

How Enforcing The Minimum Wage Renders Some Individuals Unemployable



No one in this country should be made to work for less than \$11 an hour. That is, unless you work in British Columbia where you can work for \$10.25 an hour, or New Brunswick where the minimum wage is \$10 an hour, or in the restaurant industry where tips are considered part of your wage, and the exemptions list goes on.

The point is the minimum wage is arbitrary and implies there is a minimum value for a person's work, no matter how menial, unskilled or poorly performed the work is.

Most employers would beg to differ. So would economists who find that minimum wage reduces employment by forcing employers into using contractors or doing with less employees. Nevertheless, society has come to accept the notion of a minimum wage despite its impact on employers' bottom lines and accordant unemployment rates.

A minimum wage also renders some individuals effectively unemployable, such as those with disabilities. Terri-Lynn Garrie, who was recently awarded \$200,000 by the Ontario Human Rights Tribunal, is a perfect example.

Garrie packaged wine bottles and was paid a mere \$1.29 an hour by Janus Joan Inc., which is far less than the minimum wage and, arguably, shockingly low. Nevertheless, her situation and wage worked well for all involved for 10 years. It allowed Garrie to continue receiving benefits through the Ontario Disability Support Program. By all accounts, she loved her job and "loved having something to do." That effect on her self-worth appears to have been the primary purpose of her employment.

But the arrangement came to an end when Garrie was terminated and filed a claim of discrimination with the Tribunal. The Tribunal found that her hourly wage of \$1.29 was discriminatory and awarded her \$200,000. The employer made two key mistakes: It paid Ms. Garrie less than minimum wage, and to the point, it paid non-disabled employees performing the same job more than what it paid her.

The unfortunate thing is Garrie is unlikely to ever find such a mutually satisfactory arrangement again. She could attempt to obtain employment at full pay, competing with non-disabled individuals and placing her ODSP benefits at risk. Alternatively, she could search for other full-time activities to occupy her and provide routine, stimulus and a sense of value and worth.

However, even if Garrie offered to work for less than minimum wage to make herself

marketable relative to non-disabled individuals, what employer would expose themselves to the risk of a \$200,000 award for discrimination?

More than 70% of working-age adults with intellectual disabilities are unemployed or out of the labour force. In its decision, the Tribunal urged the Ontario Human Rights Commission to determine if the practice of paying intellectually disabled individuals less than minimum wage was widespread and to make recommendations for stopping such practices. As a result, we can expect the number of unemployed working-age adults with disabilities to increase.

Rest assured, discrimination will continue, just at an earlier stage in the employment relationship when the employer decides not to hire people with a disability. This is yet another instance of the law of unintended consequences so prevalent in human rights cases – where the laws purporting to protect older workers, younger women and the disabled, only make employers more reluctant to hire them.

After all, what possible incentives do employers have to try to offset the inherent risks and costs of accommodating employees with disabilities, including for altering hours or work, schedules, purchasing additional equipment for workstations, as well as possibly facing discrimination claims if things don't go as planned?

Studies show that for some types of jobs intellectually disabled employees outperform non-disabled employees in reliability and attitude. With the following considerations in mind, employers can reduce the risks posed from changes to Human Rights legislation while gaining valuable employees.

Permanent vs. temporary Seasonal or temporary work has the advantage of a pre-determined end to the employment relationship, making it more difficult for an employee to claim that the reason for termination was discriminatory.

Equal pay for equal work Another consideration is whether the job is also performed by non-disabled employees. If so, employers must be vigilant to ensure all employees are treated equally, especially in terms of pay and other working conditions, to avoid a potential discrimination claim. If a disabled employee is the only one performing the work or all employees performing the work are disabled, this risk would be mitigated.

Last Updated: September 22 2014

Article by Howard Levitt