EMPLOYEE RIGHTS

FOR WORKERS WITH DISABILITIES PAID AT SPECIAL MINIMUM WAGES

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

This establishment has a certificate authorizing the payment of special minimum wages to workers who are disabled for the work they are performing. Authority to pay special minimum wages to workers with disabilities applies to work covered by the ***Fair Labor Standards Act (FLSA), McNamara-O'Hara Service Contract Act (SCA), and/or Walsh-Healey Public Contracts Act (PCA)****. Such special minimum wages are referred to as "****commensurate wage rates****" and are less than the basic hourly rates stated in an SCA wage determination and less than the FLSA minimum wage of* ***$7.25 per hour beginning July 24, 2009****. A "commensurate wage rate" is 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 that impact their productivity when performing essentially the same type, quality, and quantity of work in the geographic area from which the labor force of the community is drawn.*

WORKERS WITH DISABILITIES

For purposes of payment of commensurate wage rates under a certificate, a worker with a disability is defined as:

- An individual whose earnings or productive capacity is impaired by a physical or mental disability, including those related to age or injury, for the work to be performed.
- Disabilities which may affect productive capacity include blindness, mental illness, mental retardation, cerebral palsy, alcoholism, and drug addiction. The following do not ordinarily affect productive capacity for purposes of paying commensurate wage rates: educational disabilities; chronic unemployment; receipt of welfare benefits; nonattendance at school; juvenile delinquency; and correctional parole or probation.

KEY ELEMENTS OF COMMENSURATE WAGE RATES

- **Nondisabled worker standard**—The objective gauge (usually a time study of the production of workers who do not have disabilities that impair their productivity for the job) against which the productivity of a worker with a disability is measured.
- **Prevailing wage rate**—The wage paid to experienced workers who do not have disabilities that impair their productivity 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 SCA-covered work.
- **Evaluation of the productivity of the worker with a disability**—Documented measurement of the production of the worker with a disability (in terms of quantity and quality).

The wages of all workers paid commensurate wages must be reviewed, and adjusted if appropriate, at periodic intervals. At a minimum, the productivity of hourly-paid workers must be reevaluated at least every six months and a new prevailing wage survey must be conducted at least once every twelve months. In addition, prevailing wages must be reviewed, and adjusted as appropriate, whenever the applicable state or federal minimum wage is increased.

OVERTIME

Generally, if you are performing work subject to the FLSA, SCA, and/or PCA, you must be paid at least 1½ times your regular rate of pay for all hours worked over 40 in a workweek.

CHILD LABOR

Minors younger than **18 years of age** must be employed in accordance with the child labor provisions of FLSA. No persons under 16 may be employed in manufacturing or on a PCA contract.

FRINGE BENEFITS

Neither the FLSA nor the PCA have provisions requiring vacation, holiday, or sick pay nor other fringe benefits such as health insurance or pension plans. SCA wage determinations may require such fringe benefit payments (or a cash equivalent). **Workers paid under a certificate authorizing commensurate wage rates must receive the full fringe benefits listed on the wage determination.**

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.

PETITION PROCESS

Workers with disabilities paid at special minimum wages may petition the Administrator of the Wage and Hour Division of the Department of Labor for a review of their wage rates by an Administrative Law Judge. No particular form of petition is required, except that it must be signed by the worker with a disability or his or her parent or guardian and should contain the name and address of the employer. Petitions should be mailed to: Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Employers shall display this poster where employees and the parents and guardians of workers with disabilities can readily see it.

For additional information:

1-866-4-USWAGE

WHD U.S. Wage and Hour Division

(1-866-487-9243) TTY: 1-877-889-5627

WWW.WAGEHOUR.DOL.GOV

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WH 1284
Revised July 2009