

R-30

TITLE 29, CHAPTER V  
CODE OF FEDERAL REGULATIONS  
PART 524

REGULATIONS APPLICABLE TO  
EMPLOYMENT OF HANDICAPPED  
PERSONS

Pursuant to Section 14  
of the Fair Labor Standards Act of 1938  
(52 Stat. 1060)

March 1939

UNITED STATES DEPARTMENT OF LABOR  
WAGE AND HOUR DIVISION

REGULATIONS APPLICABLE TO  
EMPLOYMENT OF HANDICAPPED PERSONS  
PURSUANT TO SECTION 14 OF  
THE FAIR LABOR STANDARDS ACT <sup>1</sup>

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Section 524.1.-Purpose of application.

Application may be made to the Administrator of the Wage and Hour Division, Department of Labor, Washington, D. C. to employ a worker whose earning capacity is impaired by age or physical or mental deficiency or injury, at a wage lower than the minimum wage applicable under Section 6 of the Fair Labor Standards Act of 1938, whenever employment at such lower rate is necessary to prevent curtailment of employment opportunities.

Section 524.2.-Applications on official forms.

Such application shall be made upon forms furnished by the Wage and Hour Division and shall be signed by both the handicapped worker and the employer.

Section 524.3.-Issuance of certificates.

If the application is in proper form and sets forth facts showing--

- (a) that the worker is handicapped within the meaning of section 14 of said act;
- (b) that such handicap has impaired the earning capacity of the worker for the particular position for which the application is made, and the extent of such impairment; and
- (c) that such worker should be employed at a wage lower than the minimum wage applicable under section 6 to prevent curtailment of such worker's employment opportunities,

the Administrator or his authorized representative may accept the facts as presented and issue, in triplicate, a Special Certificate in the name of the Administrator, authorizing the employment of the named worker in the position designated at such rate lower than the minimum wage applicable under section 6 and for such length of time as the Administrator or such representative determines to be necessary to prevent curtailment of employment opportunities, subject to the limitations hereinafter prescribed in these regulations. Such rate and the length of time for which it is applicable shall be specified in the Certificate.

Section 524.3A.-Distribution of copies of certificates.

One copy of the Certificate will be given the handicapped worker, one copy shall be given the employer who shall keep this copy on file in the same place at which the worker's employment records are maintained, and one copy will be retained in the files of the Wage and Hour Division, Department of Labor.

(This section approved by the Administrator October 25, 1938, and published in the Federal Register on October 27, 1938.)

1 Issued under the authority contained in sec. 14, 52 Stat. 1060.

Section 524.4.-Investigation may be ordered.

To determine whether the facts justify the issuance of a Special Certificate for a handicapped worker, the Administrator or his authorized representative may in any case order an investigation and require the worker to take a medical examination, or may require that certain facts be certified to by designated officers of the state or federal government.

Section 524.5.-Requirements for Rates Less than 75 Percent of Applicable Rate.

No wage rate shall be fixed by the Administrator or his authorized representative for a handicapped worker at less than 75 percent of the minimum wage applicable under Section 6 unless after investigation such lesser wage rate appears to be clearly justified.

(This section, as amended, approved by the Administrator February 8, 1939, and published in the Federal Register February 14, 1939.)

Section 524.6-Termination of certificates.

All Special Certificates for handicapped workers prior to July 1, 1939, shall terminate on September 1, 1939.

Section 524.7.-Conditions for Granting or Denying Certificates.

The descriptions of alleged handicaps must be in detail. Vague descriptions, such as "nervous condition", "physically incapacitated", etc., will not suffice. Furthermore, the alleged disability must be shown to be a specific handicap for the proposed employment: Many workers, such as watchmen, may be handicapped for other occupations but are not handicapped for the employment proposed for them.

As a general rule, no Special Certificate will be issued

- (a) for a worker with temporary, or readily correctible, disabilities;
- (b) for a worker alleged to be slow or inexperienced, unless he is also handicapped within the meaning of the Act and these Regulations;
- (c) where age alone is cited as a disability for a worker under 65: (however, age in excess of 65 in and of itself does not necessarily render the worker handicapped within the meaning of the Act and these Regulations);
- (d) for a worker (irrespective of handicap) whose piecework earnings are generally equal to or above the statutory minimum;
- (e) where the application indicates the Special Certificate is desired in order to obtain an exemption from Section 7 of the Act (i.e., maximum hours and overtime) since the Administrator has no power to grant such an exemption under Section 14.

(This section, as amended, approved by the Administrator February 8, 1939 and published in the Federal Register February 14, 1939.)

Section 524.8.-Prohibition - False evidence.

(a) No employer shall employ any handicapped worker under a Special Certificate at a wage rate lower than the rate applicable in such

Certificate.

(b) No employer shall set forth any fact or facts in his application which he knows or has reasonable cause to believe are false.

(c) A Special Certificate shall be null and void if any material statement or information carried in the application is found to be false.

Section 524.9.-Request for Reconsideration and Petition for Review.

(a) Upon the submission of additional material facts an authorized representative of the Administrator may reconsider an application and may affirm, revise or reverse his former action.

(b) Any person aggrieved by the action of an authorized representative of the Administrator may within 15 days thereafter, or within such further time as the Administrator, for cause shown, may allow, file a petition for review by the Administrator of the action of the authorized representative of the Administrator and praying for such relief as is desired. If this petition is granted, all interested parties will be afforded an opportunity to be heard, either in support or in opposition to the matters prayed for in the petition, or other provision will be afforded interested parties to present their views. Should a public hearing be determined upon by the Administrator, a notice of its time, place and scope will be published in the Federal Register and made public by a general press release at least 5 days before the date of such hearing.

(c) Before any request or petition by any person or any proceeding for the cancellation or nullification of any Special Certificate for the employment of a handicapped worker will be considered by the Administrator or an authorized representative of the Administrator, reasonable notice of the time when and place where such petition or request is to be considered will be sent by registered mail to the handicapped worker and his employer named in such Special Certificate, at their last known address or addresses.

(This section, as amended, approved by the Administrator February 8, 1939, and published in the Federal Register February 14, 1939.)

Section 524.10.-Petition for Amendment of Regulations.

Any person wishing a revision of any of the terms of the foregoing regulations applicable to handicapped workers may submit in writing to the Administrator a petition setting forth the changes desired and the reasons for proposing them. If, upon inspection of the petition, the Administrator believes that reasonable cause for amendment of the rules and regulations is set forth, the Administrator will either schedule a hearing, with due notice to interested parties, or will make other provision for affording interested parties an opportunity to present their views, both in support and in opposition to the proposed changes.

(The foregoing sections (except as noted) approved by the Administrator, October 12, 1938, and published in the Federal Register, October 15, 1938.)

Section 524.90.-Temporary Certificate of Exemption during Period Before Normal Procedure is in Full Operation.

From October 24, 1938, to February 16, 1939, this regulation shall be deemed to be a certificate authorizing employers to continue in their employ handicapped workers at wage rates less than the minimum rates applicable under Section 6 of the Fair Labor Standards Act, subject to the following conditions:

- (a) The earning capacity of the employee for the particular position held by him must be, or must honestly be believed by the employer to be, substantially impaired by age or physical or mental deficiency or injury.
- (b) Such handicapped worker must have been employed by the employer on or before October 17, 1938, at a rate less than the normal minimum rate prescribed in Section 6 of the Act.
- (c) If the employer had in his employ on October 17 any non-handicapped worker or workers similarly employed at that date at a rate less than the rate paid to such non-handicapped workers.
- (d) In no event shall the wage paid to the handicapped employee during this period of temporary exemption be at a rate less than 75 percent of the normal minimum rate applicable under Section 6 of the Act.
- (e) For the purposes of this regulation no alleged handicapped worker shall be temporarily exempted if, prior to October 17, 1938, more than 5 percent of the workers were employed by the employer to perform similar work at the same rate of pay as that received by such alleged handicapped worker; provided, that this limitation shall not apply in the case of employment by non-profit or semicharitable organizations.
- (f) The temporary exemption herein provided shall terminate on December 1, 1938, as to any particular employee claimed to be handicapped, unless prior to that date the Administrator shall have received an application for exemption as prescribed in Part 524, Title 29, Chapter V, Regulations Applicable to Handicapped Persons. If a special certificate is issued on the basis of such application, it will supersede the temporary certificate provided by this Section. If any such application is denied, prior to February 16, 1939, the temporary exemption, as to the named employee, will become inoperative immediately upon notice to the employer of such denial.

(This section, as amended, approved by the Administrator January 31, 1939, and published in the Federal Register February 1, 1939.)

It appearing that a substantial number of handicapped individuals are provided remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature in charitable organizations and institutions conducted not for profit but for the purpose of carrying out a recognized program for the rehabilitation of such individuals; and

It appearing advisable for the Administrator to give further consideration to the special problems affecting the employment of such handicapped individuals at wages lower than the minimum wage applicable under Section 6 of the Fair Labor Standards Act; and

It being the intention of the Administrator to appoint an advisory committee to make recommendations with respect to permanent regulations and procedure providing for the employment of handicapped individuals in charitable organizations and institutions of the type described above at wages lower than the minimum wage applicable under Section 6 of the Fair Labor Standards Act;

Therefore, in view of the foregoing, the following regulation is hereby issued:

Section 524.91.-Temporary Certificate of Exemption for Handicapped Individuals Employed by Certain Charitable Non-Profit Institutions and Organizations during Period Before Normal Procedure is in Full Operation. Notwithstanding any provision in Section 524.90 of Part 524 (providing a temporary certificate of exemption during period before normal procedure is in full operation), from October 24, 1938 to April 1, 1939, or such earlier date as the Administrator may after notice determine, this regulation shall be deemed to be a certificate authorizing charitable organizations and institutions conducted not for profit but for the purpose of carrying out a recognized program of rehabilitation for handicapped individuals and of providing such individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature, to employ (or suffer or permit to work) handicapped individuals for such purposes at wage rates less than the minimum rate applicable under Section 6 of the Fair Labor Standards Act, subject to the following conditions:

- (a) the earning capacity of the employee for the particular position held by him or for the work which he is suffered or permitted to do must be, or must be honestly believed by the employer to be, substantially impaired by age or physical or mental deficiency or injury;
- (b) in no event shall the minimum wage paid any such handicapped individual during this period of temporary exemption be less than that proportion of the minimum wage applicable under Section 6 which the handicapped individual's earning capacity bears to the earning capacity of a non-handicapped worker.

(This section, as amended, approved by the Administrator January 30, 1939, and published in the Federal Register January 31, 1939.)

U.S. DEPARTMENT OF LABOR  
WAGE AND HOUR DIVISION  
Washington

Space not to be used by employer

Approved \_\_\_\_\_ Acted on by \_\_\_\_\_

Denied \_\_\_\_\_ Date \_\_\_\_\_

Reason \_\_\_\_\_

**APPLICATION FOR A SPECIAL HANDICAPPED WORKER'S CERTIFICATE**

Authorizing the employment of a person whose earning capacity is impaired by age or physical or mental deficiency or injury at less than the minimum wage applicable under the Fair Labor Standards Act of 1938.

N.B. — *All Questions Must Be Answered in Full.* This application is to be filed in accordance with the procedure set forth in Regulations - Part 524.

1. Name of firm \_\_\_\_\_ 2. Date application made \_\_\_\_\_
3. Address of principal office \_\_\_\_\_  
(Street) (City) (State)
4. Address to which employer's copy of certificate is to be sent (i. e. nearest company office to (5)) \_\_\_\_\_  
(Street) (City) (State)
5. Address of establishment in which worker is or is to be employed \_\_\_\_\_  
(City) (State) (Street)
6. Nature of business \_\_\_\_\_
- Name of worker \_\_\_\_\_ 8. Sex \_\_\_\_\_ 9. Age \_\_\_\_\_
10. Home address of worker \_\_\_\_\_  
(Street) (City) (State)
11. If operating under a Federal wage order, specify which one, and minimum wage provided therein \_\_\_\_\_
12. Nature of work on which it is proposed to employ this worker \_\_\_\_\_
13. Present average hourly earnings of non-handicapped workers on this type of work (12) within the establishment \_\_\_\_\_ timework  or piecework
14. Total number of persons employed in the establishment \_\_\_\_\_
15. Number of handicapped workers in the establishment \_\_\_\_\_
16. Number of non-handicapped persons in the same type of work as (12) in the establishment \_\_\_\_\_
17. Number of handicapped workers, other than this one, in the same type of work as (12) in the establishment \_\_\_\_\_
18. Describe nature of handicap *IN FULL\** (Use extra page if necessary) \_\_\_\_\_  
\_\_\_\_\_
19. If this employee has been vocationally rehabilitated specify when, where, and by what agency \_\_\_\_\_

20. Why does this handicap limit earning capacity of worker *FOR THIS PARTICULAR JOB*  
*(answer in detail)\*\** \_\_\_\_\_

21. To what *EXTENT* is the worker's earning capacity for this particular job impaired  
*(percentage if possible)* \_\_\_\_\_

22. How long employed by firm \_\_\_\_\_ 23. How long at present job \_\_\_\_\_

24. If worker has been employed in type of work specified in (12) show earnings for latest 4 wks. (Earliest wk.) (1)  
 (Enter weeks (2)  
 in order) (3)  
 (Latest Week) (4)  
 Total

WEEK ENDING	WEEKLY EARNINGS		HOURS WORKED	TOTAL AMT. PD.
	TIMEWORK	PIECEWORK		

25. Amount firm proposes to pay or guarantee worker *PER HOUR*. (Time and one-half this rate to be paid for all hours in excess of 44 hours in any one week) \_\_\_\_\_  
*(Give this figure by the HOUR, not by the day, night, week or month).*

26. In applying for a special certificate, I certify that, to the best of my knowledge and belief, all statements above are true and accurate.

27. I have read the statements made above and ask that the requested certificate authorizing my employment in the particular position applied for at an amount as determined by the Administrator or his authorized representative (less than the minimum wage applicable under the Act) be granted.

*(NB - False statements will invalidate any certificate granted and may render employer liable to the employee for the difference in back pay plus an equal amount as liquidated damages.)*

\_\_\_\_\_  
*Signature of employer or authorized agent*

\_\_\_\_\_  
*Signature of worker*

\_\_\_\_\_  
*Title*

*(If worker is illiterate, signature must be made by mark (X) and witnessed by 2 persons, neither of whom may be the employer or his agent(s) and their addresses must also be given.)*

\_\_\_\_\_  
*(Name)*

\_\_\_\_\_  
*(Address)*

\_\_\_\_\_  
*(Name)*

\_\_\_\_\_  
*(Address)*

\* Action on this application may possibly be expedited if it is accompanied by a medical certificate signed by a licensed physician not in the employ of your firm, indicating the nature, extent, degree of permanence and possibility of correction of (or recovery from) said disability together with his opinion, if possible, as to the manner and extent to which such handicap might interfere with the proposed employment.

\*\* Use additional page if necessary.