

HANDICAPPED WORKERS AND THE FEDERAL WAGE-HOUR LAW

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Handicapped people make good workers. A manufacturer of precision instruments thinks they're so good that his policy is to hire half his workers from among the handicapped. A railroad rehired, as an engineer, a man who had lost his leg when a road engine crashed into the cab of his locomotive. A double-amputee, now a repairman and auto body worker, finished his apprentice training. There was an official presentation of the completion certificate. Not only was the worker praised for his determination, but the owner of the shop where the apprentice received his training was lauded for giving him the chance to prove his ability.

The Federal Government has lent its support to efforts to give the handicapped a better chance to earn their living. Take, for instance, the special provisions of the Fair Labor Standards Act which were framed to encourage job opportunities for these workers.

The Act—which is commonly known as the Federal Wage and Hour Law—was intended to promote the health, efficiency and general welfare of workers without substantially curtailing employment or earning power. These ends were to be achieved by means of three basic provisions—on minimum wages, overtime pay and child labor—applying to employees engaged in or producing goods for interstate commerce.

Special Minimum Rates for Handicapped

When providing the minimum wage requirements, the Congress recognized that there would be some persons who, because of their handicaps, would not be able to compete with the able-bodied in the labor market. Therefore a section was enacted permitting the issuance of special certificates authorizing the employment of handicapped workers below the statutory minimum, to the extent necessary to prevent the curtailment of employment opportunities.

While most disabled persons are earning pay at or above the Act's present minimum of \$1.00 an hour, the special provisions for handicapped workers continue to further the employment of many who might otherwise be vulnerable in the search for work. Last year, the U. S. Department of Labor's Wage and Hour and Public Contracts Divisions, the agency which administers the Act, issued certificates authorizing the employment of over 4,250 workers at special rates in industry generally.

Any firm which is considering the hiring of handicapped workers at special minimum rates should first take into account the meaning of "handicapped," as used in the Divisions' regulations, Part 524, which govern the issuance of handicapped worker certificates. A "handicapped" person is one whose earning capacity is impaired by age or physical or mental deficiency or injury *for the work which he is to perform*. The fact that the potential employee may have a serious handicap does not in itself assure that the Divisions will grant the special certificate. For instance, a person with badly crippled legs could be efficient in a job requiring little or no standing, and the Divisions would not be justified in issuing a certificate for his employment at special rates in such work.

The employer who wants to obtain a handicapped worker certificate should accordingly keep in mind that he will be required to present evidence that the worker is handicapped, that the handicap is disabling for the position at which he is to be employed, and that because of the handicap the worker is unable to earn the statutory minimum of \$1.00 an hour.

To work in manufacturing or processing jobs, or in work rooms or places in which goods are manufactured or processed, the handicapped worker must be at least 16 years old—the minimum age for general employment under the Act.

How to Obtain a Certificate

The employer's first step in obtaining a special certificate is to contact the Divisions' Regional Director for the region in which the firm is located, asking for an application form for a handicapped worker certificate. An application form is needed for each handicapped person to be hired.

The application will require information among other things, on the nature of the worker's disability, a description of the occupation at which he is to be employed, the earnings of the establishment's non-handicapped workers doing the same type of work, and the wage per hour the firm proposes to guarantee the handicapped worker.

It is important that specific details be supplied when describing the worker's disability. Such vague statements as "nervous condition," "incapacitated" or "slow" will not suffice. The Divisions may require a medical examination report on the worker's condition if the nature of the handicap is not made clear.

Both the employer and the worker must sign the application. The employer should then return it to the Regional Director.

If the application and other available information indicate that the regulations' requirements are met, the Regional Director will issue the special certificate. Otherwise, it will be denied.

Terms of Certificate

The special certificate specifies, among other matters, the occupation at which the worker may be employed at special minimum wage rates, the wage rate itself, and the period of time during which the rate may be paid, usually one year. The wage rate is set to reflect the worker's actual earning capacity, and except for unusual justifiable circumstances, will not be less than 75 cents an hour.

Employers should take care to note that the worker may be paid the special minimum rate only during the effective period of the certificate. Thus, if the worker was employed before the certificate went into effect, he would be due minimum wage pay at a rate of \$1.00 an hour for all hours worked before the effective date. Similarly, work done after the expiration of the certificate is compensable at a minimum rat of \$1.00 an hour. However, certificates are renewable if it can be shown that the need for the certificate still exists.

Certificates for Handicapped Trainees

The certification procedure differs for handicapped persons being given on-the-job training under the sponsorship of a State Rehabilitation Agency or the Veterans Administration. In order to facilitate the training of the disabled for productive employment under these programs, the Divisions have made special arrangements for the certification of trainees. In most States, the sponsoring rehabilitation agency has been authorized to issue, if

warranted, temporary handicapped worker certificates valid for no more than 90 days. It is the responsibility of the rehabilitation agency subsequently to take steps to obtain a special certificate from the Divisions' Regional Director, if one is needed beyond the initial 90-day period. The employer himself need not apply.

On submission of required documentation by the rehabilitation agency, the Regional Director may then issue a special certificate to replace the temporary certificate or to take effect on the expiration of the temporary certificate, or he may terminate the temporary certificate prior to its expiration date, with or without issuing the special certificate. If a special certificate is issued or the temporary certificate is terminated prior to its expiration date, the Regional Director will give written notice to the employer, the disabled trainee, and the rehabilitation agency.

The employer must pay the trainee at least the rate specified in the certificate. Any money paid to the handicapped trainee by the vocational rehabilitation agency for maintenance or other expenses is not to be considered as offsetting any part of the wage due the trainee by the employer.

Notes About Pay

While the wage rate specified in the certificate is an hourly rate, this does not mean that the worker must be paid by an hourly rate. Many handicapped workers are paid by the piece, for instance. If the establishment also employs non-handicapped piece-rate workers in the same occupation in which the certificated worker is employed, the handicapped worker must be paid at least the same piece rates as those paid the other workers. In any establishment, the handicapped worker must be paid his full piece-rate earnings or the hourly rate specified in the certificate, whichever yields him the greater pay.

The handicapped worker certificate does not relax the statutory overtime pay provisions which require payment of time and one-half the employee's regular rate for all hours worked over 40 a week. His regular rate must be at least the rate specified in the certificate. If the worker has earned more than the specified rate—as, for example, through piece-rate earnings—his regular rate will be figured on the basis of the higher earnings. When the handicapped worker works more than 40 hours in the week, he, too, is owed overtime compensation.

More Information Available

Any firm that wants more information about handicapped worker certificates or provisions of the Act in general should contact the Divisions' nearest regional office. They are located in the following cities: Boston, New York, Chambersburg (Pa.), Birmingham, Cleveland, Chicago, Kansas City (Mo.), Dallas, San Francisco and Nashville. Copies of Regulations, Part 524, on Employment of Handicapped Persons, are also available free of charge.