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Sub Minimum Wage for Persons with Severe Disabilities: Comparative Perspectives

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ABSTRACT This article examines the extent to which the sub minimum wage (SMW) is an effective labor market policy for people with severe disabilities to address their under-employment and lack of opportunity to be gainfully employed. We assess SMW policies in the United States, Australia and Israel, along four conceptual dimensions delineating participants, programs, service delivery, and outcomes. Similarities and differences in policy and practice on these dimensions are found across countries, primarily in use of competitive versus non-competitive employment programs and wage calculation. In addition, across countries, SMW serves relatively small populations with members perceived to be in need of protection from potential job exploitation. Our primary conclusion from the analysis is that more research is crucial in order to rethink these policies and their effectiveness.

Introduction

Underemployment of people with severe disabilities has been a major focus of policy, legislation and research in the United States (Barnow 2008). Although systematic investigation is limited (Markesich et al. 2006), studies from Europe show individuals with severe disabilities, such as schizophrenia, have low employment...
rates ranging between 10 and 20 per cent (see review by Marwaha and Johnson 2004). Estimates from the United States report similar employment levels (McGurk et al. 2009). Moreover, the majority of people with severe disabilities are employed in segregated and non-competitive settings (Migliore et al. 2008) and rarely advance to competitive employment (US GAO 2001, Blanck et al. 2003, Boeltzig et al. 2006).

In the United States and other countries, tax credit policies and workplace accommodations are among the tools to promote employment of people with severe disabilities (see Mont 2004). Tax credits, used mainly by employers, are meant to create financial incentives to hire people with disabilities (Silverstein et al. 2005, Blanck et al. 2009). Once hired, accommodations used by employees assist in a barrier-free work environment (Schartz et al. 2006). Another major tool, framed as a labor market policy for underemployment and lack of opportunities to work and exposure to job skills, is the sub minimum wage (SMW) (Butterworth et al. 2007). SMW enables employers, under certain conditions, to pay persons with disabilities wages below the established minimum wage (Blanck et al. 2003).

Supporters view SMW as an important tool to increase earnings of persons with severe disabilities and integrate them in competitive workplaces (Tagar 2006). Opponents of SMW see it as a regulated measure that does not significantly change the employment status of people with severe disabilities. Some suggest sub minimum wages may be discriminatory and stigmatizing (US GAO 2001, Morris et al. 2002, Blanck et al. 2003). Nonetheless, SMW has been in practice for several decades in the United States (Morris et al. 2002) and used in other countries (see BBI 2008). Although debates as to efficacy and equity of SMW are documented, program research is limited, mainly due to a lack of useful data collection on these programs (see Butterworth et al. 2007, BBI 2008).

In this article, we examine the extent to which SMW is an effective labor market policy to enhance employment opportunities and facilitate integration of people with severe disabilities into the labor market. Persons with severe disabilities are: “individuals of all ages who require extensive ongoing support in more than one major life activity in order to participate in integrated community settings and to enjoy a quality of life that is available to citizens with fewer or no disabilities” (TASH 1991: 19).

We assess and compare SMW policies in the United States, Australia, and Israel. Unlike the prolonged experience that America, and to a lesser extent Australia, have with legislation and implementation of SMW systems for employees with disabilities, Israel’s legislation and consequential policy, are a product of the twenty-first century. This entails an opportunity to study SMW in depth as a policy tool to address the underemployment of persons with severe disabilities which emerged in three different settings and over the course of different times. Therefore insights can be gained by comparing the characteristics of these policies in each country as well as by learning from the rich history that the American (and to a lesser extent the Australian) experience provides.

The first part of the paper describes SMW and the arguments in support of and against this policy. We next review the legislative underpinnings of SMW policies in the three examined countries, comparing SMW according to Rivlin’s (1971) model for rational and systematic analysis. We assess and compare SMW policies along four conceptual dimensions delineating participants, programs, service delivery, and
outcomes. Based on our review and analysis, the closing part discusses whether the existing studies support the conclusion that SMW promotes employment rates and competitive employment for persons with severe disabilities.

SMW Background

SMW, or “adjusted minimum wage”, for example as termed in Israel (see State of Israel Ministry of Justice and Ministry of Foreign Affairs 2008), is an incentive to encourage employers to employ people with disabilities. The method consists of paying individuals whose production, in a given job and work place, is impaired severely because of their disability, according to their productivity level. The assumption is that this method of payment will generate more job opportunities for persons who are more at risk of being unemployed (Butterworth et al. 2007). As is the case with the minimum wage, SMW can be therefore viewed as a potential useful mechanism for redistribution (Lee and Saez 2010). As first conceived in the United States in 1938, SMW was aimed at persons and jobs characterized by manufacturing and repetitious work tasks (Morris et al. 2002). Under specific conditions, this policy allows employers to pay such employees wages below the statutory minimum wage (see Blanck et al. 2003). SMW is seen as a special case of the minimum wage and based on the same classic economic reasoning, namely that a rise in the minimum wage generates more unemployment (Butterworth et al. 2007).

Similar to the minimum wage (Lee and Saez 2010), SMW is a highly controversial tool which fuels timely public debates regarding its equity and whether abolishing it will create more unemployment for people with severe disabilities. For example, on April 5, 2010 the gazetteonline posted an article entitled: “Higher pay for disabled employees could put them out of work.” However, the article mentions the mistreatment of workers with mental disabilities who “were paid only $65 a month to work at West Liberty Foods and an Atalissa farm, Sen”, producing claims to therefore change the law (http://gazetteonline.com/breaking-news/2010/04/05/higher-pay-for-disabled-employees-could-put-them-out-of-work).

Some supporters of SMW argue that abolishing it will increase the under- and unemployment of persons with severe disabilities and their further marginalization from the labor market (Tagar 2006). Other claims in favor of SMW concern the context in which these wages are usually paid (contract work), the notion that fee for service income will not – and should not – cover the cost of higher wages, and the fact that a blanket minimum-wage policy would contradict rehabilitative goals. As for the first argument, private customers utilize work center services and products through a competitive bid process. The limited productivity of some employees with disabilities requires utilizing more workers to generate the same amount that is produced on average by one non-disabled worker. Therefore, if such programs were not permitted to pay wages that are based on productivity, they will be forced to charge higher prices for their goods compared to competitors from the private sector. Obviously, no customer can be expected to pay the difference in cost that stems from employing people with disabilities (Inge et al. 2009).

As for the fee for service income, historically client wages have not been legally included in cost statements. The latter aim to establish fair and equitable rates of reimbursement for work centers and day centers. Government has repeatedly ruled...
that when public monies are used to cover client payroll, it constitutes an inappropriate use of public funds since it basically means providing a subsidy to the private businesses that use rehabilitation center services. Hence, client wages must be paid out of sales or contract income, not dollars intended to fund programs and pay staff. Unfortunately, some programs do attempt to cover their client payroll out of service fee revenue. When they do so, they inevitably draw funds away from staff support, staff training, and staff payroll. Aside from operating within a questionable compliance posture, such agencies typically begin to suffer from the understaffing, higher turnover, and poor quality of services that inevitably result (Inge et al. 2009).

It has been argued that a blanket minimum-wage policy will impair a given rehabilitation program’s ability to measure productivity as well as providing a disincentive for clients to improve their performance. Historically, a detailed analysis of the productivity level of each rehabilitee has been central to the rehabilitation process. Indeed, it would be difficult to imagine how one might achieve an accurate evaluation of the training and rehabilitative needs of a client without a verifiable measure of productivity and earnings. Once assessed and evaluated, each rehabilitee is generally encouraged to develop useful work and social behaviors and to abandon those behaviors that may have, in the past, presented barriers to higher earnings and/or further community integration. The prospect and achievement of higher productivity and, most importantly, a larger paycheck, provides a very strong incentive for continued progress. Providing clear feedback to the rehabilitee about his/her productivity signifies respect and confidence that real improvements can be made. Such feedback also generates positive reinforcement of the vocational progress (Inge et al. 2009).

Finally, there are those who are in favor of SMW who suggest that segregated work, i.e. SMW arrangements in sheltered employment settings in the United States, is a transitional phase to competitive employment (Inge et al. 2009). Unfortunately, research shows that this is often not the case and sheltered work becomes long-time work for many otherwise qualified employees with severe disabilities (Blanck et al. 2003, Inge et al. 2009).

Similar to the concept of minimum wage, SMW is based on the assumption of classic economic theory which predicts that increasing the minimum wage will result in adverse effects on employment. Classic economic theory maintains that increasing the minimum wage will have negative effects on employment since higher wages for some employees will mean letting go of others so that the economic equilibrium will remain intact (Brown et al. 1982).

Classic economic theory and its predictions have been questioned by the evidence-based approach which examines the effects of increasing the minimum wage in actual labor markets. Of note is that not a single study tested the effects of increasing the SMW on people with severe disabilities (Butterworth et al. 2007). Research conducted according to the evidence-based approach however, yielded mixed and opposing findings (Butterworth et al. 2007). On the one hand studies showed that an increase in the minimum wage did not result in more unemployment (Card 1992, Katz and Krueger 1992, Card and Krueger 1994, 2000). But, on the other hand, other studies have demonstrated that increasing the minimum wage does result in more unemployment (Neumark and Wascher 2000, 2004) and more poverty
Lehmann (2006) found that an increase in the minimum wage did not affect the employment of the general population, but it had an adverse effect on the employment of people with disabilities. In view of these contradicting results, Butterworth et al. (2007: 15) conclude that

There is not currently a clear theoretical or evidence-based understanding of the impact of increases in the minimum wage on the labor market. The biggest limitation of the evidence-based approach is the difficulty of isolating the effects of the many intervening variables that may also have a role in determining the performance of economic systems.

Thus, opponents of SMW argue that since economists are not in agreement as to the effects of increasing the minimum wage on the overall population, and since SMW is similar to the case of minimum wage, then the effects of SMW on people with severe disabilities is equally questioned (Butterworth et al. 2007).

Apart from the economic argument which challenges the effectiveness of SMW, opponents of SMW argue that it is discriminatory, and exploits and stigmatizes people with severe disabilities (US GAO 2001, Morris et al. 2002, Blanck et al. 2003). Those who are against SMW also claim that although SMW is determined for a specific role in a specific work place, the employee, his/her family and their support worker might perceive the employee as incapable of earning the minimum wage or the prevailing wage (Butterworth et al. 2007).

In addition, opponents of SMW question whether diminished productivity is a disability-related or rather a mere reflection of poor job placement (Butterworth et al. 2007). Other critiques of SMW argue that it was established in an era when the United States was characterized by a production economy. With the shift in economy to a primarily service economy, in the United States and elsewhere, the reliance on productivity as a key feature of what constitutes a quality or valued employee is no longer the case (Butterworth et al. 2007).

Some argue that SMW policies reflect the perception of disability as a deviation from medical norms, that is, a deficiency or malfunction (Hahn 1993). Since in this approach disability is viewed in terms of an inability to work (see Blanck 2005, 2008), disability rights advocates view SMW as a form of cash transfer or charity, the embodiment of societal benevolence which stands in contrast to the rights approach to disability as set out, for instance, in the Americans with Disabilities Act (ADA) of 1990 (Inge et al. 2009).

Criticisms of SMW therefore are, in part, based on socio-cultural meanings of employment and disability. Production and output historically are viewed as central values in industrialized societies (Russell 2002: 122). As such, work productivity has become a shorthand for defining entitlement, worthiness, citizenship and inclusion (Levitas 1998, Logue and Blanck 2010). Those who are marked as unproductive or unemployable are doomed to the fringes of society (Abberley 2002). Some researchers suggest that defining employment in terms of productivity maintains power structures and promotes the marginalization of oppressed groups such as women and people with disabilities from the labor market (Russell 2002, Barnes 2003, Barnes and Mercer 2005).
When employment derives its meaning from production; disability is viewed as the embodiment of non-productivity or dependency (see Clapton 2003). SMW policies not only adopt notions of employment as productivity, but also foster assumptions that people with disability are unproductive due to inability. Furthermore, although labels of inability are presumably tied to certain job functions within a given workplace, judgments of reduced or impaired productivity become generalized and devoid of their contextualized meaning (Butterworth et al. 2007). In this sense, SMW policies not only stem from intertwined negative social and cultural interpretations of disability and work, but may also strengthen and perpetuate these cultural meanings.

Legislative Underpinnings of SMW Policies in the United States, Australia and Israel

The United States

The American SMW mechanism has a long history (see Whittaker 2005). Section 14(c) of the Fair Labor Standards Act (FLSA) of 1938 allows employment of people with disabilities at rates below the statutory minimum wage. The aim of the 14(c) program was to facilitate employment opportunities for individuals with disabilities (Blanck et al. 2003). The Act was amended twice. In 1966 its amendments dictated that employees with a disability in competitive and non-competitive settings, except those who were employed in “work activities centers”, be paid no less than 50 per cent of the federal minimum wage (Whittaker 2005). “Work activities center” was a term used to describe sheltered workshops that were predominantly rehabilitative and treatment centers. Participants in these activities were, according to the amendments, not considered “employees”. The second and most recent amendments to the Act, specifically Section 14(c), took place in 1986. As a result, workers with disabilities are to be paid a “commensurate” wage according to their productivity (Whittaker 2005, 2008).

Since its last amendment in 1986, questions and concerns surrounding the equity of the legislation increased. “In 1994, further hearings were held and it was asserted that the entire system of productivity-based sub-minimum wage rates was inequitable and unworkable. The law, however, supported by employers of workers with disabilities, was not altered” (Whittaker 2005: 3). It is noteworthy that in 1994 and in 2001 (during the 103rd and 106th Congresses) there were initiatives to exclude the visually impaired (in practice, the blind) from the Act but these have not materialized (Whittaker 2005).

Nonetheless and in spite of the fact that SMW legislation was not amended, many states have added restrictions to the implication of SMW, for instance, by allowing this arrangement to be implemented only in sheltered workshops (Butterworth et al. 2007).

Australia

Similar to the United States, the mechanism of SMW for employees with disabilities is not new to Australian law and policy (Australian Government 2006). Today, Australia has two systems of SMW for individuals with a disability. The first
addresses “business services”, previously termed “sheltered workshops” (i.e. the non-competitive sector). The second is geared towards “Supported Wage System” (SWS) (Australian Government 2006, http://www.workplace.gov.au/workplace/Programmes/EmployerIncentivesScheme/SupportedWageSchemeSWS.htm). These systems have a different history and origin (Australian Government 2006).

**SMW in competitive employment.** Before 1994, employment of people with disabilities for less than the minimum wage was permitted by way of “slow or infirm worker provisions contained in awards, or slow worker permits under State industrial relations legislation”. These were not available for all and furthermore relied on unreliable and invalid measures of work capacity (Australian Government 2006: 347).

Changes in the aforementioned system started in 1990 when the Australian government initiated a review of employment issues for people with disabilities. The review’s recommendations urged changes to the existing system for wage determination. As a result, one year later, Don Dunoon was hired by the government to “to develop an assessment process which determined fair and equitable wage outcomes based on a uniform assessment of employees’ skills and productive capacities matched to the requirements of the position” (Australian Government 2006: 348). The “Dunoon Report” is the basis for the contemporary evaluation system in competitive employment settings, the SWS, which was developed collaboratively with disability organization members and leaders. In 1994 the model was finalized and agreed upon by all parties (Australian Government 2006).

Legislation soon followed. The Workplace Relations Act (WR Act) of 1996 was amended and ensured that

the AIRC [Australian Industrial Relations Commission] in performing its dispute prevention and settlement functions, had regard to the need to provide a supported wage system for people with a disability. The WR Act was also amended to require that when the AIRC made an award or an order, it should ensure that the SWS was provided for people with a disability where appropriate. Furthermore, the list of allowable award matters under section 89A(2) of the WR Act specifically included “rates of pay for employees under the supported wage system”. (Australian Government 2006: 349)

In 2005 the WR Act was amended. This new legislation is known also as “Work Choices” and aims to create “a more flexible, simpler and fairer system of workplace relations for Australia” (Parliament of the Commonwealth of Australia House of Representatives 2005: 1). The Act established a new statutory agency called the Australian Fair Pay Commission (AFPC) which replaced the former AIRC and is responsible for dictating and modifying the general federal minimum wage and SMW arrangements for various groups, among them employees with disabilities (Cowling and Mitchell 2007).

Cowling and Mitchell (2007: 749) argue that

While the pre-Work Choices, Workplace Relations Act 1996 (Section 88B), provided that the AIRC must ensure that a safety net of fair minimum wages
and conditions of employment is established and maintained, the Work Choices changes have removed ‘fairness’ from both the wage-setting objectives. The AFPC must now consider . . . economic criteria in their wage-setting decisions.

These include “[p]roviding minimum wages for . . . employees with disabilities that ensure those employees are competitive in the labour market” (Cowling and Mitchell 2007: 749).

In 2008, under the Rudd federal Labor government, The Workplace Relations Act of 1996 was amended once more – Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008 (Cth) – and sought to restrict the protections provided by the Work Choices amendments to the WR Act. to non-employee outworkers in various industries (Rawling 2009).

On November 25, 2008 the Fair Work Bill was introduced into the House of Representatives and on April 7, 2009 the Fair Work Act 2009 received royal assent (http://www.workplace.gov.au/workplace/Publications/Legislation/FairWork Bill.htm).


**SMW in non-competitive settings.** In 2002, the Disability Services Act of 1986 was amended by the Disability Services Amendment (Quality Assurance) Act. The latter assured that, as of 2005, only business services that fulfilled new quality assurance criteria may be funded by the Australian government. A significant criterion assured that “the payment of award based wages as determined by a transparent assessment tool or process” (Australian Government 2006: 351).

**Israel**

Adjusted Minimum Wage Regulations (Adjusted Wage for Employees with Disabilities Having Reduced Ability to Work Regulations 5762 – 2002) were formulated in Israel in 2002 and derived from the Israeli Sub Minimum Wage Law of 1987 (State of Israel Ministry of Justice and Ministry of Foreign Affairs 2008). These regulations were implemented for a trial period, four years after their completion, in November 1, 2006, by the Ministry of Industry, Trade and Labor (MOITAL). The regulations were amended on November 5, 2009 (Minimum Wage Regulations (Wage Adjusted for Worker with a disability with Diminished Work Capacity), (amendment) 2009).
Participants of SMW Program

The question regarding the nature and number of SMW participants involves two issues: first, who is the targeted audience according to the legislation, and, second, who are the actual participants. In this section we will consider both issues.

The United States

According to the American FLSA, the definition of a worker with a disability is dependent on the particular job being performed, and the fact that an individual’s earning or productive capacities at that particular job are diminished on the grounds of a physical or mental disability. The FLSA provides examples of such disabilities: blindness, mental illness, mental retardation, cerebral palsy, but also conditions such as alcoholism and drug addiction (Whittaker 2005, BBI 2008).

Whittaker (2005: 6) argues that “Section 14(c) of the FLSA is narrowly focused. It deals only with workers who, because of a disability, are deemed to have their productivity (for the particular type of work in which they are engaged) reduced below that of non-disabled workers.” Hence, the FLSA’s definition is a functional one, which addresses a restriction in the economic arena.

The FLSA addresses all employment settings including work activities centers and workshops (Whittaker 2005, BBI 2008). However, in practice, 95 per cent of SMW employees in the United States are employed in sheltered workshops, which are non-competitive work settings (US GAO 2001). This suggests this program is a residual mechanism that is fit to serve individuals who otherwise will not participate in the labor market (US GAO 2001, Morris et al. 2002, Blanck et al. 2003).

There are approximately 425,000 persons with disabilities employed under Section 14(c) programs in the United States (Butterworth et al. 2007), mainly employed in schools, hospitals, and community rehabilitation programs (Inge et al. 2009). In 2007, there were about 22 million working-age (aged 21–64) people with disabilities in the United States (Bjelland et al. 2008).

Data on SMW participants’ disability shows that three-quarters have developmental disabilities, followed by severe physical and sensory disabilities (14%) and mental illnesses (12%) (US GAO 2001). However, Butterworth et al. (2007) argue that the number of recipients of sub minimum wage can only be estimated since there are limitations in program records and data collection.

Australia

Australia differs from the United States as it operates two different SMW systems for employees with disabilities. A definition of an employee with a disability for the purpose of wage adjustment is provided by the WR Act of 1996, but only in relation to competitive employment. According to the Act, employees with disabilities are those who are eligible, or are potentially eligible, for the Disability Support Pension (DSP) under the Social Security Act 1991 (Parliament of the Commonwealth of Australia House of Representatives 2004). This definition is a medical one, which relies on proven pathology and dysfunctions.
Similar to the trend in the United States, pro-rata mechanisms for wages are used predominantly in non-competitive employment. The SWS, which evaluates employees in open employment served approximately 5,609 people in 2006–2007 (Australian Government 2007).

In 2006 the Association of Competitive Employment (ACE) noted that more than 80 per cent were reported to be individuals with mental illnesses or developmental disabilities. The non-competitive arena consists of approximately 17,500 people with a disability, employed by 224 business services (Australian Government 2006). The total number of working-age population (15–64) that reported having a disability was estimated to consist of 2,238,258 individuals in 2003 (Mavromaras et al. 2007).

Israel

The Israeli Minimum Wage Regulations (Wage Adjusted for Worker with a Disability with Diminished Work Capacity) of 2002 define a worker with a disability as

> a worker with a physical, emotional or mental disability who is a person with disability as the term is defined in section 5 of the Equal Rights for Persons with Disabilities Law, 5758–1998 . . .; a person with a permanent or temporary physical, mental or intellectual – including a cognitive – impairment, due to which his functions are substantively restricted in one or more main spheres of life.\(^3\)

While in the United States and in Australia, the definition of a disability implies that the presence, nature and extent of the disability needs to be formally recognized, the Israeli legal definition is not bound to formal criteria, thus potentially encompassing a larger population.

The adjusted minimum wage regulations in Israel do not apply to individuals in sheltered workshops. These individuals are considered “rehabilitates”, not “employees”, and are under the responsibility of the Ministry of Welfare and Social Services (State of Israel, Ministry of Justice and Ministry of Foreign Affairs 2008). This characteristic signifies a central difference between Israel and the other two countries that focus primarily on sheltered employment.

MOITAL data show that between December 2006 and May 17, 2009, 2,129 requests for wage adjustments were received. During this period, 1,812 employees have undergone a wage assessment process (State of Israel, MOITAL 2009a). In 2009, MOITAL estimated that there are approximately 10,000 individuals with disabilities employed in the business sector only who need to undergo wage assessments (State of Israel, MOITAL 2009b).

The total number of working-age people (20–64) with disabilities in Israel was estimated to be 643,000 in 2006 (State of Israel, MOITAL 2009c). Although SMW policies serve a small number of working-age people with disabilities in each country, the growing numbers of participants in Israel suggest these policies are perceived as a solution for a relatively large percentage of the working-age disability population.

Data from June 2008 show the largest group of employees who were wage-assessed in Israel had psychiatric disabilities (42.4%), followed by mental retardation...
Both of these types of disabilities are commonly categorized as severe and are, in other Western countries, typically found in sheltered employment settings (Twamley et al. 2003, Migliore et al. 2007). In the United States, it was estimated that approximately 74 per cent of the workers in sheltered workshops under the SMW arrangement who are paid have mental retardation or another developmental disability as their primary impairment (US GAO 2001).

**Service Delivery System**

In this section we discuss key elements of each program; namely, how the assessment is initiated, the role of the assessor, who is assessed, and how the wage is determined (see Table 1).

**The Initiator**

In the American system it is the responsibility of the employer to obtain a “Special Certificate” from the US Department of Labor (DOL) (US Department of Labor, Employment Standards Administration, Wage and Hour Division 2008). Likewise, in the Australian Business Service, employers request evaluation of a worker (http://www.crsaustralia.gov.au/about_the_business_services_wage_tool.htm#when_to_refer; http://www.crsaustralia.gov.au/cgi-bin/bswt.pl). For employees in open employment by way of SWS, the application is submitted by either the employer or an Australian government employment service provider (http://www.jobaccess.gov.au/JOAC/ServiceProviders/Assisting_employers/Financial_help_and_wages/Supported_Wage_System/).

In contrast, in Israel, requests for adjusted minimum wage are filed by the employee or by someone who is acting on his/her behalf. This does not necessarily mean a legal guardian (State of Israel, MOITAL 2009d). The employee (or his/her legal guardian) is the one who is notified in two separate letters, one which informs him/her of work capacity according to the assessment (for example 32%, 75%); the other which informs the employee of the wage he/she is entitled to according to his/her work capacity (State of Israel, MOITAL 2009e). The November 2009 amendments stress that the employer will be notified of the latter (State of Israel, MOITAL 2008b).

**The Roles of the Assessor and what is being Assessed**

In the United States the employer performs the SMW assessments. These consist of determining the employee’s productivity while using validated tools and work measurement methods. The employer needs to establish the criteria that best reflect the productivity of an average worker. It is recommended the employer will measure and average the performance of at least three non-disabled workers (US Department of Labor, Employment Standards Administration, Wage and Hour Division 2009). The vast majority of the outcomes address the quantity of work. However, quality is also marginally considered (Haimowitz and Soffer 2009). Employers are required to file written assurances of semi-annual wage reviews (Morris et al. 2002).
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<th><strong>Table 1. SMW in the United States, Australia and Israel: points of comparison</strong></th>
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While the American system focuses on productivity, the Australian system for assessing adjusted wage in a similar population (non-competitive employment workers) stresses the productivity as well as the competency of the employee. This is evident, for instance, in the description of the Business Services Wage Tool (BSWT), which is a recommended assessment kit developed by the Australian government for the purpose of wage assessments in non-competitive settings (http://www.crsaustralia.gov.au/about_the_business_services_wage_tool.htm).

Unlike the American system, assessments utilizing the BSWT are performed by a professional entity, namely “Job Capacity Assessors”, commonly psychologists or social workers, working for CRS Australia (the national vocational rehabilitation agency) (Haimowitz and Soffer 2009). Both productivity and competency are evaluated by way of comparisons; the productivity level of the employee is compared to “an expected productivity benchmark” (CRS Australia 2007: 8), which could be a non-disabled employee. The employee’s level of competency is compared to “a stated competency standard” (CRS Australia 2007: 7). Each assessment is supposed to be reviewed within three years; however this is subject to change upon request of the employee or employer (Haimowitz and Soffer 2009).

Assessments in competitive employment by the SWS aim to assess “productive capacity” (Australian Government 2006: 344), that is, “assessment of the SWS worker’s output on the job compared with that of co-workers in the workplace who undertake similar work and who receive the full minimum wage for the job”. In other words, the goals of this assessment are similar to the one in the United States, namely to determine productivity. However, different from the United States, pre-assessment wage procedures are taken to verify that the employee would be unable to work at the full wage level. The Australian system then employs means of training and accommodations, that is, ensures that the person is given some support to achieve a higher wage prior to conducting the actual wage assessment (Haimowitz and Soffer 2009).

The productivity of the worker is determined by “a trained and accredited wage assessor” (Australian Government 2006: 344). Such an assessor is qualified and trained in an assessor training program and has acquired at least two years of experience in the area of disability employment. The assessor works in collaboration with the employee and employer who are full partners in determining the components of the job and what qualifies as a basic level of performance. The wage assessment is reviewed annually or earlier if proven necessary. Employers receive a fiscal incentive for participating in the SWS (Haimowitz and Soffer 2009).

Section 5 of the Israeli regulations concerns “work capacity” assessments for wage determination. These can be performed by a senior public civil servant at MOITAL (the director of the unit in charge) or by “any medical entity or any entity engaged in diagnosing capacity for work as instructed by the Director”. In practice, wage assessments in Israel are aimed primarily to measure productivity (tfuka) (see http://www.moital.gov.il/NR/exeres/86CE789D-1B45-4758-8F96-FADF7A13ADC1.htm).

Assessments are performed by two different entities, the Loewenstein Rehabilitation Hospital and the Company for Rehabilitation Projects, Ltd., also known as “Shel”, according to geographic regions. The Loewenstein Rehabilitation Hospital’s staff consists of occupational therapists (OT) and rehabilitative psychologists who use tools from disciplines (for example contextualized functional tests and
personality tests, which assess psychological characteristics and skills) for the purpose of the assessments (Loewenstein Rehabilitation Hospital 2009). Shel’s assessors are OTs and rely mainly on the discipline’s set of tools and knowledge (Company for Rehabilitation Projects, Ltd. 2009). However, both entities conduct their evaluations in comparison to a non-disabled employee. Unlike in the American and the Australian systems, there are no periodic reviews of the worker’s productivity (Minimum Wage [Adjusted Wage for Employees with Disabilities Having Reduced Ability to Work] Regulations 5762 – 2002).

Furthermore, it is important to indicate that in Israel both assessing teams are instructed to provide recommendations for accommodations and training, however, these do not affect the productivity measures or the wage determination process, and cannot be “forced” on the employer. Thus, these stand only as suggested recommendations for the future use of the MOITAL.

Wage Determination

In the United States and in Australia the wage is determined by the assessors. In the United States the employer, who assesses the worker’s productivity, needs to determine the normative or prevailing wage in the local community for an experienced non-disabled worker who does the same type, quantity, and quality of work. The assessed percentage of productivity is equivalent to the percentage of the minimum wage for which the employee is eligible. For example, if a person’s productivity is assessed to be 25 per cent, his/her wage will be a quarter of the prevailing minimum wage (Haimowitz and Soffer 2009).

In the Australian Business Service the wage is calculated according to a fixed formula that takes into account the competency and productivity levels of the employee and the prevailing wage per hour. In the SWS the employee’s wage is determined in comparison with the “applicable minimum wage that covers the same type of work” (Australian Government 2006: 354), thus “an appropriate minimum wage for an employee with a disability would be one that reflects the lesser capacity of the employee relative to other employees doing the same job” (Australian Government 2006: 354). As in the American system, the wage is proportional to the productivity level of the employee (for example, 80% productivity is translated to 80% of the prevailing wage) and consists of 10 levels of wage, which range from 10 per cent to 90 per cent in even 10 per cent intervals. The assessment for determining this final and adjusted wage is conducted during a trial period when the employee earns a mandatory minimum weekly wage that is determined and updated timely by the Australian Fair Pay Commission (Australian Government 2006, Haimowitz and Soffer 2009). The mandatory minimum weekly wage becomes the final wage in cases where a 10 per cent wage is determined that is lower than the mandatory minimum weekly wage (Australian Government 2006).

In contrast, and in order not to compromise the objectivity of the assessor, Israel has insured a separation between the assessing process and wage determination. Although wages are dictated by the regulations according to work capacity, the conversion of work capacity scores into wages are done by the director of the unit in charge in MOITAL. The system of conversion is the following (see Minimum Wage Regulations (Wage Adjusted for Worker with a disability with Diminished Work

1. For a work capacity more than 19 per cent and no more than 30 per cent less than the normal work capacity – 30 per cent of the minimum wage.
2. For a work capacity more than 30 per cent and no more than 40 per cent less than the normal work capacity – 40 per cent of the minimum wage.
3. For a work capacity more than 40 per cent and no more than 50 per cent less than the normal work capacity – 50 per cent of the minimum wage.
4. For a work capacity more than 50 per cent and no more than 60 per cent less than the normal work capacity – 60 per cent of the minimum wage.
5. For a work capacity more than 60 per cent and no more than 70 per cent less than the normal work capacity – 70 per cent of the minimum wage.
6. For a work capacity more than 70 per cent and no more than 80 per cent less than the normal work capacity – 80 per cent of the minimum wage.

Therefore, workers with work capacity that is 80 per cent and higher will receive the full minimum wage.

Individuals who have a work capacity that is lower than 20 per cent are covered by the Equal Rights of Persons with Disabilities Employed as Rehabilitated Persons (Temporary Provision) Law of 2007 and are considered “rehabilitees” rather than employees and thus are excluded from the labor market and labor protective laws (State of Israel, Ministry of Justice and Ministry of Foreign Affairs 2008).

While the floor wage in the United States is set at 1 per cent of the prevailing wage, in Israel it is set at one-third of the minimum wage. In Australia the minimum wage in open employment is 10 per cent of the prevailing wage or the mandatory minimum weekly wage. In non competitive employment, no such floor exists (http://www.crsaustralia.gov.au/about_the_business_services_wage_tool.htm#scoring).

In summary, in the United States and in Israel the assessment consists of a snapshot of productivity. In Australia the SWS’s pre-assessment of functional wants serves as a baseline for both establishing reduced productivity and for tailoring accommodations and training that can boost productivity and consequently wages. In the Australian SWS, the employee, employer and assessor are likened to partners and are all active agents which mutually mold the assessment process and agree on its outcomes. The role of the employee is marginalized in Israel and annihilated almost completely from the American system. In the United States the employer is granted power over the process as he/she plays a central role in all stages of the assessment. In Israel the assessors are the most influential players in the process.

These differences also tap into the role of the state and the perception of the state’s responsibility generally. In the United States the state’s role is minimal and encompasses the issue of certification and supervision. The latter was found lacking and insufficient (see Butterworth et al. 2007). In Israel the role of the state is also restricted as the operation of the policy is privatized. The in-house unit consists of merely three employees, one of whom is not a civil servant. A private administrative company manages the process. The two assessment entities are businesses, not government employees or private professionals trained by the government. Furthermore, in contrast to Australia, there is no standardization as to the
qualifications of these assessors. The Israeli government’s role is mainly to supervise these sub-contractors and to convert the productivity levels into wages.

Program Effectiveness

The United States

Studies on SMW policies in the United States are scant. In 2001, the Department of Labor (DOL) Inspector General’s Report and the GOA’s reports raised many concerns about the ways the data were collected, and the accuracy, validity and reliability of the data (Butterworth et al. 2007). Since then, monitoring of the data improved, but only few studies were conducted. A 2005 survey of sheltered workshops shows that whereas approximately 80 per cent of the clients were employed according to 14(c), less than 40 per cent received appropriate wages. In general the survey highlighted the extreme violations in the system (US Department of Labor, Employment Standards Administration Wage and Hour Division 2005).

The little research from the United States implies that SMW policies fail to facilitate greater earnings, integrated, competitive or gainful employment. Studies did not examine the effect of SMW on employment rates of individuals with disabilities (Butterworth et al. 2007).

The US GAO (2001) found that more than half of the participants in the program earn less than the federal minimum wage, implying that this policy fails to promote an income increase. A recent national survey of community rehabilitation programs that hold Special Wage Certificates found that less than 10 per cent of the staff reported that their client earns at least the minimum wage (Inge et al. 2009). This study also found that community rehabilitation programs generally do not promote integrated employment. Other studies showed that SMW does not promote mobility into gainful or competitive employment (US GAO 2001, Blanck et al. 2003, Boeltzig et al. 2006).

Australia

Data on the SMW systems in Australia are scant, while only one central program evaluation was conducted in Australia (ACE 2006). The study, conducted by KMPG Consulting (see Bill et al. 2004, ACE 2006) focused on the SWS program, while analyzing data from July 1994 to July 2000 on 3,675 participants. The evaluation found that only 5.1 per cent left the program for positive reasons (for example advancing to a better job), whereas approximately 27 per cent who left the program did not have a new job. Compared to sheltered employment, “most SWS jobs averaged 20.5 hours a week and just over $6.00 an hour at an averaged assessed productivity rate of 53.5 percent at a time when the minimum wage was between $10.00–$11.00 and the average wage in sheltered workshops was $1.00–$2.00” (ACE 2006: 7).

Israel

The Israeli adjusted minimum wage system is relatively new, however some evaluative data is available. In 2008 the MOITAL reported findings concerning
1,215 individuals with disabilities who have undergone the process of evaluation and wage determination. The two major wage groups were 75 per cent of the statutory minimum wage (38.9%) and 50 per cent of the statutory minimum wage (38.8%). The full minimum wage was granted for approximately 9 per cent of the referrals, while 13.5 per cent were determined eligible for one-third of the statutory minimum wage (MOITAL 2008c).

In a survey conducted with 610 individuals, approximately 10 months after their adjusted minimum wage evaluation was completed, 81 per cent reported working at the same job they worked in when they underwent the evaluation, 10 per cent reported being employed at another job, and 9 per cent reported that they were not working. As for wage, 47 per cent reported no change in wage. Moreover, one-third reported an increase in earnings as a result of the evaluation process. Relatively few (7%) reported a decrease in income, and 13 per cent of respondents replied that they do not know (MOITAL 2008c).

Discussion

The SMW is based on the assumption that the ability to pay workers with disabilities a lower wage according to their productivity will result in employment opportunities that they would not otherwise have. As mentioned above, SMW policies are highly controversial; those that are against them argue that they counter the meaning of social justice and also that society has to provide “real work for real wages”. Supporters claim that wage should be a function of productivity, hence, people with disabilities who produce less should be paid less. Using Rivlin’s (1971) rational policy analysis, we compared SMW in respect to participants, types of programs, delivery systems and outcomes in the United States, Australia and Israel. Our analysis emphasizes the complex reality that surrounds SMW policies and the ways through which each country chose to deal with these salient issues.

The comparison points out that the three countries differ in terms of the employment settings (i.e. competitive versus non-competitive) of the participants. In the United States the participants are employed in non-competitive settings, in Israel the participants are employed in competitive settings, while in Australia two separate programs address both settings. In practice, in all countries SMW current participants are primarily persons with psychiatric or intellectual disabilities, that is with severe disabilities. Compared to Australia and Israel, the US policy tends to minimize government’s regulation in the labor market. Therefore, SMW is perceived as an exceptional solution, just for those incapable of working in regular jobs (mainly sheltered industries). Australia and Israel tend to allow more government intervention, implying that SMW is a valid policy to integrate people with severe disabilities in competitive employment settings.

These ideological and economic differences in government regulation appear also in the service delivery systems. In the United States, the certified employer is the initiator of the process, the assessor and the one who determines the SMW. Australia has a similar initiator (the employer or an employment service); however, the assessment and the determination of SMW is conducted by a professional of the allied health professions. The Israeli system marginalizes the employer’s role; the
initiator is the person with disabilities, the assessment and the determination of SMW is carried out by a professional outsourced agency. The different approaches toward SMW are observed in the way wage is calculated. In the United States SMW is a direct percentage of the person’s productivity rate (starting from 1%), in Australia it is the same (but starting from 10%) or a result of a fixed formula, and in Israel it is a six-level ladder (starting from a third of the minimum wage).

A closer look at the findings, however, reveals that the documented differences are negligent. They are probably products of different cultural, economical and political systems, but they are merely variants of the same mechanism. The central role of the employer in the United States is to adhere to neoliberal capitalistic values in America (see for example Russel 2002). As noted earlier, Australia and Israel allow more government regulations and procedures aimed to protect the employment status of people with severe disabilities (see Lindsay 1995–96, Rimmerman et al. 2005).

When SMW policies are stripped off of these differences, one begins to see that the overarching ideology that fuels SMW is the same in each of the examined countries; they are all marginal policies that handle a pittance of participants (425,000 in the United States, 17,500 in the non-competitive sector and 5,609 in the competitive sector in Australia, and approximately 2,000 in Israel) all perceived as “unproductive populations”, and viewed as in need of protection from potential exploitation. Moreover, the United States, Australia and Israel exercise the same tools to evaluate, assess, and quantify medical deficits and impairments which depart from common practices of the labor market. The medicalization of disability in Australia and Israel is particularly evident. The system is laden with psychologists, occupational therapists and job placement workers. Although we were able to map the legal underpinnings of SMW policies in each of the examined countries as well as to review the execution of these policies, the lack of research concerning the effectiveness of SMW policies is most troubling and hampers our ability to draw a firm conclusion as to whether they truly serve their intended purpose. Scant data from the most experienced country, the United States, imply that the system does not achieve its intended outcomes; however the validity of the data are also questioned. The data from Australia, although too few to draw conclusions, do not imply promising outcomes. Other anecdotal information, published for example in the press, also reflect the confusion and vagueness that surround the effectiveness of SMW. Are SMW policies a mere exploitation of workers with severe disabilities or do they truly create employment opportunities for those who would otherwise have been unemployed? It seems that all three countries are still debating these issues. But most importantly, our analysis stresses the importance of rethinking SMW policies on a national and international level. To do so, systematic and valid data must be collected, analyzed and compared, and clear outcomes must be defined. These must address economic but also psycho-social indicators as well as objective and subjective ones. The interplay between SMW policies and other efforts to promote the employments of persons with severe disabilities must also be examined. Moreover, more research is needed in order to validate and standardize the measures for SMW assessments.

We strongly believe that current and future public policies should be based on viewing disability as a natural part of human experience that in no way diminishes
a person’s right to fully participate in all aspects of life (Silverstein 2000). Only after a thorough evaluation of the effectiveness of SMW policies has been conducted, will we be able to determine whether SMW contributes to this belief or hampers it.

Notes

1. These regulations were implemented for a trial period, four years after their completion, in November 1, 2006, by the Ministry of Industry, Trade and Labor (MOITAL). The regulations were amended on November 5, 2009 [Minimum Wage Regulations] (Wage Adjusted for Worker with a disability with Diminished Work Capacity), (amendment), 2009.

2. In Israel, some civil rights activists supported the Adjusted Minimum Wage Regulations (Wage Adjusted for Worker with a Disability with Diminished Work Capacity) of 2002, arguing that the alternative of rejecting them is less desired (Mor 2009).

3. Minimum Wage Regulations, literal (non-legal) translation for internal use by MOITAL.

4. Minimum Wage Regulations, literal (non-legal) translation for internal use by MOITAL.

5. Competency % + Productivity %)/2 * the prevailing wage rate per hour.

References


Butterworth, John, Hall, Allison, Hoff, David and Migliore, Alberto, 2007, State and international efforts to reform or eliminate the use of sub-minimum wage for persons with disabilities. Developed for the Wisconsin Departments of Workforce Development and Health and Family Services, Institute for Community Inclusion University of Massachusetts Boston.


Logue, Larry and Blanck, Peter, 2010, Race, Ethnicity, and Disability: Veterans and Benefits in Post-Civil War America (New York: Cambridge University Press).


Mor, Sagit, 2009, Between hope and evil: reframing disability allowances, available from: http://works.bepress.com/sagit_mor/1


Tagar, Michal, 2006,Israel’s Disenfranchised Workers: Workers’ Rights Violations (Jerusalem: the Association for Civil Rights in Israel).


Twamley, Elizabeth W., Jeste, Dilip V. and Lehman, Anthony, 2003, Vocational rehabilitation in schizophrenia and other psychotic disorders: a literature review and meta-analysis of randomized controlled trials. Journal of Nervous and Mental Disease, 191(8), 515–523.


