

Wage and Hour Division, Labor

§ 525.9

certificate authorizing payment of special minimum wages from the appropriate office of the Wage and Hour Division of the Department of Labor.

(b) With respect to patient workers employed in institutions, no deductions can be made from such individuals' commensurate wages to cover the cost of room, board, or other services provided by the facility. Such an individual must receive his or her wages free and clear, except for amounts deducted for taxes assessed against the employee and any voluntary wage assignments directed by the employee. (See part 531 of this title.) However, it is not the intention of these regulations to preclude the institution thereafter from assessing or collecting charges for room, board, and other services actually provided to an individual to the extent permitted by applicable Federal or State law and on the same basis as it assesses and collects from nonworking patients.

§ 525.6 Compensable time.

Individuals employed subject to this part must be compensated for all hours worked. Compensable time includes not only those hours during which the individual is actually performing productive work but also includes those hours when no work is performed but the individual is required by the employer to remain available for the next assignment. However, where the individual is completely relieved from duty and is not required to remain available for the next assignment, such time will not be considered compensable time. For example, an individual employed by a rehabilitation facility would not be engaged in a compensable activity where such individual is completely relieved from duty but is provided therapy or the opportunity to participate in an alternative program or activity in the facility not involving work and not directly related to the worker's job (*e.g.*, self-help skills training, recreation, job seeking skills training, independent living skills, or adult basic education). The burden of establishing that such hours are not compensable rests with the facility and such hours must be clearly distinguishable from compensable hours. (For further infor-

mation on compensable time in general under FLSA, see part 785 of this title.)

§ 525.7 Application for certificates.

(a) Application for a certificate may be filed by any employer with the Regional Office of the Wage and Hour Division having administrative jurisdiction over the geographic area in which the employment is to take place.

(b) The employer shall provide answers to all of the applicable questions contained on the application form provided by the Regional Office.

(c) The application shall be signed by the employer or the employer's authorized representative.

§ 525.8 Special provisions for temporary authority.

(a) Temporary authority may be granted to an employer permitting the employment of workers with disabilities pursuant to a vocational rehabilitation program of the Veterans Administration for veterans with a service-incurred disability or a vocational rehabilitation program administered by a State agency.

(b) Temporary authority is effective for 90 days from the date the appropriate section of the application form is signed and completed by the duly designated representative of the State agency or the Veterans Administration. Such authority may not be renewed or extended by the issuing agency.

(c) The signed application constitutes the temporary authority to employ workers with disabilities at special minimum wage rates. A copy of the application must be forwarded within 10 days to the appropriate Regional Office of the Wage and Hour Division. Upon receipt, the application will be reviewed and, where appropriate, a certificate will be issued by the Regional Office. Where additional information is required or certification is denied, the applicant will receive notification from the Regional Office.

§ 525.9 Criteria for employment of workers with disabilities under certificates at special minimum wage rates.

(a) In order to determine that special minimum wage rates are necessary in

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order to prevent the curtailment of opportunities for employment, the following criteria will be considered:

(1) The nature and extent of the disabilities of the individuals employed as these disabilities relate to the individuals' productivity;

(2) The prevailing wages of experienced employees not disabled for the job who are employed in the vicinity in industry engaged in work comparable to that performed at the special minimum wage rate;

(3) The productivity of the workers with disabilities compared to the norm established for nondisabled workers through the use of a verifiable work measurement method (see § 525.12(h)) or the productivity of experienced nondisabled workers employed in the vicinity on comparable work; and,

(4) The wage rates to be paid to the workers with disabilities for work comparable to that performed by experienced nondisabled workers.

(b) In order to be granted a certificate authorizing the employment of workers with disabilities at special minimum wage rates, the employer must provide the following written assurances concerning such employment:

(1) In the case of individuals paid hourly rates, the special minimum wage rates will be reviewed by the employer at periodic intervals at a minimum of once every six months; and,

(2) Wages for all employees will be adjusted by the employer at periodic intervals at a minimum of once each year to reflect changes in the prevailing wages paid to experienced nondisabled individuals employed in the locality for essentially the same type of work.

§ 525.10 Prevailing wage rates.

(a) A prevailing wage rate is a wage rate that is paid to an experienced worker not disabled for the work to be performed. The Department recognizes that there may be more than one wage rate for a specific type of work in a given area. An employer must be able to demonstrate that the rate being used as prevailing for determining a commensurate wage was objectively determined according to the guidelines contained in this section.

(b) An employer whose work force primarily consists of nondisabled workers or who employs more than a token number of nondisabled workers doing similar work may use as the prevailing wage the wage rate paid to that employer's experienced nondisabled employees performing similar work. Where an agency places a worker or workers with disabilities on the premises of an employer described above, the wage paid to the employer's experienced workers may be used as prevailing.

(c) An employer whose work force primarily consists of workers disabled for the work to be performed may determine the prevailing wage by ascertaining the wage rates paid to the experienced nondisabled workers of other employers in the vicinity. Such data may be obtained by surveying comparable firms in the area that employ primarily nondisabled workers doing similar work. The firms surveyed must be representative of comparable firms in terms of wages paid to experienced workers doing similar work. The appropriate size of such a sample will depend on the number of firms doing similar work but should include no less than three firms unless there are fewer firms doing such work in the area. A comparable firm is one which is of similar size in terms of employees or which competes for or bids on contracts of a similar size or nature. Employers may contact other sources such as the Bureau of Labor Statistics or private or State employment services where surveys are not practical. If similar work cannot be found in the area defined by the geographic labor market, the closest comparable community may be used.

(d) The prevailing wage rate must be based upon the wage rate paid to experienced nondisabled workers as defined elsewhere in these regulations. Employment services which only provide entry level wage data are not acceptable as sources for prevailing wage information as required in these regulations.

(e) There is no prescribed method for tabulating the results of a prevailing wage survey. For example, either a weighted or unweighted average would