

Instructions for Forms WH-200, WH-201, and WH-202

The Payment of Subminimum Wages to Full-Time Students Under Section 14(b) of the Fair Labor Standards Act

Section 14(b) of the Fair Labor Standards Act (FLSA) authorizes certain types of employers to pay subminimum wages – wages less than the federal minimum wage – to full-time students, but only after applying for and receiving a certificate from the U. S. Department of Labor.

A full-time student, for purposes of this limited exception, is a student who receives primarily daytime instruction at the physical location of a bona fide educational institution, in accordance with the institution's accepted definition of a full-time student. A full-time student retains that status during the student's holiday recess, summer, and other vacations if local law requires attendance at the end of the vacation period. If attendance is not mandatory, full-time student status is determined by the student's intention stated to the employer. A student who has graduated from high school and informs the employer of plans to attend a college or university on a full-time basis at the end of the vacation period may be presumed to be a full-time student.

Full-time students may be employed under the subminimum wage provisions of section 14(b) in retail or service establishments or in agriculture. An institution of higher education may also employ its full-time students at subminimum wages after making proper application. Such employment is permitted to the extent necessary in order to prevent the curtailment of opportunities for employment of full-time students.

The subminimum wage rate for full-time students may not be less than 85 percent of the applicable statutory minimum. It can, of course, be more than 85 percent. The chart below displays the federal minimum wages as determined by Congress, their effective dates, and the minimum amount a full-time student may be paid under FLSA section 14(b):

This is a simple table minimum and subminimum wage rates effective July 24, 2009

Effective Date	Minimum Wage	85% of Minimum Wage
July 24, 2009	\$7.25	\$6.17

If the minimum wage increases, the student may be paid not less than 85 percent of the new minimum wage on the effective date of the new minimum wage. The factor of 85 percent may not be applied against (used to reduce) any other subminimum wage program such as the Youth Minimum Wage authorized by section 6(g) of the FLSA. Please note that the scheduled increases in the federal minimum wage do not impact the Youth Minimum Wage which will remain \$4.25 per hour.

There are three different kinds of applications that may be used to apply for authority to pay full-time students subminimum wages under section 14(b):

WH- Designed to be used by Retail or Service Establishments or Agricultural employers to request authority to employ full-

200	time students at subminimum wages for a total number of hours that: (1) equal 10% of the total monthly hours of employment, or (2) are greater than 10% of the total monthly hours of employment. Employers must submit a separate application for every establishment where he or she will employ such students.
WH-201	Designed to be used by an Institution of Higher Education that wishes to employ its student's at special minimum wages. A separate application must be submitted for every campus where such students will be employed at less than the minimum wage.
WH-202	Designed to be used by Retail or Service Establishments or Agricultural employers to request authority to employ 6 OR FEWER full-time students at subminimum wages. Employers need to submit only one application to cover all establishments, but may not employ more than 6 full-time students at subminimum wages on any one work day throughout the entire enterprise.

Completed applications should be forwarded to the Wage and Hour Division National Certification Team:

U.S. Department of Labor
Wage and Hour Division
Attn: National Certification Team
230 S. Dearborn Street, Room 530
Chicago, IL 60604-1757
Telephone: (312) 596-7195

What if I have questions as I complete the application?

Both the WH-226 and the WH-226A include detailed instructions. Read them carefully. However, if you still have questions, you may wish to contact the Certification Team member who covers your state.

For questions concerning the processing of certificates, mail questions to ATTN: National Certification Program Manager at the U.S. Department of Labor, Wage Hour Division, National Certification Team, 230 S. Dearborn Street, Room 514, Chicago, IL 60604-1757.

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