

# TOWARD AN UNDERSTANDING OF EFFECTIVE PRACTICES IN EMPLOYMENT PROGRAMS FOR PEOPLE WITH DISABILITIES IN CALIFORNIA

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In the past two decades, equal opportunities for people with disabilities (PWDs) have been outlined and guaranteed through two federal acts: the 1990 Americans with Disabilities Act and the 2014 Workforce Innovation and Opportunity Act.<sup>1</sup> Intended to increase access to high-quality workforce services and preparation for competitive integrated employment, these federal acts set precedent for statewide employment programs for PWDs. In 1974, California passed its first law to ensure that individuals with disabilities were protected in the workplace. To meet a goal of more inclusive employment, California's laws have historically offered greater protection to employees than federal law.<sup>2</sup> Today, through America's Job Center of California (AJCC), the Employment Development Department (EDD) provides universal access for services through two federally funded programs: (1) the Disability Employment Accelerator and (2) the Disability Employment Initiative.<sup>3</sup> Both programs ensure that all applicants with disabilities receive equal employment opportunities in the state of California.

In 2002, the California state legislature signed into law the Workforce Inclusion Act (AB 925), which required the California Department of Health and Human Services Agency and the Labor and Workforce Development Agency to create "a sustainable, comprehensive strategy to accomplish various goals aimed at bringing PWDs into employment." The law included directions for the California Governor's Committee on Employment of People with Disabilities to work toward overall higher employment levels for adults with disabilities within the state.<sup>4</sup>

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<sup>1</sup> "Our History." Disability Rights California. March 2018. <https://www.disabilityrightsca.org/who-we-are/our-history>.

<sup>2</sup> "Disability Under the Fair Employment & Housing Act: What You Should Know About the Law." March 2009. [https://www.rccd.edu/administration/humanresources/DEC/Documents/Disability Accommodations/Disability Under the FEHA.pdf](https://www.rccd.edu/administration/humanresources/DEC/Documents/Disability%20Accommodations/Disability%20Under%20the%20FEHA.pdf).

<sup>3</sup> "Services for People with Disabilities." Employment Development Department. 2019. Accessed July 11, 2019. [https://www.edd.ca.gov/jobs\\_and\\_training/Services\\_for\\_People\\_with\\_Disabilities.htm](https://www.edd.ca.gov/jobs_and_training/Services_for_People_with_Disabilities.htm).

<sup>4</sup> Krepcio, Kathy, and Savannah Barnett. "States as Model Employers of People with Disabilities: A Comprehensive Review of Policies, Practices, and Strategies." Employer Assistance and Resource Network. October 2013. <http://www.askearn.org/wp-content/uploads/docs/statemodel.pdf>



Despite continued efforts to provide greater employment opportunities to people with disabilities, their employment rate in California remains only 33.8 percent.<sup>5</sup> Given that nearly 21.9 percent of all adults in California are affected by some type of disability, bringing PWDs into employment is of utmost importance in the state of California. In California, “disability” is defined as an actual or perceived physical or mental disability or medical condition that is disabling, potentially disabling, or perceived to be disabling or potentially disabling, which limits a major life activity.<sup>6</sup>

This issue brief will analyze various initiatives to increase employment for and accommodate PWDs in the California workforce and will argue that, on the basis of California’s legislative precedents, only providing equal treatment for PWDs once they have entered the workplace has not historically been effective at increasing employment rates for PWDs. Providing tax incentives to employers to incentivize the hiring of PWDs, on the other hand, is a much more effective practice. Namely, New York’s Workers with Disability Tax Credit will serve as an important precedent and framework for the policy solution presented in the issue brief; this tax credit has best supported the integration of PWDs into the New York labor market. Thereby, this precedent will allow the State of California to draw lessons from effective tax incentive programs in Maryland, Tennessee, and New York to increase employment rates for PWDs and develop policy options to optimize labor market outcomes.<sup>7</sup> To promote the inclusion of PWDs into the labor market, this issue brief outlines the practical avenues and numerous benefits that would emerge if the legislature passes policy that restructures the Work Opportunity Tax Credit (WOTC) in California to include “all individuals determined disabled according to criteria established by the Social Security Administration.”<sup>8</sup>

Part I presents a brief historical overview of the previous initiatives and programs instituted by the California state government in an attempt to increase employment levels for PWDs. It notes that these initiatives, despite many resources allocated toward them, have proven to be ineffective in promoting the economic stability of the disabled community.

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<sup>5</sup> Donnelly, Grace. “See How Your State Ranks In Employment Among Workers with Disabilities.” *Fortune*. February 28, 2017. <https://fortune.com/2017/02/28/disability-employment-rank/>.

<sup>6</sup> “Disability under the Fair Employment & Housing Act: What You Should Know about the Law.” *California Department of Fair Employment & Housing*, n.d., 1–12.

<sup>7</sup> Rall, Jaime, and Amanda Essex. “Employing People with Disabilities.” NCSL. December 15, 2016. [http://www.ncsl.org/research/labor-and-employment/employing-people-with-disabilities/fbclid/iwar33jepew\\_zm2gigdgxrwvdvskobm03wyrddgkzjiqhno-mbg8dwtba.aspx](http://www.ncsl.org/research/labor-and-employment/employing-people-with-disabilities/fbclid/iwar33jepew_zm2gigdgxrwvdvskobm03wyrddgkzjiqhno-mbg8dwtba.aspx).

<sup>8</sup> Burwell, Brian O, Bonnie Preston, and Sarah Bailey. “Federal Programs for Persons with Disabilities.” ASPE. Mathematica Policy Research, February 21, 2017. <https://aspe.hhs.gov/basic-report/federal-programs-persons-disabilities#SSDI>.



Part II provides a deeper analysis of the factors that may be attributed to California's ineffective employment programs. General sociodemographic factors and disability-specific barriers to effective employment practices in the state of California have created a flawed system in which PWDs continuously face disadvantages in the labor market.

Part III discusses existing incentives for employment of PWDs including (1) the Work Opportunity Tax Credit (WOTC) and (2) Disabled Access Credit. The section details the limitations of both tax incentives in boosting employment for PWDs by looking at 1999 tax year data from the IRS.<sup>9</sup> The limitations indicate that (1) tax incentives for hiring PWDs—such as the WOTC—are not well-known in the corporate world, and (2) this lack of awareness among employers further increases the unemployment rate for PWDs. By providing a comparison of tax incentives for hiring PWDs instituted in New York, Maryland, and Tennessee, this section also provides comparative analysis on effective incentives for employment of PWDs.<sup>10</sup>

Part IV argues for the expansion of WOTC-eligible groups in California to give businesses an incentive to hire PWDs.<sup>11</sup> This section voices a call to action for (1) a revision to the WOTC to explicitly include all PWDs and (2) the encouragement of private-sector employers to hire PWDs by providing tax incentives. The aim of these revisions to the WOTC in California, as the section concludes, is to prioritize the integration of PWDs into the workforce.

Part V examines the positive implications of a reformed system targeted at increasing employment opportunities for people with disabilities. More specifically, both the implementation of a revised tax incentive through WOTC to include all PWDs, as well as the reduction of inefficacy within current programs, supervised by the California state government, would be beneficial in two main regards. First, these initiatives would lead to an overall reduction of unemployment within the state of California. Given that the disabled community comprises a significant portion of California's population, unemployment reductions within the disabled community would strengthen California's economy as a whole. Second, they would provide benefits within the workplace, including a reduction in employee turnover, absenteeism, and tardiness,

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<sup>9</sup> "Incentives to Employ Workers with Disabilities Receive Limited Use and Have an Uncertain Impact." BUSINESS TAX INCENTIVES. December 2002. <https://www.gao.gov/new.items/d0339.pdf>

<sup>10</sup> Rall, Jaime, and Amanda Essex. "Employing People with Disabilities." NCSL. December 15, 2016. [http://www.ncsl.org/research/labor-and-employment/employing-people-with-disabilities/fbclid/iwar33jepew\\_zm2gigdgxrwvdyvskobm03wyrddgkzjiqhno-mbg8dwtba.aspx](http://www.ncsl.org/research/labor-and-employment/employing-people-with-disabilities/fbclid/iwar33jepew_zm2gigdgxrwvdyvskobm03wyrddgkzjiqhno-mbg8dwtba.aspx).

<sup>11</sup> "Work Opportunity Tax Credit." Work Opportunity Tax Credit, Employment & Training Administration (ETA) - US Department of Labor. January 9, 2019. Accessed July 27, 2019. <https://www.doleta.gov/business/incentives/opptax/>.



as well as an increase in productivity. Overall, the implementation of a reformed system would help dismantle the barriers that have traditionally caused the stigmatization and alienation of people with disabilities in the labor market.

## A BRIEF HISTORICAL ACCOUNT OF EMPLOYMENT OF PEOPLE WITH DISABILITIES IN CALIFORNIA

California's earliest legislation on inclusive disability employment is the Fair Employment and Housing Act (FEHA) passed in 1974; over a decade later, FEHA was followed by the Americans with Disabilities Act (ADA), its federal counterpart.<sup>12</sup> FEHA specifies that compliance with California law requires that employers (1) provide reasonable accommodations for applicants and employees who, because of their disability, are unable to perform the essential functions of their job and (2) engage in a timely, good-faith, interactive process with applicants or employees in need of reasonable accommodation.<sup>13</sup> The California state legislature later made stronger efforts to promote inclusive employment in 2000 by passing the Prudence K. Poppink Act, which emphasized that an employer or employment agency cannot ask about an applicant's medical or psychological condition or disability except under special circumstances.<sup>14</sup>

California has promoted the inclusion of PWDs in the workforce through a wide variety of policy approaches. Those approaches fall under three main categories: (1) policies that enable the state to be a model employer, including those that direct state officials to facilitate the hiring of individuals with disabilities in the state government, (2) "employment-first" policies that prioritize employment as the preferred option for working-age people with disabilities, and (3) other approaches that encourage private employers to hire, recruit, and retain PWDs.<sup>15</sup> As opposed to other welfare options such as Supplemental Social Security income (SSI) and Social Disability Insurance (DI), employment is the preferred option for the working-age PWD population because it prioritizes the sustainable integration of the community into the workforce. However, the

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<sup>12</sup> "Disability Discrimination in California." Hunter Pyle Law. <https://hunterpylelaw.com/our-practice/employee-rights/employment-discrimination/disability-discrimination/>.

<sup>13</sup> State of California. "Employees and Job Applicants Are Protected from Bias." DFEH. Accessed July 27, 2019. <https://www.dfeh.ca.gov/employment/>.

<sup>14</sup> Girion, Lisa. "State Law Redefines Who Has Disability." *Los Angeles Times*. December 31, 2000. Accessed July 27, 2019. <https://www.latimes.com/archives/la-xpm-2000-dec-31-wp-6668-story.html>.

<sup>15</sup> Rall, Jaime, and Amanda Essex. "Employing People with Disabilities." NCSL. December 15, 2016. [http://www.ncsl.org/research/labor-and-employment/employing-people-with-disabilities/fbclid/iwar33jepew\\_zm2gigdghxrwydvo-skobm03wyr\\_dgkzjiqhno-mbg8dwtba.aspx](http://www.ncsl.org/research/labor-and-employment/employing-people-with-disabilities/fbclid/iwar33jepew_zm2gigdghxrwydvo-skobm03wyr_dgkzjiqhno-mbg8dwtba.aspx).



California state legislature has not yet adopted a category that provides tax incentives for employers that hire people with disabilities. Such a tax incentive was first introduced as a federal initiative through the Work Opportunity Tax Credit (WOTC) in 2014.<sup>16</sup>

## **ADDRESSING FACTORS ASSOCIATED WITH LOW EMPLOYMENT OF PEOPLE WITH DISABILITIES**

Recent US Census data show that more than 17 million working-age individuals have a self-reported disability that limits work. These data also show that the unemployment rate for those with a work disability is more than twice as high as the rate for those without one.<sup>17</sup> Recognizing the many barriers to employment faced by people with disabilities, Congress has a long-term and continuing interest in ensuring that this community fully participates in society and becomes integrated in the workforce. According to a meta-analysis released by the Cerebral Palsy Research Foundation (CPRF), which reviewed 67 studies from the past 20 years, there are six possible explanations for the low employment levels for PWDs:<sup>18</sup>

1. Lower levels of education may inhibit the employability of individuals with disabilities, especially where job-specific knowledge and formal education are required.
2. Employers fear that PWDs are less productive and efficient than people without disabilities.
3. Stereotypes of PWDs may affect selection decisions, causing some applicants with disabilities not to be hired. Such stereotypes may be divided into six specific dimensions: (1) social or interpersonal competence, (2) task competence, (3) concern for others, (4) integrity, (5) emotional adjustment, and (6) potency or strength.
4. Employers fear litigation associated with terminating PWDs and thus don't risk hiring them.

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<sup>16</sup> "Work Opportunity Tax Credit." Internal Revenue Service. April 11, 2019. <https://www.irs.gov/businesses/small-businesses-self-employed/work-opportunity-tax-credit>.

<sup>17</sup> Kraus, L., E. Lauer, and R. Coleman. "2017 Disability Statistics Annual Report." University of New Hampshire. 2018. Accessed July 26, 2019. [https://disabilitycompendium.org/sites/default/files/user-uploads/2017\\_AnnualReport\\_2017\\_FINAL.pdf](https://disabilitycompendium.org/sites/default/files/user-uploads/2017_AnnualReport_2017_FINAL.pdf)

<sup>18</sup> Legnick-Hall, Mark L., and Philip M. Gaunt. "Why Employers Don't Hire People with Disabilities: A Survey of the Literature." CPRF. <https://www.cprf.org/studies/why-employers-dont-hire-people-with-disabilities-a-survey-of-the-literature/>.



5. Employers may fear that coworkers will react negatively to working with PWDs and thereby lower productivity, increase labor costs, and make their organizations less profitable.
6. Employers fear that customers may have negative reactions to interactions with employees with disabilities and that those reactions could impact business.

A 2003 analysis conducted by Rutgers University's John J. Heldrich Center for Workforce Development identifies points #2 and #4 as the primary reasons that businesses are hesitant to hire individuals with some form of work disability.<sup>19</sup> First, as the study noted, many employers hold the misconception that a worker's disability will prevent them from performing tasks at an optimum level. However, the report released by the CPRF explicitly states that "the evidence shows no productivity differences between people with disabilities and people without disabilities."

The second, and much more prevalent, reason identified in the study was "the fear of costly adaptations." According to a 2007 report released by the International Disability Rights Monitor, the "biggest barriers to employment" are created by employers' fear of potential additional costs such as "special transport costs for the employees with disabilities" or meeting the "pension costs, should the employee become permanently incapacitated for work."<sup>20</sup> Similar to the first reason, however, there is little to no evidence to prove that costly adaptations for employees with disabilities are a rational fear. In fact, a Cornell University report analyzing the engagement and advancement of PWDs noted that while the cost difference between people with disabilities and people without disabilities exists, it is marginal.<sup>21</sup> They further conclude that, although more definitive research regarding the matter is necessary, "the conclusion based on available data is clear: People with disabilities are a solid business investment."

Nonetheless, these two factors have been the primary contributors to the lack of employment opportunities for PWDs. The issue of low employment levels for PWDs is further compounded in states like California that lack any type of financial incentive for employers to hire them. With no financial motive for employers to hire workers with disabilities, the fear of costly adaptations is perpetuated, and the disabled community continues to be underrepresented.

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<sup>19</sup> Department of Public Information. "Disability and Employment Enable." United Nations. November 2007. Accessed July 27, 2019. <https://www.un.org/development/desa/disabilities/resources/factsheet-on-persons-with-disabilities/disability-and-employment.html>.

<sup>20</sup> Appel, Ben. "Disability Retirement." August 29, 2018. Accessed July 27, 2019. [https://www.lacera.com/benefits/Active-Member/Applying\\_for\\_Retirement/disability\\_retirement.html](https://www.lacera.com/benefits/Active-Member/Applying_for_Retirement/disability_retirement.html).

<sup>21</sup> Linkow, Peter, and Linda Barrington. "Leveling the Playing Field." Cornell University Employment and Disability Institute. 2013. Accessed July 24, 2019.



# ASSESSING INCENTIVES FOR EMPLOYMENT: THE WORK OPPORTUNITY TAX CREDIT (WOTC) AND DISABLED ACCESS CREDIT

Workers with disabilities frequently face unique challenges and disadvantages when entering or maintaining a place in the workforce. To help those with disabilities overcome these challenges, the federal government has designed a wide variety of programs and incentives.<sup>22</sup> Most of these federal efforts are targeted to PWD job applicants and can include job placement and training programs from state-administered vocational rehabilitation agencies and other service providers. Recognizing that businesses may also face some challenges when hiring, retaining, or accommodating individuals with disabilities,<sup>23</sup> Congress has also designed programs and incentives for businesses. These include three federal tax incentives: the Work Opportunity Tax Credit (WOTC), the Disabled Access Credit, and the Architectural and Transportation Barrier Removal Deduction (Table 1).<sup>24</sup>

TABLE 1: FEDERAL TAX INCENTIVES TARGETED TO EMPLOYERS TO HIRE, RETAIN, AND ACCOMODATE WORKERS WITH DISABILITIES	
Efforts	Purpose
Work Opportunity Tax Credit (WOTC)	To allow businesses to claim a tax credit when hiring and employing those with disabilities who receive veterans or state-administered vocational rehabilitation services of Supplemental Security Income benefits.
Disabled Access Credit	To allow businesses to claim a maximum credit of \$5000 for certain eligible expenditures to provide access to individuals with disabilities when such accommodations are required to comply with the Americans with Disabilities Act (ADA) of 1990.
Architectural and Transportation Barrier Removal Deduction	To allow businesses to deduct up to \$15,000 for the cost of making their facilities or transportation more accessible to and usable by individuals with a disability.

Source: United States General Accounting Office Report to Congressional Committees<sup>25</sup>

<sup>22</sup> "Incentives to Employ Workers with Disabilities Receive Limited Use and Have an Uncertain Impact." Business Tax Incentives. December 2002. <https://www.gao.gov/new.items/d0339.pdf>

<sup>23</sup> "Work Opportunity Tax Credit." Internal Revenue Service. April 11, 2019. Accessed July 27, 2019. <https://www.irs.gov/businesses/small-businesses-self-employed/work-opportunity-tax-credit>.

<sup>24</sup> Blakely-Gray, Rachel. "Disabled Access Credit: Eligibility Requirements, How to Claim, & More." Accounting Tips, Training, and News. May 14, 2019. Accessed July 27, 2019.

<sup>25</sup> "Incentives to Employ Workers with Disabilities Receive Limited Use and Have an Uncertain Impact." Business Tax Incentives. December 2002. <https://www.gao.gov/new.items/d0339.pdf>





The oldest of the three tax incentives, the barrier removal deduction, was enacted in 1976 to encourage the more rapid modification of business facilities and vehicles to overcome widespread barriers that hampered the involvement of people with disabilities and the elderly in economic, social, and cultural activities.<sup>26</sup> Administered by the IRS, it allows taxpayers to claim expenses for the removal of eligible barriers as a current deduction rather than as a capital expenditure that is gradually deducted over the useful life of the asset. In 1990, legislation reduced the maximum amount of the barrier removal deduction from \$35,000 to \$15,000 and created the disabled access credit.

The disabled access credit may be taken for expenditures made by eligible small businesses to comply with the requirements of the ADA.<sup>27</sup> The credit defines “small business” as having no more than (1) \$1 million in gross receipts or (2) 30 full-time employees. Along with their responsibility to enforce the ADA, the Equal Employment Opportunity Commission (EEOC) and the Department of Justice (DOJ) provide information and promote the use of the disabled access credit and other related tax incentives.

In addition to these incentives for accommodation, the Work Opportunity Tax Credit (WOTC) explicitly provides businesses of any size with hiring incentives for employing economically disadvantaged individuals, including those with disabilities: vocational rehabilitation referrals and Supplemental Security Income recipients.<sup>28</sup> The method for determining the amount of work opportunity credit to be claimed has two tiers: (1) For newly hired eligible employees working at least 400 hours, the credit is 40 percent of the first \$6,000 in wages paid during the first year of employment, for a maximum amount of \$2,400 for each employee, and (2) for eligible workers with 120 to 399 hours on the job, a smaller credit rate of 25 percent is allowed.

According to an analysis of the 1999 tax year data from the IRS, the GAO found that relatively few employers utilize the WOTC.<sup>29</sup> In 2013, the Congressional Research Service found, in interviews with government officials and academic experts, that fairly few PWDs may have the credit claimed for them because WOTC eligibility is limited to only disabled individuals receiving publicly funded vocational rehabilitation or SSI benefits. As these

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<sup>26</sup> “Incentives to Employ Workers with Disabilities Receive Limited Use and Have an Uncertain Impact.” Business Tax Incentives. December 2002. <https://www.gao.gov/new.items/d0339.pdf>

<sup>27</sup> Blakely-Gray, Rachel. “Disabled Access Credit: Eligibility Requirements, How to Claim, & More.” Accounting Tips, Training, and News. May 14, 2019. <https://www.patriotsoftware.com/accounting/training/blog/understanding-disabled-access-credit/>.

<sup>28</sup> “Incentives to Employ Workers with Disabilities Receive Limited Use and Have an Uncertain Impact.” BUSINESS TAX INCENTIVES. December 2002. <https://www.gao.gov/new.items/d0339.pdf>

<sup>29</sup> Scott, Christine. “The Work Opportunity Tax Credit (WOTC).” Federation of American Scientists. February 4, 2013. Accessed July 26, 2019. <https://fas.org/sgp/crs/misc/RL30089.pdf>





two categories only refer to a small subset of PWDs, interviewees also supported expanding the WOTC's coverage of people with disabilities. The Congressional Research Service adds that the two eligibility groups—those receiving publicly funded vocational rehabilitation or SSI benefits—were only added to the list of eligible groups under the WOTC as recently as August 2011 during the 110th Congress.<sup>30</sup> This suggests that a lack of disability inclusivity in “eligible groups” under the WOTC has prevented PWDs from gaining access to employment opportunities.

The GAO conducted two national surveys examining various disability employment issues and evaluating the effectiveness of tax credit incentives. One of the surveys assessed employers' experience with workers with disabilities and found that only 15 percent of the surveyed supervisors of workers with disabilities were aware of employer tax incentives.<sup>31</sup> This indicates that (1) tax incentives for hiring PWDs such as the WOTC are not well known in the corporate world, and (2) this lack of awareness can be a factor in the high unemployment rate for PWDs.

Business representatives and experts on disability issues and tax incentives have suggested options for increasing the usage and effect of existing employer tax incentives. Many of those interviewed by GAO suggested increasing the dollar value of the incentives and expanding the types of workers, businesses, and accommodations that qualify a business to receive the credits or deductions. As a result of the current narrow scope of eligibility under the WOTC, states including Maryland, New York, and Tennessee have implemented independent tax initiatives explicitly aimed at increasing the employment rate for PWDs (Table 2).<sup>32</sup>

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<sup>30</sup> Hamersma, Sarah, and Carolyn Heinrich. “Temporary Help Service Firms’ Use of Employer Tax Credits: Implications for Disadvantaged Workers’ Labor Market Outcomes.” Upjohn Institute Staff Working Paper No. 07-135, February 12, 2007, p. 5.

<sup>31</sup> “Incentives to Employ Workers with Disabilities Receive Limited Use and Have an Uncertain Impact.” Business Tax Incentives. December 2002. <https://www.gao.gov/new.items/d0339.pdf>

<sup>32</sup> Rall, Jaime, and Amanda Essex. “Employing People with Disabilities.” NCSL. December 15, 2016. [http://www.ncsl.org/research/labor-and-employment/employing-people-with-disabilities/fbclid/iwar33jepew\\_zm2gigdghxrwydvo-skobm03wyrd\\_dgkzjiqhno-mbg8dwtba.aspx](http://www.ncsl.org/research/labor-and-employment/employing-people-with-disabilities/fbclid/iwar33jepew_zm2gigdghxrwydvo-skobm03wyrd_dgkzjiqhno-mbg8dwtba.aspx)



**TABLE 2: TAX INCENTIVES FOR EMPLOYERS THAT HIRE PEOPLE WITH DISABILITIES, INCLUDING TAX INCENTIVES FOR EMPLOYERS THAT MAKE ACCESSIBILITY-RELATED MODIFICATIONS**

State	Citation	Details
Maryland	Md. Education Code Ann. §21-309 (as amended by 2015 Md. Laws, Chap. 423 [House Bill 473]); Md. Tax General Code Ann. §10-704.7 (state income tax and payroll tax); Md. Insurance Code Ann. §6-115 (insurance premium tax); Md. Tax General Code Ann. §8-216 (financial institution franchise tax); Md. Tax General Code Ann. §8-413 (public service company franchise tax)	<p>(1) Allows an eligible business to claim a credit against state income tax, insurance premium tax, financial institution franchise tax, and public service company franchise tax for wages paid and child care or transportation expenses incurred for employees with disabilities, up to certain limits.</p> <p>(2) The limits were legislatively increased in 2015 to 30 percent of up to the first \$9,000 in wages earned and up to \$900 for employer reimbursed transportation or child care expenses, for each of the first two years of employment.</p> <p>(3) Nonprofits are also eligible for the tax credit, in which case the credit is against income tax or payroll taxes.</p>
New York	N.Y. Tax Law §606 (o) (state income tax); N.Y. Tax Law §210-B (12) (franchise tax on business corporations); N.Y. Tax Law §187-a (corporation tax); N.Y. Tax Law §1456 (franchise tax on banking corporations); N.Y. Tax Law §1511 (franchise tax on insurance corporations);	<p>(1) Workers with Disabilities Tax Credit. Allows an eligible business to claim a credit against specified state taxes of up to 35 percent of the first \$6,000 in qualified first-year wages earned by each eligible employee with a disability.</p> <p>(2) In cases where the employee's first-year wages are eligible for the federal Work Opportunity Tax Credit, the state tax credit equals 35 percent of the first \$6,000 in wages paid during their second year of employment.</p>
	N.Y. Labor Law §25-b; N.Y. Tax Law §210-B (48) (franchise tax on business corporations)	<p>(1) Workers with Developmental Disabilities Tax Credit. Allows an eligible business to claim a tax credit of up to \$5,000 for a full-time qualifying employee with developmental disabilities (30 hours or more per week), based on 15 percent of an individual's wages paid after Jan. 1, 2015, for a period of employment of no less than six months; or up to \$2,500 for a part-time qualifying employee with developmental disabilities (between 8 and 30 hours per week), based on 10 percent of the individual's wages paid after Jan. 1, 2015 for a period of employment of no less than six months.</p> <p>(2) Limits the program to employees who are working in a sheltered workshop or who were unemployed for at least three months before Jan. 1, 2015. Provides that this tax credit expires on Jan. 1, 2020.</p>
Tennessee	Tenn. Code Ann. §67-4-2109(f)(2)	<p>(1) Allows an eligible business to claim a one-time credit against franchise and excise liability tax for hiring people with disabilities who are receiving state services directly related to their disabilities.</p> <p>(2) Allows a credit of \$5,000 for each net new full-time job created, and \$2,000 for each net new part-time job created.</p> <p>(3) Limits the program to employers that participate in existing state employment incentive programs for people with disabilities.</p>

Source: National Conference of State Legislatures



Of the three states that have tax incentives for employers who hire people with disabilities, only New York has a tax credit that allows eligible businesses to claim credit against specified state taxes in qualified first-year wages earned by each eligible employee with a disability.<sup>33</sup> The Workers with Disabilities Tax Credit was introduced as recently as May 2018 in New York, so the effect on the employment rate for PWDs has yet to be measured. While both Maryland and Tennessee have tax incentives, Maryland focuses on tax incentives for accommodating people with disabilities, and Tennessee limits the eligibility of PWDs by excluding those not receiving state services directly related to their disability. Thus, even states defined by the National Conference of State Legislatures as having tax incentives for employers to hire PWDs either (1) have not seen the result of tax incentives with inclusive eligibility requirements due to recent implementation or (2) only have tax incentives for accommodating, rather than hiring, PWDs.

California is in a unique legislative position for expanding its avenues for increasing PWD employment, as there is a demonstrated desire for promoting inclusive employment through policy. Currently, none of the policy avenues include tax incentives for employers to hire PWDs. Additionally, while employers in California have access to the WOTC, the narrow scope of PWD eligibility vastly limits the number of employers who claim credit for PWDs.<sup>34</sup> Given that nearly one-fifth of California's adult population is composed of people affected by some type of disability, excluding PWDs from the workforce due to a lack of tax incentives or narrow eligibility under the WOTC serves as a great civic and economic disadvantage to the state of California.

## **EXPANSION OF WOTC-ELIGIBLE GROUPS IN CALIFORNIA TO INCREASE EMPLOYMENT FOR PEOPLE WITH DISABILITIES: A POLICY PROPOSAL**

Since 1974, the state legislature of California has promoted protection and inclusivity of PWDs in the workplace. Through the 2002 Workforce Inclusion Act<sup>35</sup> and 2015 Welfare and

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<sup>33</sup> Rall, Jaime, and Amanda Essex. "Employing People with Disabilities." NCSL. December 15, 2016. [http://www.ncsl.org/research/labor-and-employment/employing-people-with-disabilities/fbclid/iwar33jepew\\_zm2gigdgghxrwydvo-skobm03wyr\\_dgkzjiqhno-mbg8dwtba.aspx](http://www.ncsl.org/research/labor-and-employment/employing-people-with-disabilities/fbclid/iwar33jepew_zm2gigdgghxrwydvo-skobm03wyr_dgkzjiqhno-mbg8dwtba.aspx).

<sup>34</sup> "Services for People with Disabilities." Employment Development Department. 2019. Accessed July 11, 2019. [https://www.edd.ca.gov/jobs\\_and\\_training/Services\\_for\\_People\\_with\\_Disabilities.htm](https://www.edd.ca.gov/jobs_and_training/Services_for_People_with_Disabilities.htm).

<sup>35</sup> Aroner, Assembly Member. "BILL NUMBER: AB 925 CHAPTERED." AB 925 Assembly Bill - CHAPTERED. September 29, 2002. [http://www.leginfo.ca.gov/pub/01-02/bill/asm/ab\\_0901-0950/ab\\_925\\_bill\\_20020929\\_chaptered.html](http://www.leginfo.ca.gov/pub/01-02/bill/asm/ab_0901-0950/ab_925_bill_20020929_chaptered.html).



Institutions Code stipulations,<sup>36</sup> the state of California has greatly improved measures for accommodating PWDs once they are part of the workforce. However, due to a lack of tax incentives for employers to hire PWDs, the six factors suppressing employment for PWDs as identified by CPRE, and the narrow scope of eligible groups under the WOTC, the employment rate for PWDs in California—among the five states with the lowest employment rates for PWDs—remains at a mere 33.8 percent.<sup>37</sup>

The WOTC in California promotes the hiring of individuals who qualify as members of aforementioned “target groups” by providing a federal tax credit incentive of up to \$96,000 for employers who hire them.<sup>38</sup> The state legislature of California and the Employment Development Department should revise the target groups defined under the WOTC to explicitly include “all individuals determined disabled according to criteria established by the Social Security Administration” and based on the definition of “disability” outlined in California’s Fair Employment and Housing Act (FEHA). Instead of limiting the scope of PWDs included under the WOTC to those receiving (1) publicly funded vocational rehabilitation or (2) SSI, the “target groups” should be expanded to include “all individuals determined disabled according to criteria established by the Social Security Administration.”<sup>39</sup> The Center on Budget and Policy Priorities finds that a very small percentage of PWDs receive SSI; in order to qualify for SSI disability benefits, applicants must (1) have a severe physical or mental impairment to last at least 12 months or result in death, based on medical evidence, and (2) adults must prove they can’t earn substantial wages anywhere across the economy. Of applicants that qualify for SSI, only 1 in 3 SSI disability applications are ultimately allowed, which further narrows the population of PWDs who fall under the WOTC target group of receiving SSI.<sup>40</sup> The US Department of Education further reaffirms that the population of PWDs who receive publicly funded vocational rehabilitation is also very small because applicants who qualify for vocational rehabilitation must be receiving SSI. Therefore, expanding the target groups to include all PWDs would allow for increased accessibility and opportunity for employers to claim credit for hiring PWDs.

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<sup>36</sup> Rall, Jaime, and Amanda Essex. “Employing People with Disabilities.” NCSL. December 15, 2016. [http://www.ncsl.org/research/labor-and-employment/employing-people-with-disabilities/fbclid/iwar33jepew\\_zm2gigdgghxrwydvo-skobm03wyr\\_dgkzjiqhno-mbg8dwtba.aspx](http://www.ncsl.org/research/labor-and-employment/employing-people-with-disabilities/fbclid/iwar33jepew_zm2gigdgghxrwydvo-skobm03wyr_dgkzjiqhno-mbg8dwtba.aspx).

<sup>37</sup> Donnelly, Grace. “See How Your State Ranks In Employment Among Workers with Disabilities.” Fortune. February 28, 2017. <https://fortune.com/2017/02/28/disability-employment-rank/>.

<sup>38</sup> “Services for People with Disabilities.” Employment Development Department. 2019. [https://www.edd.ca.gov/jobs\\_and\\_training/Services\\_for\\_People\\_with\\_Disabilities.htm](https://www.edd.ca.gov/jobs_and_training/Services_for_People_with_Disabilities.htm).

<sup>39</sup> “Incentives to Employ Workers with Disabilities Receive Limited Use and Have an Uncertain Impact.” BUSINESS TAX INCENTIVES. December 2002. <https://www.gao.gov/new.items/d0339.pdf>.

<sup>40</sup> “Supplemental Security Income (SSI).” Center on Budget and Policy Priorities, January 29, 2018. <https://www.cbpp.org/research/social-security/supplemental-security-income-ssi>.



It is important to note that expanding the definition of disability and the target groups eligible to receive a tax credit under the WOTC opens the door to fraudulent identification of disability status. However, by developing a stronger assessment tool under FEHA's definition of "disability" in California, adhering to the established criteria to identify a "disability" under the Social Security Administration, and pushing for partnerships between federal agencies and private-sector employers, a revised WOTC can be used to increase the employment rate for PWDs in the state of California.<sup>41</sup>

By (1) addressing the expansion of "target groups" under the WOTC to include all PWDs and (2) promoting the WOTC to private-sector employers, the state of California can more efficiently promote the integration of PWDs into the workforce. According to the GAO, increased publicity through disability advocacy groups and the tax preparer industry would make small businesses more aware of available incentives. Moreover, active outreach can be continued by the IRS, DOL, DOJ, and EEOC, through their websites and toll-free numbers to give individuals access to information on the incentives.<sup>42</sup> Since 1994, the DOJ has specifically contributed to the outreach by including a flyer or article with information on ADA requirements and available tax incentives along with routine SSA and IRS mailings to businesses and/or their accountants. In addition to increasing the promotion of the WOTC for employer use, according to the GAO, many business representatives would like to see the disabled access credit expanded to make more businesses eligible for the credit. The tax code limits the usage of this credit to businesses that are making accommodations in compliance with the ADA and have either (1) 30 employees or fewer or (2) \$10 million or less in gross receipts. Many believe that the restriction on employees should be expanded to include businesses with over 30 employees.<sup>43</sup> Moreover, ensuring that the incentives are available to small businesses to accommodate employees is particularly important because these businesses account for most of the growth in jobs. According to the Small Business Administration, small firms constituted about three-quarters of the US employment growth in the 1990s. Thus, by allowing (1) the expansion of "target groups" under the WOTC to include all PWDs in the state of California and (2) promoting the WOTC to large and small businesses, the unemployment rate for PWDs in the state of California can effectively be reduced.

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<sup>41</sup> "Disability Under the Fair Employment & Housing Act: What You Should Know About the Law." March 2009. [https://www.rccd.edu/administration/humanresources/DEC/Documents/Disability Accommodations/Disability Under the FEHA.pdf](https://www.rccd.edu/administration/humanresources/DEC/Documents/Disability%20Accommodations/Disability%20Under%20the%20FEHA.pdf)

<sup>42</sup> "Incentives to Employ Workers with Disabilities Receive Limited Use and Have an Uncertain Impact." BUSINESS TAX INCENTIVES. December 2002. <https://www.gao.gov/new.items/d0339.pdf>

<sup>43</sup> "Incentives to Employ Workers with Disabilities Receive Limited Use and Have an Uncertain Impact." Business Tax Incentives. December 2002. <https://www.gao.gov/new.items/d0339.pdf>



## POSITIVE IMPLICATIONS OF BRINGING PEOPLE WITH DISABILITIES INTO EMPLOYMENT

There are two main ways the state of California would benefit from increasing employment levels for PWDs.

First, lower unemployment levels would help stimulate the state's economy. With an employment rate of 33.8 percent, the vast majority of PWDs are unemployed.<sup>44</sup> Given that the disabled community consists of a significant portion of the state's adult population—nearly 21.9 percent—providing better employment opportunities for PWDs would help California's total population as a whole. Deloitte, a multinational professional services company, analyzed a case study in Australia, contextualizing the impacts of incorporating PWDs into the workforce: "The economic modelling presented suggests that closing the gap between labour market participation rates and unemployment rates for people with and without disabilities by one-third would result in a cumulative \$43 billion increase in Australia's GDP over the next decade in real dollar terms."<sup>45</sup> This analysis provides reason to believe similar positive benefits would occur in California by reducing the gap in employment for PWDs.

Second, integrating PWDs into employment would bring numerous benefits to the workplace. The Kansas University Center for Research on Learning found that, within the food company Carolina Fine Snacks, based in Greensboro, North Carolina, "the impact of hiring people with disabilities is that employee turnover dropped from 80 percent every six months to less than 5 percent, productivity rose from 60–75 percent to 85–95 percent, absenteeism dropped from 20 percent to less than 5 percent, [and] tardiness dropped from 30 percent of the staff to zero."<sup>46</sup> Philip H. Kosak, the company's President said that "the new employee's attitude was contagious: Some of the non-disabled employees began to improve their performance." Author Deborah Stadtler reaffirms that companies that succeed in incorporating candidates with disabilities "have seen 28 percent higher revenue and two times higher net income, according to an Accenture 2019 white paper on accessibility." Workplace Initiative, a network of companies, non-profits, and government agencies working to remove barriers for those with disabilities, reports that those companies also experience reduced turnover,

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<sup>44</sup> Donnelly, Grace. "See How Your State Ranks In Employment Among Workers with Disabilities." *Fortune*. February 28, 2017. <https://fortune.com/2017/02/28/disability-employment-rank/>.

<sup>45</sup> The Economic Benefits of Increasing Employment for People with Disability." *Deloitte Economic Access*, August 2011. [https://www.and.org.au/data/Conference/DAE\\_Report\\_8May.pdf](https://www.and.org.au/data/Conference/DAE_Report_8May.pdf)

<sup>46</sup> Kansas University Center for Research on Learning, 'Help Wanted: Diversifying and Strengthening your Workforce by Hiring People with Disabilities', 2005.



lower recruiting costs, increased productivity, and improved customer outreach.<sup>47</sup> The employment of PWDs sets the precedent for greater stability within the workplace.

## CONCLUSION

The state of California has been trying to promote the inclusion of PWDs in the workforce since the 1970s. However, the employment rate for individuals with disabilities remains at a mere 33.8 percent.<sup>48</sup> Given California's large disabled community, the integration of PWDs into the workforce is more imperative than ever.

For California to effectively prioritize the integration of PWDs into the workforce, it should pursue the following two legislative changes: (1) expansion of "target groups" under the WOTC to include all PWDs and (2) promotion of the WOTC to private-sector employers of large and small businesses. It is important to note that expanding the definition of disability and the target groups eligible to receive a tax credit under the WOTC opens the door to fraudulent identification of disability status due to the wide range of conditions that are considered disabilities. However, as of 2018, the Cooperative Disability Investigations program has been investigating suspicious disability claims before decisions to award benefits are made. In fiscal year 2018, with the help of state and local law enforcement, the program reported nearly \$188.5 million in projected savings to the disability programs—a \$17 return per \$1 invested. Another limitation of an expansion of the WOTC is that encouraging hiring of all PWDs could tempt employers to hire only PWDs who have "minor impediments" to work rather than PWDs with more severe conditions.<sup>49</sup> This limitation needs to be taken into consideration and closely monitored in the implementation and enforcement of these measures. The benefits of increasing employment levels for PWDs are numerous. First, California's state government would save a significant amount of money by reducing dependency on cash and medical and disability benefits. Second, given that the disabled community constitutes such a large portion of California's total population, it would help stimulate the overall economy by promoting wage growth and increasing consumer welfare. Third, it would bring benefits to the workplace by reducing employee turnover, absenteeism, and tardiness, while also

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<sup>47</sup> Stadler, Deborah. "4 Ways to Hire More People with Disabilities." SHRM. SHRM, August 16, 2019. <https://www.shrm.org/resourcesandtools/hr-topics/behavioral-competencies/global-and-cultural-effectiveness/pages/4-ways-to-hire-more-people-with-disabilities.aspx?fbclid=IwAR3c6rrTJy60EpVjcOPGiHjvf4tHNms4bug3C4JVR-YATbLAXewK8Jy29mA>.

<sup>48</sup> Donnelly, Grace. "See How Your State Ranks In Employment Among Workers with Disabilities." *Fortune*. February 28, 2017. <https://fortune.com/2017/02/28/disability-employment-rank/>.

<sup>49</sup> Burwell, Brian O, Bonnie Preston, and Sarah Bailey. "Federal Programs for Persons with Disabilities." ASPE. Mathematica Policy Research, February 21, 2017. <https://aspe.hhs.gov/basic-report/federal-programs-persons-disabilities#SSDI>.





increasing productivity. Above all, the economic opportunities engendered would help improve the quality of life for more than a fifth of California's adult population. Hence, it is of utmost importance that the WOTC is revised to include "all individuals determined disabled according to criteria established by the Social Security Administration" as a "target group"—not only to help stimulate California's economy, but also to combat the undeniable underrepresentation of PWDs within the workforce.



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## ACKNOWLEDGMENTS

We thank Nicole Annunziata, Fernanda Borges Nogueira, Matt Hughes, and the Roosevelt Network for guiding, reviewing, and recognizing our work. We thank Pranav Desai, founder of Voice of Specially Abled People, for his expertise in the disability sector and his valuable insights for our work.

## ABOUT THE ROOSEVELT NETWORK

**The Roosevelt Network** trains, develops, and supports emerging progressive policymakers, researchers, and advocates, focusing on communities historically denied political power. With locations on campuses and in cities in nearly 40 US states, the network is founded on the principle that changing who writes the rules can help fulfill the promise of American democracy and build true public power. The network supports student-led, scalable policy campaigns that fight for the equitable provision, distribution, and accessibility of public goods at the campus, local, and state levels. In addition to its student-led activities, the organization leverages the power of its alumni network—which includes public officials, lawyers, teachers, nonprofit executives, and researchers—to expand opportunities for the next generation of policy leaders. A program of the Roosevelt Institute, the network operates alongside leading economists and political scientists to bring the ideals of Franklin and Eleanor Roosevelt into the 21<sup>st</sup> century.

