

Wage and Hour Division (WHD)

Instructions for Form WH-226: The Payment of Special Minimum Wages to Workers with Disabilities Under Section 14(c) of the Fair Labor Standards Act

Section 14(c) of the Fair Labor Standards Act (FLSA) authorizes the payment of special minimum wages - wages less than the Federal minimum wage - to workers with disabilities whose productivity is impaired by their disabilities after the employer has applied for and received an authorizing certificate from the U. S. Department of Labor. The special minimum wage paid a worker with a disability must be commensurate with that worker's individual productivity as compared 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 vicinity where the worker with a disability is employed.

The term *worker with a disability* is defined in FLSA section 14(c) (1) as an individual "whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury." Some examples of disabilities that may affect a worker's earning or productive capacity include **blindness, mental illness, mental retardation, cerebral palsy, alcoholism, drug addiction and age**. Age may be considered to be an impairment to earning or productive capacity only when the individual is at least 70 years old and age impairs his or her productivity for the work to be performed. The fact that a worker is over 70 years of age does not, in and of itself, constitute a disability under section 14(c). Vocational, social, cultural, or educational disabilities, standing alone, are not disabilities under section 14(c). Examples include chronic unemployment, receipt of welfare benefits, nonattendance at school, juvenile delinquency, and correctional parole or probation. However, these conditions could meet the section 14(c) definition of a disability if they exist in conjunction with some other physical/mental deficiency or injury.

For more detailed information about section 14(c), you may wish to review Regulations 29 CFR Part 525 (*Employment of Workers With Disabilities Under Special Certificates*) or read a series of fact sheets developed on this topic which are located at <http://www.dol.gov/whd/sec14c>.

Employers apply for subminimum wage certificates using form WH-226 and supplemental form WH-226A.

WH-226 Application for Authority to Employ Workers with Disabilities at Special Minimum Wages. This application must be submitted by employers of workers with disabilities - such as Community Rehabilitation Programs, Hospitals, Schools operating work experience programs, and private businesses - who wish to obtain authority to pay special minimum wages under FLSA section 14(c). Generally, an employer will submit a single WH-226 that covers each branch establishment,

supported employment work site (including enclaves), or school work experience site where the applicant seeks to employ workers with disabilities at special minimum wages. A separate WH-226A must be submitted along with the WH-226 for each location where such workers will be employed. The instructions for completing the WH-226 are included on Page 4 of the form.

WH-226A

Supplemental Data Sheet for Application for Authority to Employ Workers with Disabilities at Special Minimum Wages. A separate WH-226A must be submitted along with the WH-226 for each site where workers with disabilities are (will be) employed at special minimum wages as listed in Block 6 of the WH-226. The directions for completing the WH-226A are contained on page 2 of the form.

Completed applications should be forwarded to:

U. S. Department of Labor
Wage and Hour Division
230 South Dearborn Street, Room 514
Chicago, Illinois 60604

What if I have questions as I complete the application?

If you have questions, you may wish to contact the Certification Team member who covers your state at (312) 596-7195.

For technical questions concerning certificates, mail questions to ATTN: National FLSA Certification Team Supervisor at the U.S. Department of Labor, Wage and Hour Division, National FLSA Certification Team, 230 South Dearborn Street, Room 514, Chicago, IL 60604.

Note: In order to view, fill out, and print PDF forms, you need Adobe® Acrobat® Reader® version 5 or later, which you may download for free at <http://www.adobe.com/products/acrobat/readstep2.html>. To save the completed forms on your workstation, you need to use the "Save..As" method to save the file. For example, select the PDF link and click on your "RIGHT" mouse button or press SHIFT + F10. This will cause a menu to be displayed, from which you will select the proper save option -- depending upon which browser you are using:

- For Microsoft IE users, select "Save Target As"
- For Netscape Navigator users, select "Save Link As"

Once you've selected the proper save option for your browser, and have saved the file to a location you specified, go to your program menu and start the Adobe Acrobat® Reader. Once open, locate the PDF file you saved and open it directly in Acrobat®.