

Fact Sheet #39: The Employment of Workers with Disabilities at Subminimum Wages

This fact sheet provides general information concerning the application of section 14(c) of the [Fair Labor Standards Act \(FLSA\)](#).

Characteristics

Section 14(c) of the FLSA authorizes employers, after receiving a certificate from the Wage and Hour Division, to pay [subminimum wages](#) - wages less than the Federal [minimum wage](#) - to workers who have disabilities for the work being performed. The certificate also allows the payment of wages that are less than the prevailing wage to workers who have disabilities for the work being performed on contracts subject to the [McNamara-O'Hara Service Contract Act \(SCA\)](#) and the [Walsh-Healey Public Contracts Act \(PCA\)](#).

A worker who has disabilities for the job being performed is one whose earning or productive capacity is impaired by a physical or mental disability, including those relating to age or injury. Disabilities which may affect productive capacity include blindness, mental illness, developmental disabilities, cerebral palsy, alcoholism and drug addiction. The following, taken by themselves, are not considered to be disabilities for purposes of paying [subminimum wages](#): education disabilities, chronic unemployment, receipt of welfare benefits, nonattendance at school, juvenile delinquency, and correctional parole or probation.

Section 14(c) does not apply unless the disability actually impairs the worker's earning or productive capacity for the work being performed. The fact that a worker may have a disability is not in and of itself sufficient to warrant the payment of a [subminimum wage](#).

Coverage

Any person who works on or otherwise handles goods that are moving in interstate commerce is individually subject to the [minimum wage](#) and [overtime](#) requirements of the FLSA. In addition, employees of enterprises operated for a business purpose that have an annual dollar volume of sales or business done of at least \$500,000 are also subject to the FLSA's requirements. Furthermore, employees of public agencies; hospitals; institutions primarily engaged, in the Act's own words, "in the care of the sick, the aged, or the mentally ill or defective who reside on the premises;" schools for children who have disabilities; or preschools, elementary or secondary schools, or institutions of higher education are covered on an enterprise basis regardless of the annual dollar volume of the employer.

Requirements

Certification

Employers must obtain an authorizing certificate from the Wage and Hour Division prior to paying [subminimum wages](#) to employees who have disabilities for the work being performed. Employers shall submit a properly completed application ([Form WH-226-MIS](#), Application for Authority to Employ Workers with Disabilities at [Subminimum Wages](#).) and the required supporting documentation to: United States

Department of Labor, Wage and Hour Division, 230 South Dearborn Street, Room 530, Chicago, Illinois, 60604-1757; (312) 596-7195. Certificates covering employees of work centers and patient workers normally remain in effect for two years. Certificates covering workers with disabilities placed in competitive employment situations or School Work Experience Programs (SWEPs) are issued annually.

Commensurate Wage Rates

[Subminimum wages](#) must be commensurate wage rates - based on the worker's individual productivity, no matter how limited, in proportion to the wage and productivity of experienced workers who do not have disabilities performing essentially the same type, quality, and quantity of work in the geographic area from which the labor force of the community is drawn. The key elements in determining commensurate rates are:

- Determining the standard for workers who do not have disabilities, the objective gauge against which the productivity of the worker with a disability is measured.
- Determining the prevailing wage, the wage paid to experienced workers who do not have disabilities for the same or similar work and who are performing such work in the area. Most SCA contracts include a [wage determination](#) specifying the prevailing wage rates to be paid for work on the SCA contract.
- Evaluating the quantity and quality of the productivity of the worker with the disability.

All [subminimum wages](#) must be reviewed and adjusted, if appropriate, at periodic intervals. At a minimum, the productivity of hourly paid workers must be reevaluated every six months and a new prevailing wage survey must be conducted at least every twelve months.

Overtime, Child Labor and Fringe Benefits

Generally, workers subject to the FLSA, SCA, and/or PCA must be paid [overtime](#) at least 1 1/2 times their regular rate of pay for all hours worked over 40 in a workweek. Minors younger than 18 years of age must be employed in accordance with the [youth employment provisions](#) of the FLSA and PCA. Neither the FLSA nor PCA have provisions requiring the payment of fringe benefits. Workers paid [subminimum wages](#), however, must receive the **full** fringe benefits listed on the wage determination when performing work subject to the SCA.

Enforcement

The Wage and Hour Division is responsible for the administration and enforcement of the FLSA. In addition, any worker with a disability paid at [subminimum wages](#), or his/her parent or guardian, may petition the Administrator of the Wage and Hour Division for a review of their special wage rates by a Department of Labor Administrative Law Judge.

Worker Notification

Each worker with a disability and, where appropriate, the parent or guardian of such worker, shall be informed orally and in writing by the employer of the terms of the certificate under which such worker is employed. In addition, employers must display the Wage and Hour Division poster, Notice to Workers with Disabilities Paid at Special Minimum Wages ([WH Publication 1284](#)).

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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