



## ***Beyond* Segregated and Exploited**

Update on the Employment of People with Disabilities

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April 2012

NATIONAL  
**DISABILITY RIGHTS**  
NETWORK  
Protection & Advocacy for Individuals with Disabilities



Cover image courtesy APSE: Three employees at Best Buy posing for a photo in the store.

Tracy (left), Tracey (middle) and Jai (right).

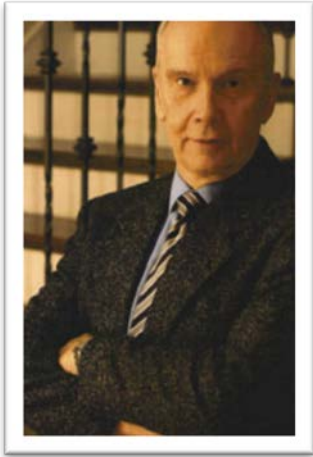
Jai spent his days going from store to store looking for work. He would often stop at Best Buy to recharge his power chair. When Tracey, the assistant manager at Best Buy, noticed Jai using his knowledge of electronics to assist other customers, he offered him a job.

Tracy formerly worked in a sheltered workshop but left for competitive employment at Best Buy.



## A Letter from the Executive Director

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One year ago we made a call to action in our report **Segregated and Exploited: The Failure of the Disability Service System to Provide Quality Work**. In that report we examined the ability of sheltered workshops and other segregated employment settings to meet the needs of workers with disabilities.

What we found was a system that does not provide truly meaningful employment opportunities for people with disabilities and in many instances exploits their disability for the financial gain of employers. We found a system that traps these workers in endless “training” programs that prepare them for nothing and often leaves them impoverished. Worse, federal laws and programs as well as many provider organizations within the disability service system help facilitate this travesty.

Our findings galvanized us to take action.

Over the last year the National Disability Rights Network and the Protection and Advocacy System that we represent in Washington, DC, have taken action to end segregated work, the sub-minimum wage, and the further exploitation of workers with disabilities.

At the national level, NDRN has worked with lawmakers on Capitol Hill and the Obama Administration on legislation to expand employment options, specifically employment in integrated settings at competitive wages, and to phase out the antiquated and obsolete public policies that lead to sheltered employment and sub-minimum wages.

Around the nation, P&As are working at the state and local level assisting workers with disabilities who desire real jobs and helping those trapped in sheltered workshops get out and find integrated employment. P&As are also working systemically to improve and expand employment options at the state and local level so that segregation is no longer the only choice.

I am grateful to all those who have joined us in our call to action. They include Self Advocates Becoming Empowered, the New York Association on Independent Living,

Community Employment Alliance, Washington State Rehabilitation Council, the Washington State Division of Vocational Rehabilitation, and others.

The following update to our report details the work started over the past year and examines further how federal policies are contributing to the segregation and exploitation of workers with disabilities.

We are proud of the work that has been accomplished this past year but there is much still to do. Indeed we are only just beginning. Only 20% of people with disabilities are in the workforce with over 400,000 of them stuck in sheltered workshops earning on average only \$175 per month. Few receive health care or the other benefits typical of the average American worker. And because of the nature of segregated work – in which workers with disabilities are isolated and hidden away – there continues to be instances of exploitation, abuse and neglect. This must end. Now.

We can do better and we will. We renew our call to action and pledge to continue challenging a system that is failing to provide quality work to people with disabilities.

Curt Decker



Executive Director

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## **Summary of Activities by the Protection and Advocacy Network on Segregated and Sub-minimum Wage Employment**

In January of 2011, the National Disability Rights Network (NDRN) issued *Segregated and Exploited: The Failure of the Disability Service System to Provide Quality Work* in an effort to bring attention and ignite discussion about the ongoing problem of placing people with disabilities into segregated employment settings (also called sheltered workshops) and those performing jobs that pay less than the minimum wage.

Since the release of that report, the nationwide network of Protection and Advocacy (P&A) affiliates have been engaged in a wide variety of activities at the state and local level to educate providers and public officials and advocate for people with disabilities to work in competitive, integrated settings. P&As have engaged in the following activities:

1. *Monitoring sub-minimum wage employers.* Some states, such as Florida, Utah and Alaska, are investigating their network of sub-minimum wage employers to ensure that they are properly implementing the protections that exist for people with disabilities in section 14(c), and also to ensure that vocational rehabilitation (VR) providers are attempting to place clients in competitive settings before placing them in sheltered workshops. Some states, such as New York and Missouri, have been monitoring sheltered workshops through the Representative Payee project, a grant from the Social Security Administration to monitor representative payees.
2. *Outreach and education.* Many P&A agencies, such as the P&A's in Washington, DC, Louisiana, Maine, Ohio and West Virginia, have been conducting outreach and education to inform people with disabilities what their rights are and what the options are for employment.
3. *Employment First statutes and policies.* The Disability Rights Center of Kansas successfully advocated for the nation's most aggressive and thorough "Employment First" statute, which requires that state agencies develop a policy to place people with disabilities in competitive and integrated settings, and for the state to develop goals to turn this policy into reality. Other states,

such as California and North Dakota, have been working with their State DD Councils or with their state agencies to develop Employment First policies.

4. *Other legislation.* Some P&A's have been working to eliminate state policies that encourage support of sheltered workshops. The North Dakota P&A, for example, has been advocating for a bill that would prevent state contracts from going to sheltered workshops without competitive bidding, which is currently the case.
5. *Support for transition-age youth.* The Georgia Advocacy Office is collaborating with the state vocational rehabilitation agency to help ensure appropriate vocational assessments for youth transitioning from school. Other P&As, such as Indiana, Kentucky, South Carolina and Tennessee are developing transition booklets and holding transition fairs to provide information to transition-age youth on how to obtain future schooling or employment.
6. *Collaboration with state agencies.* Some state P&As, such as Oregon, Rhode Island and Wisconsin, have been sitting on supported employment advisory groups or working with state agencies to encourage supported employment and reduce support of sheltered workshops. Others, such as Mississippi and Maine, are forming coalitions to bring other organizations on board and develop recommendations for state-wide policies that promote integrated employment.
7. *Litigation.* On January 25, 2012, Disability Rights Oregon (DRO) filed a lawsuit against the State of Oregon alleging that it failed to provide supported employment services in the most integrated setting as required under *Olmstead*. In its complaint, DRO asserts that the State of Oregon has failed to provide supported employment services to more than 2,300 state residents who are segregated in sheltered workshops and paid below the state's minimum wage. DRO is requesting that the State provide supported employment services to enable people with disabilities to participate in competitive employment in integrated settings.



8. *Case work.* Many P&As have been engaged in direct representation of individuals wanting to leave sheltered employment. In Utah, for example, the Disability Law Center (DLC), is investigating a local sheltered workshop based on allegations of financial exploitation of clients. The DLC is looking at whether the sheltered workshop is providing appropriate training to maximize employee skills and properly evaluating consumers for wage increases.



## **Summary of Public Policy Advancements**

On the national level, the National Disability Rights Network has led a number of efforts to limit the growth of segregated workshops and develop policies to ensure that people with disabilities have a better chance to find employment in an integrated setting. The staff of NDRN has met with people from the various federal agencies that engage in development of policy related to employment of people with disabilities, and also with Congressional staff to pursue legislative advances. These efforts have resulted in legislative and administrative advances to address the problem of segregated employment in the Obama administration and in Congress.

In June 2010, Senator Tom Harkin, chair of the Senate Health, Education, Labor and Pensions (HELP) Committee, distributed a draft bill to jointly reauthorize the Workforce Investment Act (WIA) and Rehabilitation Act. These bills include a variety of employment programs for people with disabilities and for the general population, including vocational rehabilitation, funding for various supported employment programs for people with disabilities, and the Client Assistance Program and Protection and Advocacy for Individual Rights program, both of which advocate for people with disabilities in the employment setting. These bills have both been overdue for reauthorization for a number of years.

The draft WIA/Rehabilitation Act bill included provisions designed to help ensure pursuit of alternative employment placements besides sheltered workshops and sub-minimum wage employers for young people with disabilities transitioning from education to employment. NDRN supported this draft bill as a beginning toward chipping away at the federal policies that encourage placement in sheltered workshops, and submitted comments to attempt to strengthen the draft as it moved through the legislative process. NDRN's comments were based on the policy recommendations originally set forth in the Segregated and Exploited report. Unfortunately, the bill was sidelined due to issues unrelated to employment of people with disabilities.

In October 2011, Representatives Stearns and Bishop introduced the Fair Wage for Workers with Disabilities Act. This bill would phase out section 14(c) of the Fair Labor Standards Act and thereby eliminate sub-minimum wage for people with disabilities. NDRN supports this legislation and hopes this new attention on the problems of

sheltered and sub-minimum wage employment will help the legislation advance through Congress.

While legislative advances in Congress have been slow, NDRN has been able to make some progress with the Obama Administration, by educating and working with the various Federal agencies on different ways to limit placement of people with disabilities in sheltered workshops. NDRN has met with the following agencies to discuss policy changes and efforts that might assist in our goals:

- The Office of Disability Employment Policy – to discuss how NDRN, the P&As and CAPs can work together with the Department of Labor to encourage support for competitive employment opportunities;
- The Rehabilitation Services Administration – to discuss how the vocational rehabilitation programs could provide better support to people with disabilities who are approaching transition age and help ensure that they have an opportunity to work in a competitive integrated setting;
- The Equal Employment Opportunity Commission – to explore how Title I of the Americans with Disabilities Act could be used to help ensure equal pay for equal work for people with disabilities and limited use of sub-minimum wage;
- The Wage & Hour Division of the Department of Labor – to advocate for better enforcement of the safeguards that exist in section 14(c) and limit the number of people with disabilities who receive sub-minimum wage;
- The Office of Personnel Management – to encourage the federal government to become a model employer of people with disabilities in competitive, integrated settings, and how NDRN can assist training Service Placement Program Coordinators to recruit people with disabilities;
- The Center for Medicare and Medicaid Services – to explore ways to reduce or eliminate Medicaid and Medicare funds from going to sheltered workshops;

- The Department of Justice – to explore legal action against states based on the *Olmstead* decision and the Americans with Disabilities Act for failing to ensure that people with disabilities work in the most integrated setting.

NDRN will continue to meet with Congressional staff people and officials in the Obama administration to explore ways to further limit the use of sheltered workshops and payment of sub-minimum wage to people with disabilities.



## **State and Federal Dollars Keep Sheltered Workshops Open Against National Policy**

As work has progressed over the past year, one issue has emerged as a leading factor perpetuating sheltered work and sub-minimum wage jobs.

That issue is money.

This section expands on our original report by providing further insight into the complex and confusing system that pumps millions of dollars into sheltered work despite good national public policy meant to encourage integration and competitive employment.

### Who continues to fund sheltered settings and why is the funding so well hidden?

Two major sources of federal funding for employment services for people with disabilities are the Centers for Medicare and Medicaid Services (CMS) and the Rehabilitation Services Administration (RSA). Both agencies have clearly and admirably vocalized the importance of integrated employment for people with disabilities. Most recently, in September of 2011, CMS issued a Bulletin providing more technical assistance on employment options for people with disabilities and the home and community waiver program.<sup>1</sup>

CMS explained that:

“Work is a fundamental part of adult life for people with and without disabilities. It provides a sense of purpose, shaping who we are and how we fit into our community. Meaningful work has also been associated with positive physical and mental health benefits and is a part of building a healthy lifestyle as a contributing member of society. Because it is so essential to people’s economic self-sufficiency, as well as self-esteem and well-being, people with disabilities and older adults with chronic conditions who want to work should be provided the opportunity and support to work competitively within the general workforce in their pursuit of health, wealth and happiness. **All individuals, regardless of disability and age, can work** – and work optimally with opportunity, training, and support that build on each person’s strengths and interests. Individually tailored and preference-based job development, training, and support should

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<sup>1</sup> See CMCS Bulletin “Updates to the §1915 (c) Waiver Instructions and Technical Guide regarding employment and employment related services” (2011) <https://www.cms.gov/CMCSBulletins/downloads/CIB-9-16-11.pdf>.

recognize each person’s employability and potential contributions to the labor market.”<sup>2</sup>

The preference for integrated employment outcomes was confirmed by CMS in their bulletin in which states are reminded that:

“[states] have obligations pursuant to the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the Supreme Court’s *Olmstead* decision interpreting the integration regulations of those statutes. Consistent with the *Olmstead* decision and with person centered planning principles, an individual’s plan of care regarding employment services should be constructed in a manner that reflects individual choice and goals relating to employment and **ensures provision of services in the most integrated setting appropriate.**”<sup>3</sup>

Similarly, RSA has stated a policy of integrated employment. In January of 2001, RSA limited the meaning of a successful employment outcome to integrated outcomes only.<sup>4</sup> They stated in a February 2002 Technical Assistance Circular<sup>5</sup> that this was done in order to, “ensure that individuals with significant disabilities are not routinely placed in [sheltered workshops] based on the view that they are only capable of sheltered work as opposed to integrated employment in the community.”<sup>6</sup>

However, despite CMS’ recognition of the importance and value of the ADA and *Olmstead* integration principles and RSA’s definition of successful employment being limited to integrated settings, states are still able to access money to facilitate the continuation of sheltered settings for individuals with disabilities.

The funding for segregated employment options continues partially because § 1915(c)(5)(b) of the Social Security Act provides that states may request funding for prevocational services and supported employment. However, there is absolutely nothing in the federal rules and regulations that require prevocational services or supported employment be provided in community-based or integrated settings. In fact, the sole limit is that such services cannot otherwise be available to the person seeking services

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<sup>2</sup> *Id.* at 3

<sup>3</sup> CMCS Bulletin at 5

<sup>4</sup> Employment Outcome 34 CFR 361.5(b)(16)

<sup>5</sup> See ASSESSMENTS OF INDIVIDUALS WITH SIGNIFICANT DISABILITIES UNDER THE STATE VOCATIONAL REHABILITATION SERVICES PROGRAM (2002) <http://www2.ed.gov/policy/speced/guid/rsa/tac-02-01.pdf>

<sup>6</sup> *Id.* At 2



under a different statutory scheme like the Rehabilitation Act of 1973, as amended or the Individuals with Disabilities Education Act (IDEA).<sup>7</sup>

Even when prevocational services are not delivered by a facility that is specifically classified as a “sheltered workshop” with a 14(c) certificate, they can still result in the segregation and exploitation of people with disabilities. Notice how comparable prevocational services and sheltered workshops are described:

**Prevocational Services:** Non-task specific training or volunteer work performed in a segregated setting for which a person is compensated below minimum wage, if at all. It is not a prerequisite for community supported employment.<sup>8</sup>

**Sheltered Work:** Menial tasks performed in a segregated setting for which a person is compensated below minimum wage. It is not a prerequisite for community supported employment.<sup>9</sup>

Beyond that striking similarity, prevocational services may actually be directly tied to sheltered workshop services. For example, in the state of Ohio, requests for participation in vocational habilitation (e.g. day programs) through Ohio’s Individual Options Waiver Program<sup>10</sup> are linked to sheltered workshops.

This choice falls under prevocational services because the program involves “services designed to teach and reinforce habilitation concepts related to work including responsibility, attendance, task completion, problem solving, social interaction, motor skill development, and safety.” The program is clearly tied to the workshop because only people with disabilities working in a program that qualifies for a special minimum wage certificate can participate in it.

Ideally, prevocational services are designed and intended to help individuals with disabilities develop the work skills needed to succeed in competitive, integrated employment. The ability to follow directions, complete tasks in a timely manner, problem-solve and develop the social skills needed to thrive in a work environment are examples of things that might be addressed. However, rather than serving as a stepping

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<sup>7</sup> *Id.*

<sup>8</sup> This author’s summary of the CMCS Definition of Prevocational Services as defined in the CMCS Bulletin.

<sup>9</sup> *Id.*

<sup>10</sup> <https://www.cms.gov/MedicaidStWaivProgDemoPGI/MWDL/itemdetail.asp?filterType=dual,data&filterValue=Ohio&filterByDID=2&sortByDID=2&sortOrder=ascending&itemID=CMS1223059&intNumPerPage=10>

stone on the way toward the ultimate goal of community employment, individuals may, instead participate in prevocational services for years and years. After all, prevocational services have absolutely no time limit.

CMS has suggested prevocational services be time limited, but do not require this of states.<sup>11</sup> Therefore, if a person is placed in a prevocational training program, they may literally be placed on a dead-end path with no end goal of integrated, competitive employment in sight.

### RSA Regulations Provide Disincentives to Integrated Work

RSA may be able to claim that much of the funding for segregation comes from other sources,<sup>12</sup> but they still provide a valuable resource – the workers.

As we showed in our original report one year ago, this is as much by default as by design. RSA’s failure to provide the services or support needed for people with disabilities to obtain competitive employment means many are funneled directly upon graduation from school to the segregated work setting without referral to or assessment by vocational rehabilitation.

RSA still allows sheltered workshops as a way to prepare for integrated work in the community while receiving VR services.<sup>13</sup> However, just like their counterparts without disabilities, VR clients would likely be better served by honing their skills in an integrated, “real world” environment. Research demonstrates that no more than 5% of individuals in sheltered workshops ever transition into integrated employment.<sup>14</sup>

Moreover, the time limit imposed upon the duration of VR services makes it more likely that the more difficult cases are placed in sheltered workshop settings. Under the

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<sup>11</sup> CMCS Bulletin at. 7

<sup>12</sup> State Vocational Rehabilitation Services Program, 34 C.F.R. 361 APPENDIX A (Jan 2001) available at [\(stating that “Sheltered workshops are primarily supported by other State, local, and private resources and rely very little on VR program funds.” \)](#)

<sup>13</sup> State Vocational Rehabilitation Services Program, 34 C.F.R. 361 APPENDIX A (Jan 2001)

<sup>14</sup> See Statement of Senator Michael Enzi, *Opportunities Too Few? Oversight of Federal Employment Programs for Persons with Disabilities, Hearing Before S. Comm. On Health, Education, Labor, and Pensions*, 109<sup>th</sup> Cong. 3 (2005) (noting that fewer than 5% of participants in the federal Javits-Wagner-O’Day program move into supported or competitive employment in a given year); Michael Gill, *The Myth of Transition, Contractualizing Disability in the Sheltered Workshop*, 20:6 Disability & Society 613–623 (Oct.2005) (citing a 2003 study which found that only 3.5% of sheltered workshop employees in the United States transitioned into community-based settings per year).

Rehabilitation Act of 1973, as amended, VR can fund supported employment services for a total of 18 months. Although there is a possibility of an extension for continued supported employment services, this option is rarely implemented. People who require continued support on the job beyond the 18-month time frame are often unable to continue working in the community.

Despite CMS' and RSA's expressed preference for integrated employment, the heavy flow of Medicaid dollars spent on prevocational services and RSA's policy allowing workers to get those services in sheltered settings does not support the call for community-based employment.

### Ohio: A Case Study

In order to illustrate how this develops in real terms, we examined the flow of money to sheltered workshops in Ohio. We chose Ohio because the state makes detailed data on funding of segregated settings and other budgetary matters easily available to the public. Ohio is just one of many states that continue to fund work for people with disabilities in segregated, sub-minimum wage settings.

Sheltered workshops within the state of Ohio are run by the individual County Boards of Developmental Disabilities. Ohio does not directly mandate that these boards utilize sheltered work in the development of their employment plans.<sup>15</sup> However, most of the county boards have decided to rely upon segregated settings as the main way of employing people with disabilities.

In August 2011, *The Columbus Dispatch* studied federal wage documents for 69 out of Ohio's 88 counties and found that 70 percent of the 21,000 Ohioans with disabilities who are employed and receive services from the county boards are stuck in sheltered workshops. As many as 1,000 workers were receiving less than a single quarter per hour in compensation. Eighty percent were receiving less than \$3.70 per hour.<sup>16</sup>

"In an effort to open employment doors for disabled individuals and to safeguard the Ohio minimum wage laws, the director of the Ohio Department of Commerce (ODOC) may permit individuals whose earning capacity is impaired by physical or

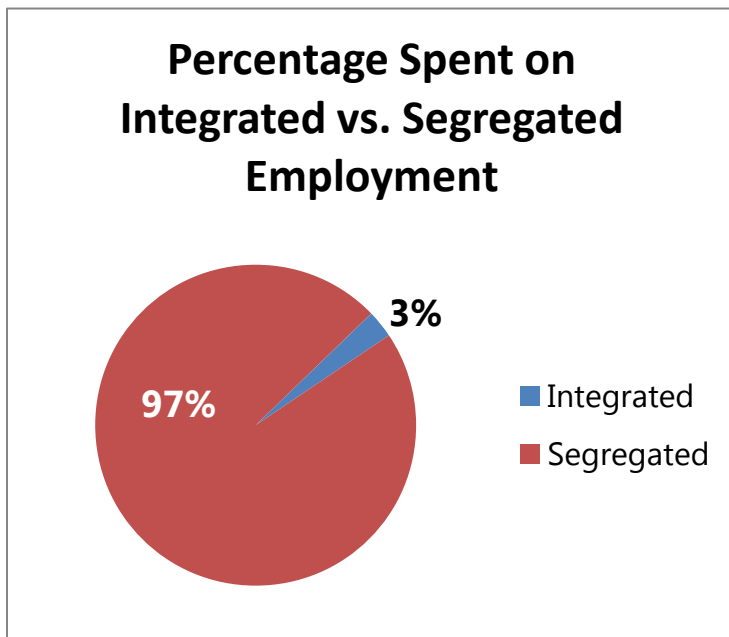
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<sup>15</sup> Ohio Revised Code Section 5126.051

<sup>16</sup> Jill Riepenhoff, *Far Below Minimum Wage*, *The Columbus Dispatch*, August 1, 2011.

mental deficiencies or injuries to work for lower than the applicable minimum wages.”

In Ohio, in order to draw down (use) the federal funds allotted to a state, the state and county must spend a certain ratio of money – called an FMAP. The amount of money spent at the state or county level is referred to as the “match.” As a result, a state’s actual use of federal Home and Community-Based Services (HCBS) funds may lead to more money being spent towards a program like segregated employment than is approved at the federal level.



The chart here and the following table illustrate how governments are spending more on segregated employment despite explicitly stated policies favoring integrated employment.

The first line of Table 1 is the amount of HCBS funds approved by CMS.<sup>17</sup> HCBS means services furnished under the provisions that permit individuals to live in a home setting rather than a nursing facility or hospital.

The remaining numbers included are estimates arrived at by using a simple formula. Ohio has a line item budget that explains how much overall money was spent from or appropriated for federal funds, state funds, and county funds. One of the line items includes the HCBS Waiver program. In order to arrive at these estimates, we multiplied the overall amount of money spent by the ratio of funds allotted at the federal level toward a particular program. This is an estimate because it assumes that each dollar

<sup>17</sup> Level One: <https://www.cms.gov/MedicaidStWaivProgDemoPGI/MWDL/itemdetail.asp?filterType=dual,data&filterValue=Ohio&filterByDID=2&sortByDID=2&sortOrder=ascending&itemID=CMS1252347&intNumPerPage=10> Individual Options: <https://www.cms.gov/MedicaidStWaivProgDemoPGI/MWDL/itemdetail.asp?filterType=dual,data&filterValue=Ohio&filterByDID=2&sortByDID=2&sortOrder=ascending&itemID=CMS1223059&intNumPerPage=10>

spent on the program at the county or state level drew down funds according to the proportion set in the overall state plan.

Table 1:

w/ Day	2011		2012		2013	
	Integration	Segregation	Integration	Segregation	Integration	Segregation
HCBS \$ Approved	5,541,810	194,295,117	5,628,952	200,713,687	5,681,241	205,405,010
Federal \$ Spent	3,788,413	132,821,277	4,407,168	157,148,079	4,973,424	179,813,900
State \$ Matched	574,838	20,153,757	61,029	2,176,149	60,555	2,189,368
County \$ matched	651,018	22,824,633	1,195,159	42,616,255	1,463,415	52,909,729
<b>Total Spent*</b>	<b>5,014,271</b>	<b>175,799,667</b>	<b>5,663,357</b>	<b>201,940,484</b>	<b>6,497,395</b>	<b>234,912,998</b>

\*Does not include HCBS \$ approved line.

Table 1 shows actual expenditures for 2011 and approved appropriations for 2012 and 2013.<sup>18</sup> It also includes adult day services. Adult day services in Ohio are defined as “non-residential community-based service designed to meet the needs of functionally and/or cognitively impaired adults through an individualized care plan that encourages optimal capacity for self-care and/or maximizes functional abilities.”<sup>19</sup>

Day services are included in Table 1 because adult day services, supported employment enclave, and prevocational services are all services that are offered in four-hour or more segments as part of an overall plan for a person’s entire day. So, since adult day services are an integral piece of the entire puzzle, a true representation of the cost of segregation must also include adult day services.

The estimates in the table above clearly show that significantly more money is being spent on segregated employment rather than integrated employment. The bottom line is that although progress has been made since the release of our initial report one year

<sup>18</sup> <http://www.lsc.state.oh.us/fiscal/bid129/budgetindetail-hb153-en-fy11actexp.pdf>

<sup>19</sup> Ohio Adult Day Services Standards <http://aspe.hhs.gov/daltcp/reports/aduldayOH.pdf>

ago, there is still much work to be done to end segregated employment for people with disabilities.

## **Conclusion**

The National Disability Rights Network is committed to finding solutions that improve employment outcomes for people with disabilities. Some have criticized this work as idealism run amuck. They say that we are moving too fast, that there are not enough

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### **NDRN's Policy Recommendations**

*Detailed recommendations can be found on page 46 of the original report – **Segregated and Exploited**.*

#### *End Segregated Employment and Sub-minimum Wage for People with Disabilities*

- Restrict all federal and state money that is spent on employers who segregate employees with disabilities from the general workforce.
- End the ability of employers to pay employees with disabilities a sub-minimum wage.
- End all programs that emphasize moving young adults from the classroom to a segregated or sub-minimum wage employment environment.

#### *Promote and Facilitate Integrated and Comparable Wage Employment Alternatives*

- Strengthen existing and create new federal and state tax incentives for employers to place employees with disabilities in integrated environments at comparable wages.
- Assist employees with disabilities to find employment in the general workforce in jobs that they choose.

#### *Increase Labor Protections and Enforcement*

- Fully investigate violations and abuses perpetrated by employers that pay less than the minimum wage or segregate workers with disabilities.
  - Increase penalties for violators.
  - Formalize standards for employee evaluations and productivity measurements.
- 

jobs for anyone right now let alone jobs for workers with disabilities in the community that pay real wages. They say there are not enough employers who understand people with disabilities can work if given the chance and the services and supports they need to succeed. Sadly, there are still some who say that people with disabilities will never be able to work real jobs earning real wages. They say sheltered workshops are the best we can do.

We say that lack of vision is upholding the status quo.

As we showed in our call to action one year ago, the training sheltered workshops claim to provide does not lead to meaningful jobs and can be damaging to the individuals trapped there. At worst the sheltered and segregated nature of the work environment contributes to abuse, neglect and financial exploitation.

As we have continued to explore this issue over the past year, we are

even more convinced that segregating workplaces based on disability is just another form of institutionalization. It is commonly accepted now, both in attitude and reflected in laws like the ADA, that people with disabilities should not be forced to live in institutions to receive services and supports. That same principle applies to the workplace. People should not be forced to work in sheltered workshops or receive employment training in segregated settings just because they have a disability.

This update to our call to action is an affirmation of our pledge to fight as doggedly for real jobs and real wages for people with disabilities as we have and continue to do for other areas of community integration like housing and education. In our minds employment integration is community integration.



## **Appendix A**

### A Review of P&A Activity

#### **Alabama:** Alabama Disabilities Advocacy Program (ADAP)

In January the Alabama Department of Mental Health, Division of Developmental Disabilities made a policy decision that beginning October 1, 2012 sheltered work will be phased out as a waiver service in Alabama. By October 1, 2015, sheltered work may not be billed as a waiver service under any code. ADAP staff furnished the state agency copies of the NDRN report, as well as other material supporting integrated work. ADAP, together with other groups including the state agency, is providing training and technical assistance to local agencies in developing integrated employment and paying fair wages.

#### **Alaska:** Disability Law Center of Alaska (DLC)

DLC requested and received all applications for sub-minimum wage certificates in Alaska to identify which employers are paying sub-minimum wages to individuals with disabilities. DLC will use this information to begin advocating for an increase in wages for employees with disabilities. Also, DLC is working with the state on improving the selective hiring process for state employees.

#### **Arizona:** Arizona Center for Disability Law (ACDL)

ACDL is working with allies from around the state on Employment First issues.

#### **California:** Disability Rights California (DRC)

DRC is working on a committee with the State Council on Developmental Disabilities to develop a policy on Employment First which will direct money to be used on employment services and supports for individuals with disabilities receiving state services.

#### **Colorado:** The Legal Center for People with Disabilities and Older People

Legal Center staff participated in a workgroup convened to determine the steps needed to end Non-Integrated Work Sites with the least impact on persons receiving this service. A report is near completion with several recommendations that include: (1)

amending current waivers to include funding for pre-vocational services; (2) flexibility in service definitions and related rules when establishing when someone can receive pre-vocational services; (3) Enhance a programs ability to provide other employment and community based options; (4) recognize a need for a standardized comprehensive assessment that focuses on finding someone a job in which they are interested and well suited; (5) rates review; (6) consider pay-for-performance supported employment models; (7) ensure choice of services; (8) provide guidance to the Division on transition from segregated to integrated/supportive employment practices.

**Delaware:** Community Legal Aid Society, Inc. (CLASI)

CLASI is investigating the state’s over-reliance/steering of people with disabilities into sheltered workshops. There are several sheltered workshops in the state and CLASI is reaching out to clients and advocacy organizations (the Arc for instance) to try to find clients who might prefer a more integrated work setting.

**District of Columbia:** University Legal Services (ULS)

ULS is conducting outreach and training regarding employment opportunities for people with disabilities and advocating for quality supportive employment opportunities for individuals with developmental disabilities. There are also plans to review how day programs are training and moving individuals to the workforce.

**Florida:** Disability Rights Florida (DRF)

The Employment Team/Client Assistance Program will be starting to investigate the segregated/sheltered workshops in Florida. The emphasis so far has focused on promoting integrated employment mostly through administrative strategies such as agency rule-making and private employer outreach in addition to related investigative efforts through the representative payee project.

**Georgia:** Georgia Advocacy Office (GAO)

GAO created and continued collaboration on a pilot project with DD Network, VR, and Department of Education for students transitioning from school to obtain appropriate vocational assessment and customized employment where VR was closing students’ cases based upon VR’s finding that the “disability is too severe” for student to benefit from employment services. GAO staff testified before the Equal Employment

Opportunities Commission and the United States Congress regarding the benefits of integrated employment for people with disabilities at minimum wage or better. GAO created and continued facilitation of a group of stakeholders in rural, South Georgia to develop an employment collaborative to facilitate increased integrated employment for individuals with disabilities. GAO worked with the parties in the implementation of *United States v. Georgia* to carry out the provision of evidence-based supported employment for people with psychiatric disabilities statewide

**Hawaii:** Hawaii Disability Rights Center (HDRC)

HDRC has made transition a priority and has been diligently working with the Hawaii Department of Education (DOE) to eliminate “sheltered workshops” from transition plans in a student’s Individualized Education Plan. HDRC’s Client Assistance Program meets quarterly with the Hawaii Division of Vocational Rehabilitation (DVR) to discuss employment outcomes and will continue to do outreach to the DOE and other government agencies, including for profit and non-profit agencies to advocate in favor of paid employment at a livable wage.

**Illinois:** – Equip for Equality (EFE)

Equip for Equality is engaging in significant employment discrimination litigation (especially using PABSS and AT funds). They have also done extensive training on ADA employment issues, receiving a contract to do six national webinars annually on emerging ADA employment issues, as well as employment trainings as the fiscal agent of the Illinois ADA Project. Last year, Equip for Equality hosted an ADA conference featuring the EEOC on the new ADAAA regulations. They also manages an ADA employment database for the public (go to [www.adacaselaw.org](http://www.adacaselaw.org)).

**Indiana:** Indiana Protection and Advocacy Services (IPAS)

IPAS is completing sheltered workshop outreach across the state and is focusing on transitions services for youth. They printed 5000 copies of the NDRN report which was distributed with an IPAS cover letter at all the transition events in the state! Transition brochures were completed for three school corporations identified in 2009 and 7,000 copies distributed to parents and students. These brochures will provide students aged fourteen years and older with much needed transition information to guide them in making decisions regarding their future schooling or employment.

**Iowa:** Disability Rights Iowa (DRI)

DRI is supporting individuals living with disabilities in employment related issues and established a new priority goal to focus on furthering integrated employment and eliminate sub-minimum wage. They are creating a formal relationship with Iowa Vocational Rehabilitation Services to move individuals out of sheltered workshops and into competitive employment.

**Kentucky:** Kentucky Protection and Advocacy (KYP&A)

KYP&A conducted youth transition fairs last year with the goal of integrated competitive employment. The P&A also hired a time-limited employee to assist with a new priority focusing on Kentucky's sub-minimum wage/sheltered employment providers. The Client Assistance Program worked with the KY Protection and Advocacy agency to plan visits to various workshops in the Commonwealth. CAP also continues to work with VR staff on employment reviews and ways to get more information out to clients on integrated employment.

**Louisiana:** Advocacy Center (AC)

The Advocacy Center created the Louisiana's Work Pays coalition, comprised of 35 individual organizations active in employment issues for people with disabilities. One activity of the coalition was to advocate for Louisiana becoming an "Employment First" state which Louisiana's Office for Citizens with Developmental disabilities approved in the fall. Now the coalition will work toward changes in policy that will support the transition from sheltered workshops to supported and competitive employment. Advocacy Center also completed a series of workshops for consumers and family members on the benefits of competitive and supported employment. They will issue a report in spring 2012 calling for policy changes that will support competitive employment for people with disabilities.

**Maine:** Disability Rights Center(DRC)

DRC recruited and trained 20 advocates with disabilities to work on state councils and committees to promote Employment First, and protest sub-minimum wage. These advocates have joined the Governor's Commission on Disability and Employment, State Rehabilitation Council, APSE Maine and other forums to report on activities and

strategize next steps. DRC also convened 110 people for an event on customized employment, supported employment, and systems issues and prepared a 25 page summary of the NDRN Call to Action in simpler language along with a consumer questionnaire to assist people with disabilities ask relevant questions when shopping among agencies for employment supports. A delegation from Maine went to the November Alliance for Full Participation summit in Baltimore, and the May regional self-advocacy summit in Rhode Island. Follow up meetings have capitalized on the Employment First energy coming out of these events, and the group is currently assessing Employment First initiatives from other states and developing an action plan.

**Maryland:** Maryland Disability Law Center (MDLC)

Maryland is a “work first” state and the state Developmental Disabilities Administration (DDA) and the state Department of Disabilities has made employment a priority issue by exploring market-wage work for every client they serve. The P&A is monitoring state efforts and visiting day programs to collect data about contract work that is below market wage. Through its PABSS and Assistive Technology grants, the P&A continues to represent individuals who need services, access to benefits, or technology devices in order to be ready for work or to pursue work outside of a segregated setting.

**Massachusetts:** Disability Law Center (DLC)

The Disability Law Center produced a user friendly transition guide and is working with the state DDS, Vocational Rehabilitation, and state Health and Human Services to promote better integrated employment outcomes in Massachusetts. DLC was successful in a lawsuit against a school district that failed to provide a Free Appropriate Public Education to a student who required functional living skills to be prepared for employment and independent living. DLC convened a Stakeholder Group in support of a bill, “Bridges to Success,” which is stalled in the state legislature that promotes more seamless planning from school to work. DLC provided input into both the original bill and subsequent amendments as well as provided written and oral testimony on the bill.

**Minnesota** – Minnesota Disability Law Center (MDLC)

The Minnesota Disability Law Center is conducting monitoring visits of all the sub-minimum wage programs in the state and analyzing the data; holding information/discussion meetings with providers and other advocates; and establishing a

relationship with pro bono counsel for possible litigation. MDLC is using its position on Minnesota’s new Olmstead Plan Advisory Committee to insist that employment be included in the state’s Olmstead plan.

**Mississippi** – Disability Rights Mississippi (DRMS)

DRMS devoted and published an entire newsletter on employment. DRM also helped develop a successful application for one of six ADD grants to improve competitive employment outcomes for youth and young adults with DD/ID. As a managing partner for the project titled *Mississippi Partnerships for Employment*, DRMS has a sub-contract with primary responsibility to do legal and policy analyses and to facilitate an Employment Work Group to make recommendations for systems change for the consortium. DRMS also sent a staff member to the Alliance for Participation's Summit which focused entirely on employment.

**New Jersey**: Disability Rights New Jersey (DRNJ)

DRNJ is addressing employment and sub-minimum wage issues through both CAP and PABSS programs and participates in NJ's Alliance for Full Participation effort. This effort is focused on increasing the full employment of people of with disabilities.

**New York**: Commission on the Quality of Care (CQC)

CQC is using PABSS and the Rep Payee Program to pursue employment issues identified through case representation and monitoring of employer representative payees.

**North Carolina**: Disability Rights North Carolina (DRNC)

DRNC convened a diverse group of Mental Health officials, Vocational Rehabilitation officials, disability advocacy group representatives, individuals with disabilities, and providers to respond to NDRN’s call to action on sheltered workshops, segregated employment, and subminimum wages. This resulted in the development of an Employment First work group and a position paper initiated by North Carolina Alliance on Full Participation. In October, DRNC moved into Phase 2 of its community monitoring project, which it has titled the “Dignity in Work” Project. Attorneys and advocates are visiting 14(c) certificate holder facilities, continuing to monitor and assess the state of subminimum wage employment in North Carolina. Requests were made to state and federal agencies for each 14(c) certificate holder in North Carolina and joint

meetings were held to discuss employment services and how to best connect individuals receiving Adult Developmental Vocational Program services to Vocational Rehabilitation services, and North Carolina’s Employment First initiative. Staff were invited by the state to meet with consultants from the State Employment Leadership Network (SELN) and a small group of state leadership staff to discuss some of the initial findings of the “Dignity in Work” project. Staff attended the Vermont Sheltered Workshop Conversion Institute.

**North Dakota:** Protection and Advocacy Project (P&A)

P&A presented NDRN recommendations at the ND Association of Community Providers conference and is working on developing an Employment First initiative. DRND is also interviewing people with disabilities earning sub-minimum wage and working in sheltered workshops and providing case assistance for them to access services to leave sheltered employment. On the public policy front, DRND challenged a bill that would allow state contracts to go to work centers without competitive bidding. Staff testified to try to get amendments that required minimum wage. Unfortunately, the bill passed.

**Ohio:** Ohio Legal Rights Service (OLRS)

Ohio Legal Rights Service (OLRS) conducted extensive outreach to sheltered workshops to provide training on voting rights, this also allowed OLRS to share general information about rights and how to contact the P&A for advocacy assistance including employment. OLRS also conducted a comprehensive review of employment supports and opportunities provided by the state of Ohio with public funding, including evaluating data on funding sources, types of employment services, and outcomes. As a result of the review, OLRS prepared a report summarizing the information and recommending further action be pursued in collaboration with other disability advocates and organizations to shift the funding from segregated to integrated opportunities. OLRS began working with self advocacy organizations on employment issues. This culminated in regional employment forums hosted by People First for which Ohio Legal Rights Service provided legal expertise. OLRS will collaborate with People First and others on statewide recommendations to develop a plan to create more job opportunities, better wages, and benefits for people with disabilities. On March 19, Ohio Governor John Kasich signed an Employment First executive order making integrated jobs a priority for the state.

**Oregon:** Disability Rights Oregon (DRO)

DRO is participating in a supported employment advisory group of providers, agencies, and interested parties which has advised the state on initiating an Employment First policy and strategy. DRO is investigating the states system of sheltered workshops in terms of the high level of segregated services and low level of employment outcomes.

**Pennsylvania:** Disability Rights Network of Pennsylvania (DRNP)

DRNP is researching data on segregated employment in Pennsylvania for advocacy efforts. Staff who sit on the State Rehab Council have requested a meeting to present the NDRN report on Segregated and Exploited to educate the council so that they can better plan to address the unmet needs of this segregated population.

**Rhode Island:** Rhode Island Disability Law Center (RIDLC)

RIDLC is participating in a consortium with other disability agencies and self advocates. The consortium is working together to improve competitive and integrated employment outcomes for young adults with developmental disabilities, especially for those with intellectual disabilities by engaging best practice models for integrated employment using braided funding. The goal is to develop a self-directed multi-year, multi-internship process for vocational evaluation, career exploration and career development.

**South Carolina:** Protection and Advocacy for People with Disabilities, Inc.

P&A established a new priority on School to work Transition and is following up on APSE Students with plans to educate transitioning youth with disabilities on the available options for appropriate employment outcomes.

**Tennessee:** Disability Law & Advocacy Center of Tennessee (DLAC)

DLAC is a member of the statewide Alliance for Participation, which recently established employment goals for Tennessee that focus on methods of increasing the number of Tennesseans with disabilities who achieve competitive and integrated employment. DLAC actively participated in a consortium of 25 agencies and organizations led by the Vanderbilt Kennedy Center for Excellence in Developmental Disabilities in an effort to obtain an ADD systems change grant. The working relationships has led to the establishment of the Tennessee Collaborative on Meaningful Work a group formed to formulate and support initiatives resulting from a grant by the U.S. Department of Labor



intended to implement exemplary employment services for individuals with disabilities in the public workforce system. One of DLAC's 2012 priorities is to advocate and assist individuals with disabilities so that they can transition to life after high school either through post-secondary education or competitive and integrated employment. A taskforce is in place to support this goal and has established objectives of educating school systems and the state vocational rehabilitation agency about their responsibilities for transition. DLAC staff are also participating in the Nashville Community Conversation on Meaningful Employment for People with Disabilities.

**Texas:** Disability Rights Texas (DRTX)

DRTX is helping individuals move from institutions into community jobs through supported employment. DRTX has developed a pilot project identifying a liaison from the VR agency to go into the state schools (in west TX) to take referrals for VR services. The Client Assistance Program has conducted in-service training to the Community Integration team on basic VR procedures to facilitate referrals to VR for individuals leaving institutions. They have addressed procedural issues within the state schools that remove barriers to employment – specifically assisting residents get ID for employment. In addition, DRTX is working with youths in Texas Youth Commission (TYC) facilities to ensure that they are referred to VR six months before discharge so that they can get assistance with education, training, and employment. DRTX is also conducting outreach to sheltered workshops to inform staff and consumers about the availability of VR services.

**Utah:** Disability Law Center (DLC)

The DLC is helping develop the program for the Employment First legislation that has passed in Utah by sitting on an advisory council to ensure the plan encourages employment for people with intellectual disabilities. The Employment Team conducts outreach to employment agencies, employers, and consumer groups (i.e. People First) about employment discrimination, requesting a reasonable accommodation, employee rights, etc. DLC is currently working on an investigation into a local sheltered workshop regarding calculation of wages to investigate the allegation of financial exploitation of clients at the Work Activity Center (WAC) to determine: Whether method of wage calculation is in violation of the Fair Labor Standards Act; Whether WAC significantly changed their method of wage calculation for consumer employees; Whether WAC is

properly evaluating consumer employees for appropriate wage increases; Whether WAC is providing needed training to consumer employees to maximize skills needed for less restrictive employment options; Whether WAC record keeping re consumer employee wages is accurate; Whether WAC consumer employees need advocacy assistance from DLC.

**Vermont:** Disability Rights Vermont (DRVT)

Vermont has successfully closed all sheltered workshops. DRVT participates in the bi-annual Vermont Sheltered Workshop Conversion Institute which attracts advocates and policy makers from across the country understand the process and the model that was used.

**Washington:** Disability Rights Washington (DRW)

DRW is monitoring a class action settlement relating to HCBS services including an emphasis on employment and continuing to monitor the Washington Adult Working Initiative that requires employment services be the first priority to people receiving DD services in the state.

**West Virginia:** West Virginia Advocates (WVA)

WVA is planning to educate self advocates on employment rights for people with disabilities. WVA is also conducting outreach at People First groups and State psychiatric hospitals and conducting outreach with social work staff at facilities regarding employment issues and options available to persons with disabilities.

**Wisconsin:** Disability Rights Wisconsin (DRWI)

DRWI is participating in a state committee working on promoting integrated competitive employment. DRWI is also working with our state People First group to create a Wisconsin-focused paper to accompany the nationally-focused NDRN paper.

**Wyoming:** Wyoming Protection and Advocacy System

Wyoming Protection and Advocacy System is examining how to address segregated employment and related issues through their programs and developed employment goals and objectives in their upcoming FY 2012 Priorities. Although Wyoming does not

have extensive segregated employment these priorities include work in segregated employment and wage disparity areas.



## Appendix B

## The Columbus Dispatch

DISPATCH EXCLUSIVE | HELP WANTED: JOBS FOR THE DISABLED

**Far below minimum wage****Some say low pay for the disabled is immoral; others view the federal law as a godsend**

Sunday, May 22, 2011 03:20 AM

BY JILL RIEPENHOFF

THE COLUMBUS DISPATCH

Thousands of adults with Down syndrome, autism and other developmental disabilities work in Ohio at jobs that pay less money than a teen-age baby sitter earns.

Some clean hotel rooms for 40 cents an hour. Others sew table linens for 79 cents an hour. Some assemble automotive parts for \$2.15 an hour or answer telephones for \$3.75 an hour.

The majority don't earn half of the state minimum wage of \$7.40.

A little-known provision in the 73-year-old federal wage law allows employers to pay less than minimum wage if adults have disabilities that limit their productivity.

The Fair Labor Standards Act once dictated how little was too little to pay a worker. But today, there is no floor, clearing the way for some to earn as little as a penny an hour.

The wage issue has divided the very community that seeks the highest quality of life for people with disabilities. The difference of opinion is stark:

"It's immoral," said Curtis L. Decker, executive director of the National Disability Rights Network.

"This has been a godsend," said Ted Williams, whose autistic son earns a low wage at his job in Columbus.

The debate comes down to this: Critics say low wages show that disabled workers are being exploited, but supporters say the pay rates reflect opportunities - that even the most disabled Ohioans are being given a chance to pursue work and build full lives.



CHRIS RUSSELL | DISPATCH

**With an average hourly wage of \$2.15, Kathleen Notestine, right, is among more than 14,600 disabled Ohioans who make less than minimum wage. "She's always motivated to work," said Tonya Porter, left, her supervisor at the sheltered workshop ARC Industries North.**



CHRIS RUSSELL | DISPATCH PHOTO

**Kathleen Notestine lives in a modest house on the North**

The issue gained national attention after authorities discovered abuses in 2009 at a turkey-processing plant in Iowa. Disabled adults were forced to work long hours for little pay and live in squalor. It's an extreme case that most advocates say is an anomaly.

To assess the state of low-wage earners in Ohio, *The Dispatch* analyzed federal wage documents from 69 of the 70 counties that support workers with developmental disabilities through taxpayer-funded agencies and operate employment centers. Harrison County, in eastern Ohio, defied the state open-records laws and did not fully comply with the newspaper's request.

At least 14,600 developmentally disabled Ohioans earn less than the minimum wage for the work they are doing. The number is likely much higher, but wage information is not public in 18 of Ohio's 88 counties.

Statewide, there are about 21,000 disabled Ohioans who receive services through their counties and are employed. About 70 percent work in sheltered workshops, quasi-industrial settings that resemble factories.

The counties that run sheltered workshops bid on jobs with government agencies and private companies for contract work, such as assembling Christmas packages for prison inmates, bagging stuffed animals and inspecting baby-food jar lids.

Worker pay is based on productivity. A disabled worker who can perform a task at 30 percent the rate of a nondisabled worker would earn about a third of minimum wage - \$2.22 an hour.

More than 80 percent of the low-wage work force earns an hourly wage of \$3.70 or less.

More than 35 percent, or 5,200 workers, make less than \$1 an hour.

Nearly 1,000 make less than a quarter an hour.

"It's concerning in terms of overall numbers," said John L. Martin, director of the Ohio Department of Developmental Disabilities, the agency that oversees the statewide system. "But I don't have a concern that people are being taken advantage of."

Many families are thankful for the law because it has allowed disabled adults to enjoy the intangible benefits of a job: building self-esteem and socializing with peers.

Norma Williams said it has given her autistic son a purpose in life. "He has a place to go and a reason to get up every morning. I don't care about the money."

Most low-wage earners are employed in sheltered settings where they are supervised by experts trained to assist disabled adults. They are

**Side and is primarily supported through government benefits. She and her roommate receive round-the-clock supervision but are responsible for many household duties. During free time, Notestine copies Bible phrases while sitting in her room.**



**After work, Notestine has a full schedule that includes household chores and hitting a neighborhood gym.**



CHRIS RUSSELL | DISPATCH PHOTOS

**Troy Thompson finds a creative outlet at Studio West, an art shop at ARC Industries West in Franklin County. He enjoys working with clay and earns a commission of about \$80 a month on art sold. He also works as a janitor for \$5 an hour. Thompson wishes he made more.**





He returns to the art studio twice a week so that he can spend time with game-show models he made and work on art projects.

"Do you remember *Celebrity Hot Potato*?" he asked. "It was on NBC at 10 o'clock in 1984."

The hope is to ease Thompson into steady work.

"His job skills are good. I'd like to see him have more opportunities," said Mariann Brush, his longtime supervisor at ARC West. "But I think he'll end up back here where he has things he likes to do."

When Congress established a national minimum wage through the Fair Labor Standards Act in 1938, it created an enticement for employers to hire disabled war veterans: They could pay them less than other workers.

But the law capped the hourly rate at no less than 75 percent of the 25-cent minimum wage, which would be \$3.99 in today's dollars.

In the 1930s, most developmentally disabled adults were sequestered from society in institutions or at home. Few considered the possibility that they could work.

In the 1950s, Congress reduced the minimum amount a disabled adult could earn to 50 percent of the \$1 minimum wage.

At the same time, medical experts sought to distinguish the different functional levels among people with developmental disabilities. As a result, the population was labeled based on IQ scores as idiots, imbeciles or morons.

By the late 1960s, Ohio recognized that people with developmental disabilities could hold jobs. The state became a national leader for employing developmentally disabled adults through newly created sheltered industrial shops.

"Employment of developmentally disabled adults really didn't exist before then," said Martin, the state agency director.

Back then, those workers could earn no less than 80cents an hour (\$5.17 in today's dollars), which was half of the minimum wage in 1968.

Congress eliminated the wage floor in 1986, and today, nearly a dozen workers across Ohio earn a penny an hour.

"On the surface, that sounds extreme. But it's never been identified as a significant issue," said David M. Williamson, superintendent of the Ohio Department of Commerce's Division of Industrial Compliance and Labor, one of two government agencies assigned to oversee wage laws.

The lowest-paid workers likely receive that wage because they are unable to complete a task with speed or accuracy.

Ohio law requires employers to seek special-wage licenses if they want to pay less than the state minimum, which is higher than the national minimum. About 200 public and private organizations are

## workshops operate

- **Video 2 | Kathleen Notestine works and lives an active lifestyle**

## Help Wanted: Jobs for the Disabled

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certified in Ohio to pay developmentally disabled adults less than the minimum wage.

But in the 11 years the state law has been on the books, the agency never has reviewed wage documents, visited a work site or received a complaint.

"We are going to get involved mainly through the complaint process," Williamson said. "We're not an enforcement agency."

A division of the U.S. Department of Labor is, but the agency also rarely inspects or visits the 3,100 work sites nationally where workers are paid less than the minimum wage.

Employers also must apply for a certificate from the department's Wage and Hour Division to hire adults with disabilities and pay them subminimum wages. As part of the application, they are required to provide the names of employees, their average hourly wage and the disabilities that limit their productivity.

Officials grant the exemptions based on information in the application. They don't test workers' productivity.

In Ohio, the taxpayer-funded county developmental-disabilities boards represent nearly half of the agencies that hold the low-wage certificates. The others include nonprofits, such as Goodwill Industries, and private companies.

Franklin County was last audited by the federal department about a decade ago. A Clermont County official cannot recall the last time she saw a federal labor official.

Licking County recently discovered that it had submitted inaccurate salary information to the Labor Department in 2008 and 2010. Those documents showed that the workshop's median hourly wage was 12cents and that more than 93percent of the workers earned less than \$1 an hour.

In reality, the median hourly wage at LICCO Industries is \$1.75 an hour.

The error was not carried over to employees' paychecks, said Nancy Neely, superintendent of the Licking County developmental-disabilities board.

But the Labor Department never questioned the application, and Licking County was certified to pay the lower wages.

A wide grin stretched across Kathleen Notestine's face when asked about her job.

She was attaching half-inch O-rings onto a large screw used in the automotive industry, one after another until she emptied the box of 30 in about 15 minutes. Then she grabbed another box and started again.

"It's fun," she said.

Until she discovered ARC Industries North, Notestine lived a rather sheltered life. She was born with Down syndrome in 1959, and her parents chose to keep her home. She had little formal education.

Today, she is one of the most productive employees on supervisor Tonya Porter's 10-person crew. The work varies from week to week, but it's largely the same type of job - assembling, labeling and packaging.

If there is a new task to learn, Notestine masters it within 30 minutes.

"She takes pride in her work, and she likes going fast," Porter said. "She's motivated by a paycheck, because she knows going fast gives her a nice check."

Notestine typically works at a pace that is about 75percent slower than a non-disabled worker, county officials said. She earns on average about \$2.15 an hour, the average wage of Ohio's workers with disabilities.

In her free time at home, Notestine spends hours hand-copying Bible verses, even though she can't read. She has declined opportunities to try different types of jobs, especially those outside the workshop where she could earn a higher wage.

"She has the ability to do janitorial work, but she has no interest in that," said Wendy Morgan-Lee, Notestine's longtime friend and advocate. "She has a great social life in the workshop."

But there are many days when there's no work to be done. Notestine passes those days playing board games and coloring, activities that don't produce a paycheck.

Sheltered workshops were so successful in their infancy because of their tie to Ohio manufacturing. Now, that helps drive down workers' salaries.

Factories across the state have scaled back or shut down, taking with them the lifeblood of sheltered workshops: small assembly jobs that were cheaper for companies to contract out than to complete in-house.

Franklin County's ARC North, where Notestine works, lost a contract that employed 150 workers every day. The company went out of business. Now, some workers there sometimes go days without a job to do.

Licking County's LICCO Industries has been hit especially hard. In the 1990s, the county was a manufacturing hub. Those factories snatched up workers with developmental disabilities and constantly sent small assembly jobs to the workshop.

"We couldn't place people fast enough," said Neely, the Licking County board superintendent. "We were able to divert people from coming to the sheltered workshop in the first place."

But when the economy began its free-fall, workers with disabilities were the first to be laid off. They ended up back in the workshops, doing piece-rate jobs that have all but dried up, too.

Today, about 100 adults are working in jobs in the Licking County community, and 200 are employed at the workshop, where the median hourly wage is \$1.75.

"We would like to see every person gainfully employed so they make more money, so they're not socially isolated. That's the philosophical concept," Neely said. "The reality is different."

Workshops are competing for contract jobs with China, automation and near-record unemployment.

"Workshops aren't making money off the people who are working there," said Marcy B. Samuel, Franklin County's director of program operations.

In Franklin County, more than 80 percent of the revenue generated through contract jobs was used to pay the salaries of workers with developmental disabilities, 2009 federal income-tax documents show. The remainder covered overhead costs such as equipment purchases and adapting machinery.

The county uses tax dollars to pay the professional staff.

"It's easy to focus on the notion of wages. It's not why workshops are there,"

Samuel said.

They are supposed to be places where adults with disabilities learn the skills they need to find gainful employment.

"The money people earn is incidental to the services," Samuel said. "That's getting missed in the whole national debate."

Mike Turvey folds towels - one after another for about five hours a day - at Greene Inc., a sheltered workshop in the southwestern Ohio city of Xenia.

He's 39, has his own apartment, a girlfriend and money to afford cable TV. He couldn't be happier.

He used to work at a Burger King. When that job disappeared five years ago, Turvey returned to the workshop - a safety net for adults with developmental disabilities.

"What's so great about this job," he said, "is that I get paid more than at Burger King."

The laundry division serves area hospitals, funeral homes and others. Each day, workers wash, dry, fold and package 3,000 pounds of towels, sheets and gowns. The unit's median hourly salary is \$7.03.

Supervisors challenge employees to increase their productivity and reward them with pizza parties.

"You can take an individual and make them more productive," said Deborah Capuano, director of Greene County's adult-services division.

Not long ago, Greene Inc. kept workers busy with lower-paid, piece-rate jobs that are typical of most workshops. Then the economy tanked.

"We lost a lot of that work to China," Capuano said.

So Greene Inc. transformed itself from a traditional workshop into a business that provides document shredding, and it beefed up its industrial-laundry services.

The shredding operation has contracts with state and federal government agencies, which generate much more revenue and have higher minimum-pay requirements.

As a result, the median hourly wage for Greene Inc.'s 166 employees is the fourth highest in the state at \$4.53.

Three of the poorest counties in the state - Meigs, Morgan and Vinton - have the highest median wages for developmentally disabled workers. All are small, so their median wages can easily be influenced by government contracts, which have higher wage requirements. For example, some workers in Vinton County clean state parks or county fairgrounds.

Wages also are pushed higher when it's difficult to determine a per-item pay rate for a job; in those cases, a worker's pay often defaults to minimum wage. That happens often in Morgan County.

"They've become taxpayers instead of just getting entitlements," Capuano said. "This is a work force. That's what we're expected to do here."

No other state has as many adults employed in taxpayer-funded workshops as Ohio.

Yet nearly 40 percent of adults with cognitive disabilities in Ohio live in poverty, census data show. The state rate trails only Kentucky, Vermont, Washington, D.C., and West Virginia.

And the number of disabled Ohioans who are unemployed - even in workshops - continues to grow.

State leaders are working to improve the employment picture and reduce the reliance on sheltered workshops.

"That benchmark data has energized us," said Martin, of the state developmental-disabilities agency.

In 2009, Ohio counties collectively spent more than \$556 million to operate sheltered workshops and day-care type facilities where disabled adults do not work, according to a survey by the Institute for Community Inclusion, an advocacy group based at the University of Massachusetts.

When adjusted for inflation, counties now are spending 1,200 percent more on sheltered environments than they did 20 years ago, the data show. That cost doesn't include Social Security and Medicaid benefits paid to adults with disabilities.

"If people are working, they don't need as much SSI and Medicaid. You're moving people off a continuum," said Decker, of the National Disability Rights Network. "People should be expected to work. ... It's the expectation for everyone in this country except people with disabilities. I don't think being in a workshop is good."

He believes that at least 90percent of sheltered-workshop employees should be working in the community.

Among the employed is Ann Goss, who has worked for more than 23 years as the dining-room hostess at Wendy's in the Licking County city of Heath.

"It was always my dream to work in fast food," said Goss, 52.

Her mother, Rose, wanted more for her daughter than a piece-rate-type job. She advocated strongly to keep Goss, who was born with brain damage, from working at a sheltered workshop.

"She's such a people person," Mrs. Goss said. "She has so much to offer."

And she earns \$7.45 an hour.

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# Sheltered Workshops No Better Than Institutions, Report Finds

By [Michelle Diamant](#)

January 19, 2011 Text Size [A](#) [A](#)

A scathing advocacy group report released Tuesday is taking issue with sheltered workshops and the advocates, employers, lawmakers and others who encourage subminimum wage jobs for individuals with disabilities.

The [report](#) from the National Disability Rights Network paints a glum picture of the jobs held by many Americans with disabilities that pay less than the federal minimum wage of \$7.25 per hour. In it, the authors charge that the segregated environments people with disabilities often work in are akin to institutions by “warehousing” people, limiting their opportunities and putting them in danger of abuse and neglect, all while providing financial gain for employers, some of whom earn six-figure salaries.

“For decades we have worked to ensure federal laws guarantee the right of people with disabilities to live and work in their chosen communities,” said Curt Decker, executive director of the National Disability Rights Network, an umbrella group for the protection and advocacy organizations in each state, which produced the report. “Yet, our investigation found that many people with disabilities are still being segregated and financially exploited.”

Under current law, the Department of Labor authorizes select employers to pay less than the minimum wage to workers with disabilities if the employee is determined to be less productive as a result of their disability. In such cases, individuals are paid a percentage of the hourly wage a typical employee would earn for performing the job.

However, government oversight of employers to ensure that workers are paid appropriately is limited, the report found, leaving the door open for abuse given that many workers are not able to speak up for themselves.

What’s more, while sheltered workshops are typically billed as providing job training, the report authors argue there’s little opportunity for people to transfer into competitive employment since the skills they’re taught frequently have little application elsewhere. And the low pay workers receive — often just 50 percent of the minimum wage — keeps people in a cycle of poverty.

“Sheltered workshops are often celebrated for providing an altruistic service to their communities,” the report says. “In reality they provide workers with disabilities with dead-end jobs, meager wages and the glimpse of a future containing little else.”



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## Segregated Employment, Sub-Minimum Wage Create Employment Barriers for People With Disabilities

Segregated employment settings and policies permitting employers to offer sub-minimum wages to persons with disabilities create barriers to meaningful employment, according to a recent study by the National Disability Rights Network. Additionally, inefficiencies and lack of accountability in the sheltered workshop system create unexpected higher costs for state and federal programs because those employed by a sheltered workshop remain reliant on supplemental support programs and Medicaid. To promote and facilitate meaningful employment, federal and state policies should strengthen existing and new tax incentives for employers to place employees with disabilities in integrated environments at comparable wages. Policies should encourage helping employees with disabilities find employment in the general workforce. To help students with disabilities transition to competitive employment, state vocational rehabilitation agencies should be actively involved—at very early stages—in school district transition planning processes, not only when the student is close to graduation.

These are findings of a report, "Segregated and Exploited: The Failure of the Disability Service System to Provide Quality Work," by the National Disability Rights Network (NDRN). Additional findings about the barriers posed by segregated employment included the following:

- The 40-year-old AbilityOne Program perpetuates and promotes segregated workplaces because it requires the federal government to purchase specific supplies and services from non-profit organizations that employ individuals who are blind or who have severe disabilities. However, these organizations are permitted to pay employees less than the prevailing wage, and 75% of the direct labor to produce the commodity must be provided by people with disabilities
- State vocational rehabilitation agencies often fail to conduct annual compliance reviews to ensure that individuals with disabilities are employed in competitive employment, and the federal government has not tracked state follow-up rates. As a result, the state agencies are not able to ensure that individuals with disabilities are employed in competitive, integrated employment, not a sheltered workshop
- Transition services described in the Individuals with Disabilities Education Act are often overlooked because the state vocational rehabilitation agency is not directly involved during Individualized Education Plan development meetings. Schools have often overlooked the state vocational rehabilitation agency's role in the transition planning process and as a result, students never receive a comprehensive needs assessment or vocational rehabilitation-funded services; instead students accept the alternatives offered only by the school system.

The authors conducted a literature scan and reviewed federal policies related to employment of people with disabilities. They sought to identify helpful policies and practices and those that posed barriers to inclusive, competitive employment for persons with disabilities. The analysis included examples of traditional sheltered workshop outcomes, contrasting them with emerging practices that support competitive employment.

A link to the full text of "Segregated and Exploited: The Failure of the Disability Service System to Provide Quality Work" may be found in *The OPEN MINDS Circle Library* at [www.openminds.com/library/011511dssegregemp.htm](http://www.openminds.com/library/011511dssegregemp.htm).

OPEN MINDS has reported on efforts to expand support for competitive, integrated employment settings in the following articles:

- "Administration Moving Forward With Community Living Initiatives" is available at [www.openminds.com/market-intelligence/premium/omol/2010/060710ds2.htm](http://www.openminds.com/market-intelligence/premium/omol/2010/060710ds2.htm).
- "CMS Approves Job Focus for Nebraska's Developmental Disability Programs" is available at [www.openminds.com/market-intelligence/premium/omol/2010/052410idd1.htm](http://www.openminds.com/market-intelligence/premium/omol/2010/052410idd1.htm).
- "Illinois Ranks 49th in Serving People With Disabilities in Community Settings; Housing, Education, & Employment Key Issues" is available at [www.openminds.com/market-intelligence/premium/omol/2010/122010ds6.htm](http://www.openminds.com/market-intelligence/premium/omol/2010/122010ds6.htm).
- "The University of Arizona to Launch Certificate Program for Tucson Students With Intellectual Disabilities" is available at [www.openminds.com/market-intelligence/premium/omol/2011/013111soc3.htm](http://www.openminds.com/market-intelligence/premium/omol/2011/013111soc3.htm).
- "After Alalissa Scandal, Iowa Task Force Recommends Changes to Prevent Abuses of Work Programs for People With Developmental Disabilities" is available at [www.openminds.com/market-intelligence/premium/omol/2009/031609hol1.htm](http://www.openminds.com/market-intelligence/premium/omol/2009/031609hol1.htm).

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Segregated Employment, Sub-Minimum Wage Create Employment Barriers for People With Disabilities. (2011, March 7). OPEN MINDS Weekly News Wire.

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## KCCI.com

### Iowans Protest Minimum Wage Exemption

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**DES MOINES, Iowa** -- A group of National Federation of the Blind Iowa members held a protest Tuesday outside the Des Moines office of Sen. Tom Harkin.



The group said the protest was to raise awareness of a bill being considered by the U.S. Senate Committee on Health, Education Labor and Pensions. Similar protests were held outside other Senate member's offices around the country on Tuesday.

The protesters said senators should reject a proposal, part of a reauthorization of the Workforce Investment Act, that would outline the circumstances under which people with disabilities could be employed at less than the federal minimum wage of \$7.25 per hour. .

The group said the law is unfair and everyone should be paid equally. Supporters of the bill said it would offer protections not currently in place.



"All American workers are supposed to get minimum wages except if you are disabled and if you happen to work for an employer who has a special certificate, they can get. Then you can be paid a sub-minimum wage and they said it is legal to do that," said Michael Barber of the National Federation of the Blind Iowa.

Harkin is the senator who authored the Americans with Disabilities Act, which prohibits discrimination based on disabilities. Tuesday is the anniversary of the bill's signing in 1990.

The bill is scheduled for a vote next Wednesday.

### Harkin's Statement

"Everyone with a disability should have the opportunity for competitive employment, and our laws should be designed with that in mind. For the first time, the draft WIA bill requires that young adults with significant disabilities be given an opportunity to experience competitive, integrated employment before trying anything else. If this language is defeated, the result will

be the status quo, which is simply unacceptable for our youth.

"The WIA draft would prevent young people with disabilities from being tracked from school into sheltered employment, and requires that all young people have an opportunity to experience competitive, integrated employment first. Unlike under current law, sub minimum wage would no longer be the first option for young people with disabilities. Youth will be provided the training, supports and services they need to develop the skills necessary to succeed in the competitive, integrated workforce. This would include opportunities to work as interns and in part-time jobs.

"That is why the provision is supported by the National Disability Rights Network, the National Council on Independent Living, and other groups that believe that no one should be paid less than minimum wage because of their disabilities. And it speaks to the heart of my efforts on this 21st anniversary of the ADA: increasing employment opportunities for all individuals with disabilities."

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# Independent.co.uk

## Dominic Lawson: It's not about money. It's about work

For the mentally disabled work can bring not just a sense of having a purpose and a role, but an end to profound loneliness

*Tuesday, 21 June 2011*

To move from obscurity to the most hated man in Britain in the space of a day is an achievement, of sorts. The man who has managed this unenviable feat is Philip Davies, the backbench (and likely to remain so) Conservative MP for Shipley.

"Disgusting", "insane" and "like Hitler" have been some of the printable comments heaped upon Mr Davies's head in the aftermath of some remarks he made during a speech in the House of Commons last Thursday on the Employment Opportunities Bill. The purpose of the measure, according to its proposer, Christopher Chope MP, was to "introduce more freedom, flexibility and opportunity for those seeking employment"; it would "reduce restrictions on foreign nationals lawfully resident in the UK that prevent them from working" and "enable those entitled to the minimum wage to opt out from that entitlement".

It is in that context that Davies made his ill-fated observations. He declared it a "scandal" that "only about 16 per cent of people with learning disabilities have a job". He then argued that employers might be more prepared to take on such people if the applicants were allowed to offer to work for less than the minimum wage (which in October is to rise to £6.08 per hour).

Davies added that "the national minimum wage has been of great benefit to lots of low-paid people" but that if legislators "are not prepared to accept that the minimum wage is making it harder for some of those vulnerable people to get on the first rung of the jobs ladder, we will never get anywhere in trying to help these people into employment".

Does that seem "insane", "disgusting", "like Hitler" – or, as the Daily Mirror declared, "a contemptible bid to impose slave labour"? Even the Daily Telegraph observed that Mr Davies's remarks had "stunned both Labour and Tory MPs". They, like Davies's critics in the media, seemed to imagine that he had proposed that the mentally disabled be "forced" to work for less than the minimum wage; whereas in fact he was merely suggesting that they be allowed to offer their services for less than £6.08 per hour.

There is still a fierce academic debate about the economic and social consequences of the minimum wage; but politically, in this country, the issue is settled. It was introduced by New Labour in 1999 (although back in the days when he was a Financial Times journalist, Ed Balls opposed a minimum wage as likely to increase unemployment). By 2000 even the Conservatives abandoned their opposition, and there is no chance that David Cameron, with his concern to "detoxify the Tory brand", would even dream of trying to repeal the legislation. Yet respected academics with no affiliation to the political right have continued to insist that it has been anything but beneficial to those it most sought to help.

In "Minimum Wages", by David Neumark, a research fellow at the US Institute for the Study of Labour, and William Wascher, of the division of Research and Statistics at the US Federal Reserve, the authors concluded, on the basis of 20 years' research, that "minimum wages reduce employment opportunities for less-skilled workers and tend to reduce their earnings; they are not an effective means of reducing poverty; and they appear to have adverse long-term effects on wages and earnings, in part by reducing the acquisition of human

capital... Policymakers should instead look for other tools ... to provide poor families with an acceptable standard of living."

In fact, some states in the US have attempted to increase the scandalously low employment rate of those with learning disabilities by giving them exemptions from minimum wage legislation. It is fair to say that disability rights organisations there have been as excoriating about such exemptions as equivalent bodies here are about Philip Davies's advocacy of the same idea.

The Associated Press last month ran a story on the effects of Ohio's legislation which allowed employers to pay less than the minimum wage to adults with "disabilities limiting their productivity". AP quoted the director of the National Disability Rights Network describing Ohio's legislation as "immoral". However the news agency also quoted the mother of an autistic man with a low wage job in Columbus, Ohio; Mrs Norma Williams said that her son's new job "allows him to have a purpose in life... he has a place to go and a reason to get up in the morning. I don't care about the money".

Similar comments can be found on The Spectator's Coffee House website, which dared to suggest that Philip Davies "should not be dismissed out of hand". In one of them, Glyn Butcher wrote (and I reprint here exactly in the form it appeared), "I have been to mental health services since I was 11 years old... I personally did not find Mr Davies comments offensive he was stating the TRUTH about service users like myself standing no choice of getting paid employment if I went to an interview and they were people there without disabilities he was just making a point that people like me want to work that bad that we would work for less money because working in itself gives us a sense of value that money cannot buy. Thank you Mr Davies for understanding me."

Of course such an arrangement can be condemned as a "ruthless exploitation by employers" of the desperation for work on the part of a man such as Glyn Butcher. Set against such rhetorical outrage is the fact that a single adult under the age of 24 is entitled to out-of-work benefits of between £60 and £70 a week; but the minimum that he can legally be paid if he works for 35 hours is over £200 a week. As Christopher Chope told the House of Commons, "If he is offered, and willing to take, 35 hours a week for, say, £140 a week, which is twice what he can get on the dole, the state does not allow him to take it... how ludicrous, mad and silly is that situation?" If it is mad, then the madness will continue: Chope's Employment Opportunities Bill is dead in the water.

While a weekly income of £140 might appear to be well adrift of the amount necessary for the basics of comfort and accommodation, the point is that the mentally disabled (and I don't mean in this context those with temporary or purely psychological problems) will for the most part either live in care homes or with their families. My 16-year-old daughter, who has Down's Syndrome, comes into the latter category. Recently she has been attending a wonderful place in Sussex called Chalk Farm, a small hotel whose staff all have mental disabilities of varying degrees of severity, and which trains such people for similar work elsewhere.

When one thinks of what a transformation in their lives such work can bring – not just a sense of having a purpose and a role, but also an end to what can be profound loneliness – the cruelty lies in not giving employers the maximum incentive to take them on. Yesterday I asked my daughter what she felt about getting just tips for waitressing at a place such as Chalk Farm. Her reply was firm, and to the point: "It's not about money. It's about work."

*Like Dominic Lawson on The Independent on Facebook for updates*

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