LEAD CENTER

Employment First Technical Brief #2:

Federal Legal Framework that Supports Competitive, Integrated Employment Outcomes of Youth and Adults with Significant Disabilities

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ODEP
Office of Disability Employment Policy

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Employment First Technical Brief #2

Federal Legal Framework that Supports Competitive, Integrated Employment Outcomes of Youth and Adults with Significant Disabilities

Understanding the rights of individuals with disabilities and the responsibility of state and local entities to comply with the civil rights obligations of the Americans with Disabilities Act (ADA) can provide a framework to support the implementation of *Employment First* initiatives in states.[1] The following brief highlights various legal actions by Federal enforcement agencies that have significant implications for how states prioritize and deliver services for individuals with disabilities. These actions relate to the organization, financing, and provision of employment and long-term services and supports consistent with an *Employment First* framework, and reinforce the principle that competitive, integrated employment[2] is a critical component for citizens with disabilities in developing a full and meaningful life in the community. As the U.S. Department of Justice explained in one of its Olmstead Enforcement Findings Letters:

> "[W]ork options" are frequently an important gateway to the other "everyday life activities" that the Supreme Court recognized in *Olmstead* to be severely diminished by unnecessary segregation, including "family relations, social contacts…economic independence, educational advancement, and cultural enrichment." *Olmstead,* 527 U.S. 581,600-01 (1999). It is axiomatic

[1] ***Employment First*** refers to a framework for systems change that is centered on the premise that ***all*** individuals with disabilities, including those with the most significant disabilities, are capable of full participation in competitive, integrated employment and community life. Under this approach, publicly-financed systems are urged to align policies, regulatory guidance, operational processes, funding structures, and service delivery practices toward a commitment to competitive, integrated employment as the priority option of employment and long-term supports for youth and adults with disabilities. ODEP encourages states to approach *Employment First* efforts with a cross-disability lens, and to ensure that state *Employment First* efforts engage all relevant State government systems and external stakeholders that are responsible for or relevant to improving the employment outcomes. Many states have formally committed to establishing an *Employment First* framework through official executive proclamation and/or formal legislative action.

[2] **Integrated employment**, as defined by ODEP, refers to work paid directly by employers at the greater of minimum or prevailing wages with commensurate benefits, occurring in a typical work setting where the employee with a disability interacts or has the opportunity to interact continuously with co-workers without disabilities, has an opportunity for advancement and job mobility, and is preferably engaged full time. This definition aligns with the recent passage of the Workforce Innovation and Opportunity Act, which contains a similar definition for the term "competitive, integrated employment".

> that when "work options" in the community are severely diminished because of unnecessary segregation, so too are most other important everyday life activities, regardless of where one resides.[3]

This technical brief is the second of a four-part series highlighting current Federal policies, regulations, resources, and the legal framework that collectively promote *Employment First* initiatives across the country.

Overview of the ADA Legal Framework that Supports Competitive, Integrated Employment Outcomes for Individuals with Disabilities and *Employment First* Systems-Change Efforts

Since enactment of the ADA over 25 years ago, individuals with disabilities have garnered a number of civil rights protections in support of their ability to live, work, and meaningfully engage in typical community settings. Several recent developments in the application of the ADA and other Federal statutes to the provision of services have led to a legal framework that informs the direction, intent, and scope of state *Employment First* systems-change efforts.

TITLE I OF THE ADA

Title I of the ADA protects individuals who meet the definition of "disability" under the Act from discrimination by private, state, and local government employers with 15 or more employees in the recruitment, hiring, promotion, training, pay, and other privileges of employment.[4] Therefore, discriminatory assignments, reduced pay, or lesser benefits for employees with disabilities may violate Title I of the ADA.

The ADA also requires that covered employers make reasonable accommodations to help otherwise qualified individuals with disabilities participate in the application process and benefit from the full range of employment-related opportunities available to others.[5] Reasonable accommodations may include making existing facilities accessible; job restructuring; allowing part-time or modified work schedules; acquiring or modifying equipment; changing tests, training materials, or policies; providing qualified readers, interpreters, or communication devices; and/or reassigning an employee with a disability to a

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[3] U.S. Department of Justice Letter of Findings re: United States' Investigation of Employment and Vocational Services for Persons with Intellectual and Developmental Disabilities in Oregon Pursuant to the Americans with Disabilities Act (dated June 29, 2012). http://www.ada.gov/olmstead.

[4] 42 U.S.C. §§ 12101 *et seq*.

[5] Generally, it is incumbent upon the individual with a disability to inform the employer that an accommodation is needed. See 29 C.F.R. pt. 1630 app. § 1630.9 (2012); see also H.R. Rep. No. 101-485, pt. 3, at 39 (1990) [hereinafter House Judiciary Report]; H.R. Rep. No. 101-485, pt. 2, at 65 (1990) [hereinafter House Education and Labor Report]; S. Rep. No. 101-116, at 34 (1989) [hereinafter Senate Report].

vacant position for which the employee is qualified when accommodation in the current position is not possible.[6] Reasonable accommodations are required unless their provision results in undue hardship to an employer's business. "Undue hardship" means significant difficulty or expense, and focuses on the resources and circumstances of the particular employer in relationship to the cost or difficulty of providing a specific accommodation. Undue hardship refers not only to financial difficulty, but to reasonable accommodations that are unduly extensive, substantial, or disruptive, or those that would fundamentally alter the nature or operation of the business.[7] An employer must assess on a case-by-case basis whether a particular reasonable accommodation would cause undue hardship. The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing Title I of the ADA.

Protecting vulnerable workers from disparate pay, harassment, and other discriminatory policies is one of the priorities identified in the EEOC's Strategic Enforcement Plan (SEP).[8] Appendix I outlines the specific details of a recent landmark class action suit, *EEOC v. Hill Country Farms,* Inc. [No. 3-11-V-41 (S.D. Iowa)], in which the EEOC secured its largest verdict ever for violations of Title I of the ADA on behalf of people with disabilities.

TITLE II OF THE ADA

Title II of the ADA provides that a public entity, such as a state or local government, may not exclude a qualified individual with a disability from participation in, or deny such an individual the benefits of the services, programs or activities provided by the public entity. Additionally, Title II prohibits any public entity from subjecting a qualified individual with a disability to any form of discrimination.[9]

Regulations governing Title II of the ADA reiterate that public entities are required to "administer services, programs, and activities in the ***most integrated setting*** appropriate to the needs of qualified individuals with disabilities**."**[10] The preamble discussion of the "integration regulation" explains that "the most integrated setting" is one that "enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible."[11]

[6] 42 U.S.C. § 12111(9); 29 C.F.R. § 1630.2(o)(2)(i-ii).

[7] See 42 U.S.C. § 12111(10); 29 C.F.R. § 1630.2(p); 29 C.F.R. pt. 1630 app. § 1630.2(p).

[8] http://www.eeoc.gov/eeoc/plan/sep.cfm.

[9] 42 U.S.C. § 12131 *et seq.*

[10] Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.* (2010). http://www.ada.gov/olmstead/q&a_olmstead.pdf.

[11] 28 C.F.R. Pt. 35, App. B (addressing § 35.130).

In the landmark Supreme Court decision *Olmstead, .*[12] the Supreme Court held that Title II prohibits the unjustified segregation of individuals with disabilities. The Court explained:

> [I]nstitutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life... [and] confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment."

The Supreme Court held in that case that public entities are required to provide community-based services when (a) such services are appropriate, (b) the affected persons do not oppose community-based treatment, and (c) community-based services can be reasonably accommodated, taking into account the resources available to the entity and the needs of other persons with disabilities.[13]

Other Federal agencies have also applied *Olmstead* principles to update Federal public policy pertaining to the delivery of employment services to individuals with disabilities. For example, the Centers for Medicare and Medicaid Services (CMS), which oversees Medicaid, recognized Olmstead's application to non-residential employment and vocational services provided under Medicaid. CMS stated that States, "…have obligations pursuant to . . . the Supreme Court's *Olmstead* decision," requiring that, "…an individual's plan of care regarding employment services should be constructed in a manner that … ensures provision of services in the most integrated setting appropriate."[14] Since January 22, 2001, the U.S. Department of Education's Rehabilitation Services Administration has prohibited Federal vocational rehabilitation funds from being used for long-term placement of persons with disabilities in "extended employment," meaning sheltered workshops and other segregated settings.[15]

Several recent legal cases have provided more specific direction to public entities about the breadth and depth of the integration mandate outlined in *Olmstead.* Two legal cases in particular, *Lane v. Brown* and *U.S. v. Rhode Island and City of Providence,* are specifically related to the provision and availability of supports that lead to competitive, integrated employment options for youth and adults with significant disabilities.

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[12] 527 U.S. 581 (1999).

[13] Id. at 607.

[14] CMS Informational Bulletin 5 (Sept. 16, 2011), available at: http://downloads.cms.gov/cmsgov/archived-downloads/CMCSBulletins/downloads/CIB-9-16-11.pdf.

[15] See 66 Fed. Reg. 7250; see also 29 U.S.C. § 720(a)(1), (3)(B) (Title I of the Rehabilitation Act) ("Individuals with disabilities must be provided the opportunities to obtain gainful employment in integrated settings."); U.S. Department of Education, Office of Special Education and Rehabilitative Services, Rehabilitation Services Administration, *Technical Assistance Circular*, 06-01 (Nov. 21, 2005), available at http://www2.ed.gov/policy/speced/guid/rsa/tac-06-01.doc.

Lane v. Brown (formerly Lane v. Kitzhaber) – 12-CV-00138 – (D. Or. 2012)

On Sept. 8, 2015, the U.S. Department of Justice announced that it had entered into a proposed settlement agreement with the State of Oregon that will resolve alleged violations of the Americans with Disabilities Act and will provide relief that will impact approximately 7,000 Oregonians with intellectual and developmental disabilities (I/DD) who can and want to work in typical employment settings in the community. The proposed agreement resolves a class action lawsuit, filed in January 2012 by private plaintiffs, in which the department moved to intervene in March 2013.

Lane v. Brown was the first class action of its kind to challenge a state's employment services for unnecessarily over-relying on segregated employment opportunities in lieu of more integrated options. The Federal court in this case held that employment and vocational services administered, managed, or funded by a state are covered by the Olmstead requirements.[16] In its June, 2012 *Letter of Findings*, the United States Department of Justice (DOJ) determined that the State of Oregon had failed to provide employment and vocational services to youth and adults with intellectual/developmental disabilities (I/DD) in the most integrated settings appropriate to their needs, which included the state's:

- failure to develop sufficient community-based employment and vocational services and supports for individuals with I/DD who are unnecessarily confined to sheltered workshops;
- direction of available resources to segregated sheltered workshops rather than to community-based services; and
- use of systemic criteria and methods of administration that unnecessarily require individuals with disabilities to attend sheltered workshops in order to access and receive employment and vocational services.[17]

These findings provide a roadmap of obligations that states can consider in assessing their own public investments. Specifically, states can use this information to inform their systems-change efforts, focusing on (a) building the capacity necessary to offer a sufficient number of community-based employment options; (b) realigning public funding streams and reimbursement rate structures to ensure that entities providing employment services are incentivized to focus on delivering integrated employment supports; and (c) ensuring that individuals do not have to enter a segregated program in order to receive training or supports that are intended to assist a person in obtaining competitive, integrated employment. These findings can be instrumental to states that are assessing their own compliance with Title II of the ADA as it relates to the provision of employment-related supports to individuals with disabilities.

As a result of the proposed settlement, over the next seven years, 1,115 working-age individuals with I/DD, who are currently being served in segregated sheltered workshops, will have opportunities to work in real jobs at competitive wages. Additionally, at least 4,900 youth ages 14-24 will receive

[16] 841 F.Supp.2d 1199 (D.Or. 2012).

[17] U.S. Department of Justice Letter of Findings re: United States' Investigation of Employment and Vocational Services for Persons with Intellectual and Developmental Disabilities in Oregon Pursuant to the Americans with Disabilities Act (dated June 29, 2012). http://www.ada.gov/olmstead.

supported employment services designed to assist them to choose, prepare for, get, and keep work in a typical work setting. Half of the youth served will receive, at a minimum, an Individual Plan for Employment through the State's Office of Vocational Rehabilitation Services. Correspondingly, the State will reduce its reliance on sheltered workshops and implement policies and capacity-building strategies to improve the employment system to increase access to competitive integrated employment and the opportunity for people with I/DD to work the maximum number of hours consistent with their abilities and preferences.

Additional details on the steps that the State of Oregon will take to implement the terms of the proposed settlement can be found on the U.S. Department of Justice's Olmstead website.[18]

U.S. v. Rhode Island and City of Providence, 1:13-CV-00442, (D.R.I. 2013)

On June 13, 2013, the United States entered a court-enforceable Interim Settlement Agreement with the State of Rhode Island and the City of Providence, which resolved the DOJ Civil Rights Division's findings developed as part of an ADA Olmstead investigation. This first-of-its-kind agreement addresses the rights of people with disabilities to receive state- and city-funded employment and daytime services in the broader community, rather than in segregated sheltered workshops and facility-based day programs exclusively with other people with disabilities. DOJ launched an ADA investigation in January 2013 into Rhode Island's day activity service system for people with intellectual/developmental disabilities, and found that the majority of people receiving state- and city-funded employment and daytime services through segregated programs can and want to work and receive services in more integrated community settings.

This matter was initially brought to light by an investigation by DOL's Wage and Hour Division, regarding improper subminimum wages being paid to people with disabilities working at a private provider, Training Thru Placement (TTP), one of the largest facility-based employment service providers in the State's system. As a result of its initial investigation, DOL revoked TTP's special wage certificate under Section 14(c) of the Fair Labor Standards Act.[19] This action represents the first time DOL has revoked a special wage certificate since the program's inception in 1938.

The Interim Settlement Agreement is significant for state *Employment First* efforts for several reasons.

- First, the Agreement affirms that supported employment placements do not include facility-based work/sheltered workshops, group enclaves, mobile work crews, time-limited work experiences (internships), or facility-based day programs.

- Second, the Agreement calls for individuals to receive sufficient services to support a normative 40-hour week, with the expectation that individuals in the target population will average at least

[18] See http://www.ada.gov/olmstead/olmstead_cases_list2.htm#lane for more information.

[19] See 29 U.S.C. § 214(c); 29 C.F.R.§ 525.

20 hours per week in integrated jobs, via supported employment supports, at competitive wages.
    - The Agreement requires supported employment services to be provided in the amount, intensity, and duration necessary to place, maintain, and provide ongoing support, to an individual in a Supported Employment Placement. Thus, the Agreement specifically ties the services to the outcome of a competitive, integrated job.
    - The Agreement requires individuals to be compensated at or above minimum wage or the customary wage, whichever is higher.
    - Individuals must be allowed to work as many hours as they are capable of and must be allowed to interact with people without disabilities to the fullest extent possible.
    - Individuals must have equal opportunities to access community opportunities, promotions and advancement opportunities equally with nondisabled employees.
    - Services must be individually tailored and flexible, and placements must be consistent with the individuals' interests, strengths, and abilities.

- Third, the Agreement requires individuals with disabilities in the target population to receive Integrated Day Services for the remainder of all time set forth in their individual service plan (ISP) in a 40-hour week when they are not in school or supported employment. With respect to this provision, the Agreement:
    - requires that Integrated Day Services be individualized, flexible, purposeful, and productive daytime activities; shall be individually tailored to a person's interests, abilities, and goals; and shall afford individuals the services and supports necessary to interact with non-disabled individuals to the fullest extent possible during the day.
    - affirms that integrated day services must include an array of group and non-group activities and facilitate meaningful choice by individuals with I/DD between group and non-group activities.
    - prohibits Integrated Day Services from being provided as part of a sheltered workshop, day services, group home, or residential service provider's on-site program.

Additionally, state governments should pay particular attention to what is required under the auspice of "supported employment services" under the agreement, and the emphasis on the amount, level of intensity, and duration of supports necessary to place, maintain, and provide ongoing support to individuals with significant disabilities in an integrated employment setting. Such services are to be individually tailored, based on individual strengths, and reflective of individual interests. Competitive, integrated employment outcomes should also include allowing an equal opportunity for promotion, ensuring interaction with people without disabilities to the fullest extent possible, and aiming for individuals to work full-time.

The *U.S. v. Rhode Island and City of Providence* Agreement is also unique in that it demonstrates a collaborative enforcement model that bridges the collective legal enforcement responsibilities across DOL (which has jurisdiction over Federal labor laws, including, but not limited to, the Fair Labor Standards Act), and DOJ. Furthermore, the Rhode Island example demonstrates a conscious effort on the part of the Federal government to reconcile and clarify existing misperceptions among Federal laws

and creates a strong precedent for informing state and local service provision as well as *Employment First* systems-change efforts.

U.S. v. Rhode Island – 1:14-CV-00175 – (D.R.I. 2014)

The Department of Justice continued its investigation of Rhode Island's statewide system after the initial interim agreement was reached in 2013, and in January 2014 issued findings determining that the statewide system over-relied on segregated services to the exclusion of integrated alternatives in violation of the ADA. DOJ found workers with intellectual and developmental disabilities (I/DD) in settings where they had little or no contact with persons without disabilities, and where they earned an average wage of $2.21 per hour. The investigation found that workers typically remain in such settings for many years, and sometimes decades. DOJ also found that students in Rhode Island schools were often not presented with meaningful choices to participate in integrated alternatives, such as integrated transition work placements and work-based learning experiences, which put students at serious risk of unnecessary postsecondary placement in segregated sheltered workshops and facility-based day programs.

On April 8, 2014, the United Stated entered into a statewide settlement Agreement that will resolve violations of the ADA for approximately 3,250 Rhode Islanders with intellectual and developmental disabilities (I/DD). The landmark ten-year Agreement is the nation's first statewide settlement to address the rights of people with disabilities to receive state funded employment and daytime services in the broader community, rather than in segregated sheltered workshops and facility-based day programs.

Rhode Island will provide supported employment placements to approximately 2,000 individuals, including at least 700 people currently in sheltered workshops, at least 950 people currently in facility-based non-work programs, and approximately 300-350 students leaving high school. Individuals in these target populations will receive sufficient services to support a normative 40 hour work week, with the expectation that individuals will work, on average, in a supported employment job at competitive wages for at least 20 hours per week. In addition, the State will provide transition services to approximately 1,250 youth between the ages of 14 and 21, ensuring that transition-age youth have access to a wide array of transition, vocational rehabilitation, and supported employment services intended to lead to competitive, integrated employment outcomes after they leave secondary school. The U.S. District Court for the District of Rhode Island has entered the settlement agreement as a court-enforceable Consent Decree.

Under the Agreement, Rhode Island has agreed to provide:

- Supported employment placements that are individual, typical jobs in the community, that pay at least minimum wage, and that offer employment for the maximum number of hours consistent with the person's abilities and preferences, amounting to an average of at least 20 hours per week across the target population;
- Supports for integrated non-work activities for times when people are not at work including mainstream educational, leisure, or volunteer activities that use the same community

centers, libraries, recreational, sports and educational facilities that are available to everyone;
- Transition services for students with I/DD, to start at age 14, and to include internships, job site visits and mentoring, enabling students to leave school prepared for jobs in the community at competitive wages; and
- Significant funding sustained over a ten-year period that redirects funds currently used to support services in segregated settings to those that incentivize services in integrated settings.

The ten-year Agreement will allow the State to ensure that the services necessary to support individuals with I/DD in competitive, integrated jobs will not disappear with a change in administration or legislative leadership. More information on this historical agreement (including fact sheets, personal profiles of individuals who will benefit from the agreement, and a copy of the consent decree) can be found at: http://www.ada.gov/olmstead/olmstead_cases_list2.htm#ri-state.

Summary of Legal Framework Supporting Employment First Systems-Change Efforts to Promote Integrated Employment Outcomes for People with Disabilities

Local and state entities that want to take proactive measures to comply with the ADA and desire to implement systems-change efforts that reflect the goal of providing day, vocational and employment services to individuals with disabilities in the most integrated settings should consider taking steps to ensure that:

- Workers with disabilities have access to reasonable accommodations to ensure their success in completing the job they have been determined qualified to perform;
- Strategic investments are made to ensure an adequate number of community-based integrated employment, vocational, and training services are available;
- Funding streams are realigned and reimbursement rate structures modernized to prioritize investments in employment services that lead to competitive, integrated employment outcomes;
- Services are provided in a manner that prohibits the tracking of workers with disabilities into sheltered workshops or other segregated settings as a condition of accessing vocational, employment and training services that are intended to lead to competitive, integrated employment;
- Youth with disabilities are exposed to and receive access to integrated transition services as early as possible, and are not required to participate in segregated or facility-based work opportunities as a condition of receiving transition supports;
- Investments in group supported employment services, including work crews and group enclaves, are reduced;
- Reliance on special wage certificates, sheltered workshops, or other segregated facility-based programs by entities receiving public funds to support individuals with significant disabilities is discouraged, except as a last resort; and

- Olmstead implementation efforts meet specific benchmarks, including competitive employment outcomes that are designed to transition persons with disabilities from sheltered workshops and day habilitation programs to integrated employment settings.

To support ongoing state systems change efforts, ODEP encourages states and external stakeholders to participate in its *Employment First* State Leadership Mentoring Program (EFSLMP), which provides a plethora of opportunities to receive training, technical assistance, and ongoing mentoring to support the successful implementation of state *Employment First* initiatives. To engage in ODEP's National *Employment First* Community of Practice, individuals may register at: http://www.econsys.com/eflsmp/?subscribe. For more information on ODEP's investments to promote a national *Employment First* strategic framework, please refer to ODEP's webpage at http://www.dol.gov/odep/topics/EmploymentFirst.htm.

This technical brief is the second in a four-part series of policy resources developed for state governments and external stakeholders by the National LEAD Center. This technical brief attempts to provide information on recent legal developments that can be used to inform and support state Employment First systems-change efforts, cross-systems resource coordination and policy collaboration focused on improving competitive, integrated employment outcomes for citizens with disabilities.

Appendix I.

Additional Background Information on Recent Legal Cases

The following appendix provides additional background information on the three legal cases referenced in this memorandum.

EEOC v. Hill Country Farms, Inc. d/b/a Henry's Turkey Service

> *Inherent in the ADA is the idea of dignity - that people with disabilities have the right to full and productive lives. This was the principle Henry's Turkey Service attempted to take away from these men and the principle the jury so emphatically restored. The ADA starts from the idea that people with disabilities can be great employees, if given the opportunity to fairly compete and prove themselves.*
>
> –Janet V. Elizondo, Director of the EEOC District Office in Dallas, Texas

In a historic verdict, a jury recently awarded the EEOC damages totaling $240 million - the largest verdict in the Federal agency's history - for disability discrimination and severe abuse. The jury agreed with the EEOC that Hill Country Farms, a Texas-based company doing business in Iowa as Henry's Turkey Service, subjected a group of 32 men with intellectual disabilities to severe abuse and discrimination for a period between 2007 and 2009, after 20 years of similar mistreatment. The jury awarded each of the men $5.5 million in damages for emotional harm and "loss of enjoyment of life", and an additional $2 million each as punitive damages.[20] This verdict follows a September 2012 order from the district court judge that Henry's Turkey pay the men $1.3 million for unlawful disability-based wage discrimination, thus making the total judgment $241.3 million.[21]

Such abuse violated the ADA, which prohibits discrimination on the basis of disability in terms and conditions of employment and wages, and also bars disability-based hostile environment

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[20] The award amounts were later reduced to $50,000 total damages for each victim in accordance with statutory caps based on the number of employees of the employer, consistent with §1981a of the Civil Rights Act of 1991. This reduction did not, however, affect the full measure of wages awarded.

[21] In addition to the EEOC's disability-based harassment and discrimination verdict, the EEOC earlier won a $1.3 million wage discrimination judgment when Senior U.S. District Court Judge Charles R. Wolle found that, rather than the total of $65 dollars per month Henry's Turkey reportedly paid to the disabled workers while contracted to work on an evisceration line at the plant, the employees should have been compensated at the average wage of $11-12 per hour, reflecting pay typically earned by workers without intellectual disabilities who performed the same or similar work. The EEOC's wage claims for each worker ranged from $28,000 to $45,000 in lost income over the course of their last two years before the Henry's Turkey Service operation was shut down in February 2009.

harassment. The EEOC filed its lawsuit[22] after first attempting to settle the case through its conciliation process. The decision resulted in the largest verdict ever obtained by the under the ADA.

For a more detailed analysis of this case, please refer to: http://www.workplaceclassaction.com/2013/05/eeoc-obtains-record-smashing-240-verdict-in-ada-case.

U.S. v. Rhode Island and City of Providence 1:13-CV-00442, (D.R.I. 2013)

On June 13, 2013, the United States entered a court-enforceable interim settlement agreement with the State of Rhode Island and the City of Providence, which resolved the DOJ Civil Rights Division's findings that the State and City have unnecessarily segregated individuals with I/DD in a sheltered workshop and segregated day activity service program, and have placed public school students with I/DD at risk of unnecessary segregation in that same program. The first-of-its-kind agreement will provide relief to approximately 200 Rhode Islanders with I/DD who have received services from the segregated sheltered workshop and day activity service provider Training Thru Placement, Inc. (TTP), and the Harold A. Birch Vocational Program (Birch), a special education program which has run a segregated sheltered workshop inside a Providence high school.

Pursuant to the Interim Settlement Agreement, the State and City are providing TTP and Birch service recipients the opportunity to receive integrated supported employment and integrated daytime services that will enable them to interact with the broader community to the fullest extent possible. The State will no longer provide services or funding for new participants at TTP's sheltered workshop and segregated day program, and the City will no longer provide services or funding to Birch's in-school sheltered workshop, which has served as a pipeline to TTP. Instead, the State and City are required to provide adults at TTP and youth in transition from Birch with robust and person-centered career development planning and discovery, transitional services, supported employment placements, and integrated day services. The Interim Settlement Agreement calls for individuals to receive sufficient service to support a normative 40-hour week, with the expectation that, on average, individuals will work for at least 20 hours per week in a supported employment job at competitive wages.

The complete interim settlement agreement can be reviewed at: www.ada.gov/olmstead/documents/ri-providence-interim-settlement.docx.

U.S. v. Rhode Island – 1:14-CV-00175 – (D.R.I. 2014)

On April 8, 2014, the United States entered into the nation's first statewide settlement agreement vindicating the civil rights of individuals with disabilities who are unnecessarily segregated in sheltered workshops and facility-based day programs. The settlement agreement with the State of Rhode Island resolves the DOJ's January 6, 2014 findings as part of an ADA Olmstead

[22] No. 3:11-cv-00041-CRW –TJS, filed by EEOC in U.S. District Court for the Southern District of Iowa.

investigation that the State's day activity service system over-relies on segregated settings (including sheltered workshops and facility-based day programs) to the exclusion of integrated alternatives, such as supported employment and integrated day services.

The consent decree resolves the Civil Rights Division's Jan. 6, 2014, findings that the State of Rhode Island violated the ADA and the Supreme Court's decision in *Olmstead* by failing to serve individuals with intellectual and developmental disabilities (I/DD) in the most integrated day activity service setting appropriate for their needs, and by placing transition-age youth at serious risk of segregation. This determination was based on the following findings:

- In Rhode Island, approximately 80 percent of the people with I/DD receiving state services, about 2,700 individuals, are placed in segregated sheltered workshops or facility-based day programs. By contrast, only about 12 percent, or approximately 385 individuals, participate in individualized, integrated employment. The investigation found that the State has over-relied on segregated service settings to the exclusion of integrated alternatives.
- Placement in segregated settings is frequently permanent in the State: nearly half (46.2 percent) of the individuals in sheltered workshops have been in that setting for 10 years or more, and over one-third (34.2 percent) have been there for 15 years or more. Individuals with I/DD in sheltered workshops in Rhode Island reportedly earn an average of only about $2.21 per hour.
- The ADA and *Olmstead* prohibit public entities from placing individuals, including young people with I/DD, at serious risk of unnecessary segregation. According to State data, among youth with I/DD who transitioned out of Rhode Island secondary schools between 2010 and 2012, only about five percent transitioned into jobs in integrated settings, even though many more of these youth are able to work in integrated employment and are not opposed to doing so.

The consent decree focuses on three target populations: (1) individuals in sheltered workshops; (2) individuals in facility-based day programs; and (3) youth in transition from secondary school. Under the consent decree, the State has pledged a sustained commitment to transform its service system over the next 10 years, providing relief to approximately 3,250 people. Rhode Island will provide supported employment placements to approximately 2,000 individuals, including at least 700 people currently in sheltered workshops, at least 950 people currently in facility-based non-work programs, and approximately 300-350 students leaving high school.

- Supported employment placements must provide persons with I/DD with supported employment services in integrated employment settings where they (1) are paid at least minimum wage, (2) work the maximum number of hours consistent with their abilities and preferences, and (3) interact with peers without disabilities to the fullest extent possible. As a group (not individually), persons receiving supported employment placements under the consent decree will average 20 hours of work per week in integrated employment settings. All persons receiving supported employment placements will also be provided with integrated non-work services, ensuring that individuals have access to integrated work and non-work hours for a total 40 hours per week.
- To ensure informed choice, individuals with I/DD may remain in segregated programs if they request a variance after they have received a vocational assessment, a trial work experience, outreach information and benefits counseling.

- Under the consent decree, the State will provide transition services to approximately 1,250 youth between the ages of 14 and 21. Also under the consent decree, the Rhode Island Department of Education (RIDE) will adopt an employment first policy, making work in integrated employment settings a priority service option for youth. State agencies will promote the implementation of a school-to-work transition planning process that will include specific timelines and benchmarks for all youth between the ages of 14 and 21. Youth in transition will receive integrated vocational and situational assessments, trial work experiences, and an array of other services to ensure that they have meaningful opportunities to work in the community after they exit school.

The State is also implementing other major systems change reforms required under the consent decree related to outreach, education and support; provider capacity; interagency collaboration; funding; quality assurance; and data collection and monitoring.

Lane v. Brown (formerly Lane v. Kitzhaber) – 12-CV-00138 – (D. Or. 2012)

> *The unnecessary segregation of individuals with disabilities in segregated, non-residential employment and vocational programs violates Title II of the ADA and Olmstead….The civil rights of people with disabilities who can and want to receive employment services in the community are violated when they are unnecessarily segregated into sheltered workshops.*
>
> --DOJ Statement of Findings to the State of Oregon dated June 29, 2012

The class action, *Lane v. Kitzhaber* (since renamed *Lane v. Brown*), was filed in January 2012, by eight named individuals and United Cerebral Palsy of Oregon and Southwest Washington, on behalf of themselves and other individuals with I/DD who are in Oregon sheltered workshops or have been referred to sheltered workshops. The original complaint alleged that although the State of Oregon was funding some supported employment services (SES) that permitted a small group of individuals with I/DD to work in integrated employment settings, thousands of other similarly-situated individuals were unable to obtain such supports because the State's Department of Health Services (DHS) administered, managed, and funded an outdated employment service system that primarily relied upon segregated sheltered workshops as the option for receiving employment supports from the State. Thus, the plaintiffs claimed, the State agencies responsible for financing the majority of employment supports for individuals with I/DD had failed to timely develop and adequately fund SES as a primary option for employment services, despite their demonstrated knowledge of how to provide these services to support people in integrated employment, their acknowledgement of the benefits of integrated employment, and their repeated public commitment to policies designed to expand integrated employment.[23]

On April 20, 2012, the U.S. Department of Justice submitted a statement of interest to the District Court in Oregon indicating agreement with the plaintiffs that Title II of the ADA prohibits unnecessary segregation of individuals with disabilities in sheltered workshops:

[23] Class Action Allegation Compl. at ¶ ¶ 5-6, *Lane v. Kitzhaber*, 3:12-cv-00138-ST (filed Jan. 25, 2012).

In Oregon, in spite of the state's significant leadership and commitment to ensuring that people can live in integrated settings, thousands of individuals still spend the majority of their day-time hours receiving employment services in segregated sheltered workshops, even though they are capable of, and want to receive employment services in the community. Such unjustified segregation makes many of the benefits of community life elusive for people with disabilities, even though they are residing in the community. In this way, "work options" are frequently an important gateway to the other "everyday life activities" that the Supreme Court recognized in Olmstead to be severely diminished by unnecessary segregation, including "family relations, social contacts…economic independence, educational advancement, and cultural enrichment." It is axiomatic that when "work options" in the community are severely diminished because of unnecessary segregation, so too are most other important everyday life activities, regardless of where one resides.[24]

Then, in March 2013, the Department of Justice moved to intervene in the lawsuit, claiming that Oregon violated the ADA by unnecessarily segregating adults with I/DD in sheltered workshops and by placing Oregon youth with I/DD at unnecessary risk of segregation in sheltered workshops. On May 7, 2013, the Federal court held that Title II's Olmstead requirements prohibit unnecessary segregation of people with disabilities in employment and vocational services. On May 22, 2013, the DOJ was granted permission to intervene in the pending class action lawsuit against the State of Oregon.

A proposed settlement agreement reached on September 8, 2015 between opposing parties in *Lane v. Brown* resolves the first class action lawsuit in the nation to challenge a state funded and administered employment service system, including sheltered workshops, as a violation of the ADA's integration mandate. The terms of the proposed settlement agreement will impact approximately 7,000 Oregonians with intellectual and developmental disabilities (I/DD) who can and want to work in typical employment settings in the community. Approximately 1,900 Oregonians with disabilities currently receive services in sheltered workshops. Since the initiation of the lawsuit, approximately 3,900 Oregonians with disabilities have received services in sheltered workshops, and historically hundreds of students have transitioned each year from Oregon public schools to sheltered workshops. After placement, individuals with I/DD tend to remain in sheltered workshops for an average of between 11 and 12 years, and some individuals remain as long as 30 years. At the time of the Department's complaint-in-intervention, in March 2013, the average hourly wage for sheltered workshop participants was $3.72, and over 52 percent of participants earned less than $3.00 per hour, while some individuals earned only a few cents per hour. In 2012, DOJ found that Oregon significantly over-relied on segregated employment service settings to the exclusion of integrated service options. For example, as of March 2012, only 16 percent of individuals with I/DD received any services in individual supported employment and only 10 percent of their total hours were in integrated employment settings.

Additionally, hundreds of youth with I/DD each year have left Oregon schools and entered sheltered workshops. DOJ found that those young people were not given timely or adequate services to allow them to make informed choices about transitioning to work in integrated settings and lacked access to the services and supports necessary to prepare them for integrated employment. In some instances,

[24] U.S. Department of Justice Statement of Interest in *Lane v Kitzhaber* (April 2012).

students with I/DD were instead prepared for the tasks typically performed in sheltered workshops, whether by performing mock-sheltered workshop activities in school classrooms or by participating in adult sheltered workshops as part of the school curriculum.

The proposed agreement recognizes that Oregon has made substantial progress in providing employment services to and improving employment outcomes for individuals with I/DD since the filing of the plaintiffs' complaint and the department's complaint-in-intervention. In 2013 and 2015, respectively, Oregon's then Governor John Kitzhaber issued Oregon Executive Orders 13-04 and 15-01 and the State developed Integrated Employment Plans committing to implement strategies for the Oregon Department of Human Services and Oregon Department of Education to improve Oregon's employment service system for individuals with I/DD. These plans call upon the State to reduce its reliance on segregated sheltered workshops and increase its investment in supported employment services. The proposed settlement agreement builds upon these plans and commitments, and incorporates many of their provisions. Upon finalization of the settlement agreement, Oregon will substantially implement Executive Order 15-01 and the Integrated Employment Plan.

The proposed settlement agreement outlines the following key provisions:

- **Individuals with I/DD that Receive(d) Sheltered Workshop Services**: Over the next seven years, Oregon will provide supported employment services so that 1,115 working-age individuals that receive or have received sheltered workshop services can newly obtain competitive integrated employment. The supported employment services must be individualized, evidence-based, flexible, offered in an integrated employment setting and based on an individual's capabilities, choices and strengths. By June 30, 2017, Oregon will reduce the current number of working-age adults with I/DD in sheltered workshops from approximately 1,926 to no more than 1,530 and decrease the number of hours adults are working in sheltered workshops from approximately 93,530 hours to no more than 66,100 hours.
- **Youth At-Risk of Entering Sheltered Workshops:** As of July 1, 2015, Oregon will no longer purchase or fund sheltered workshop placements for transition-age youth and working-age adults who are newly eligible for state-funded employment services or already utilizing those services and are not already working in a sheltered workshop. Over the next seven years, Oregon will ensure that at least 4,900 youth ages 14 to 24 years of age are provided the employment services necessary for them to prepare for, choose, get, and keep integrated employment. Employment services will be individually planned and based on person-centered planning principles and evidence-based practices. At least half of the young people who receive employment services will receive an individual plan for employment.
- **Enhancing Employment Outcomes:** Oregon DHS will enhance employment outcomes by: (a) issuing guidance to front line staff and third-party vendors that the recommended standard for planning and implementing supported employment services will be the opportunity to work at least 20 hours per week; (b) developing and seeking approval from the Centers for Medicare and Medicaid Services for reimbursement rates for supported employment services for outcome payments and other financial incentives to providers for individuals with I/DD to obtain integrated employment at a monthly average of at least 20 hours per week; (c) continuing to offer one-time performance-based payments to providers achieving employment at least 20

hours per week for individuals with I/DD; (d) issuing guidance that its technical assistance provider(s) will train employment professionals and job developers that the recommended standard for planning and implementing supported employment services will be the opportunity to work at least 20 hours per week; and (e) collecting and reporting twice each year the percentage of individuals with I/DD who receive supported employment services under the agreement and who are working in an integrated employment setting at least 20 hours per week.

Additional requirements related to the availability of career development planning services for adults with I/DD, offering of transition planning services for youth with I/DD; training for direct support professionals in the delivery of effective practices; availability of technical resources to support the transformation of sheltered workshop providers; and data collection & monitoring activities were also outlined in the proposed settlement agreement.