjusted, so that the proper wage for the individual's production rate is maintained. The federal requirements regarding adjusting sub-minimum wage when the federal or state minimum wage increases can be found at: ***www.dol.gov/esa/whd/FOH/ch64/64g05.htm.***

The US Department of Labor will send out notification regarding the changes in minimum wage, and will monitor to ensure that changes are properly implemented.

Impact on subcontracts

In conjunction with the adjustments in wages paid directly to consumers, your agency will need to consider adjustments to contract and unit rates charged to businesses, to ensure that the agency is able to cover the cost increases resulting from the change in wage rates for consumers.

Making sure that employers comply with the new minimum wage

In your communication with consumers, be sure they are aware of the changes in minimum wage, and that if they are earning below the new minimum wage, they should see an increase in their paycheck. Advise consumers that if they notice their rate of pay has not increased after the date that the change in minimum wage goes into effect, or have other questions about how the change in minimum wage will impact their paycheck, they should talk to their employer. Service providers are encouraged to guide consumers in this process, and advocate on behalf of the consumer with the employer as appropriate.

What if an employer refuses to pay the minimum wage increase?

It is very unlikely, but possible, that an employer may ignore the minimum wage increase or tell the consumer that they are not entitled to it. If this occurs, with the consumer's permission, it is suggested that the disability service provider contact the employer to discuss the issue, and advocate on the consumer's behalf. If this does not resolve the issue, the **Wage and Hour Division of the US Department of Labor** can be contacted at 1-866-4USWAGE. Local offices for the Wage and Hour Division are located throughout the United States. A listing can be found at: ***www.dol.gov/esa/contacts/whd/america2.htm***. The state's labor department can also be contacted. A listing of state labor departments is at: ***www.dol.gov/esa/contacts/state_of.htm***

Potential employer concerns

Given that many individuals with significant disabilities earn at or near the minimum wage, with the increase in minimum wage, there may be concern regarding whether an employee is still providing sufficient value to an employer in exchange for the work they perform. Such concerns are usually unfounded, and it is recommended that service providers not initiate conversations with employers regarding this. Why create a problem when none exists? At the same, service providers should stay attuned to whether there are any employer concerns in this regard. This can be accomplished through communication with consumers, to determine if there any issues or concerns that have arisen at their job in conjunction with the minimum wage increase. In addition, if there are employers that you maintain ongoing contact with as part of your support for a consumer, as the minimum wage increase goes into effect, be sure that you are actively communicating with the employer (maybe a bit more than usual), and generally solicit any questions or concerns they have (without specifically mentioning the minimum wage).

If the consumer is laid off or hours are reduced

It is unlikely but possible that an employer will cut back a consumer's hours or lay them off as a result of the minimum wage increase. Employers have the right to take such action, but it is important to ensure that the individual's rights are protected. While employment discrimination can be difficult to prove, the following should be considered in determining a course of action:

» Is the employee the only individual whose hours are being cut or being laid off?

» Are only employees with disabilities having their hours cut or being laid off?

» Have there been any issues in the past regarding the employee's performance? (If the employer is suddenly identifying performance issues which were not mentioned previously, and using those as the reason for a lay off, that is a red flag.)

If there are any concerns regarding whether an individual has been singled out as a result of their disability (either consciously or unconsciously), it is important to assist individuals in advocating on their own behalf, or if appropriate, to advocate for them. Direct confrontations or accusations of discrimination should be avoided, but the following areas of inquiry may be useful:

» How many other employees are being laid off or having their hours cut? What types of jobs do they perform?

» What is the underlying reason(s) for this action?

» What are the employer's personnel policies regarding layoffs or hour reductions, and have all these procedures been followed?

» If the individual is a member of a union, have all the proper union procedures been followed, and can the union assist in some way?

Within such discussions, consumer and service providers should focus on whether there are options for changing the employers mind in laying the individual off or cutting back hours. Obvious points to be made include citing the employee's performance, reliability, etc. (assuming these have been positive). In addition, it may be possible to identify ways that increase the value of the employee to the employer, such as rearrangement of job duties and job tasks, or increased support from the provider agency to increase the productivity of the individual and train them on additional tasks.

In cases where it appears that the individual has been discriminated against as a result of their disability, the individual may wish to file a complaint with the Equal Opportunity Employment Commission (***www.eeoc.gov***) or their state labor department, and/or contact legal advocates, such as their local Protection and Advocacy Organization (***www.ndrn.org***). See the resource section for additional contact information. Even if the consumer does not plan to file a complaint, if there are concerns, it is at least worth a discussion with a legal advocate for advice and feedback, and to determine potential courses of action.

Resource Section

Social Security Administration

Voice: 1-800-772-1213, TTY: 1-800-325-0778

Employment Support Programs: *www.ssa.gov/work*
Changes in wages can be reported by calling Social Security. The website also has extensive information and resources regarding work incentives and impact of income on employment.

Work Incentives Planning and Assistance projects: These projects can provide expert assistance regarding the impact of income on benefits. Listing is available at: *https://secure.ssa.gov/apps10/oesp/providers.nsf/bystate*

Minimum Wage Information

Information on the federal minimum wage is available from the Wage and Hour Division of the US Department of Labor.

1-866-4USWAGE

The following have information about the minimum wage:
- *www.dol.gov/compliance/guide/minwage.htm#Relation*
- *www.dol.gov/esa/minwage/q-a.htm*

Information on state minimum wage rates is available at: *www.dol.gov/esa/minwage/america.htm*

Information on minimum wage for your state should also be available from your state labor departments. A listing is available at: *www.dol.gov/esa/contacts/state_of.htm*

ADA and Disability Rights

National Disability Rights Network
900 Second Street, NE, Suite 211, Washington, DC 20002
Voice: (202) 408-9514, Fax: (202) 408-9520
email: info@ndrn.org, website: *www.ndrn.org*

Membership organization for Protection and Advocacy (P&A) Systems for individuals with disabilities. Location of the P&A in your local area can be found by contacting NDRN; a listing is also available on the website. P&As can be helpful resources on employment rights and other disability-related legal issues.

Equal Employment Opportunity Commission (EEOC)
1801 L. Street, Washington, DC 20507
Voice: (800) 669-4000, TTY: (800) 669-6820
Fax: (513) 791-2954, website: *www.eeoc.gov*

ADA information and information on how to file complaints.

Additional publication on Social Security Benefits:

» **Making It Easier to Go to Work: What the Changes at Social Security Mean to You** – A user-friendly guide on Social Security benefits for people with disabilities, Medicare, Medicaid, and related issues, and how income from employment impacts benefits. *www.communityinclusion.org/article.php?article_id=56*

This issue of The Institute Brief is a product of the State Employment Leadership Network (SELN). SELN is a joint program of the Institute for Community Inclusion and the National Association of State Directors of Developmental Disabilities Services. This issue was written by David Hoff.