

R-239

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)

April 1939

These Regulations, Part 524, include the amendments approved by the Administrator on April 17, 1939 of sections 524.3, 524.3A, 524.4, 524.5, 524.6 and 524.7. These amended sections were published in the Federal Register on April 21, 1939 and became effective on that date.

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 quintuplicate, 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.

(This section, as amended, approved by the Administrator April 17, 1939 and published in the Federal Register April 21, 1939.)

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<sup>1</sup> Issued under the authority contained in sec. 14, 52 Stat. 1060.

SECTION 524.3A DISTRIBUTION OF COPIES OF CERTIFICATE

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 three copies will be retained in the files of the Wage and Hour Division, Department of Labor.

(This section, as amended, approved by the Administrator April 17, 1939 and published in the Federal Register April 21, 1939.)

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 additional data or facts or may 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.

(This section, as amended, approved by the Administrator April 17, 1939 and published in the Federal Register April 21, 1939.)

SECTION 524.5 REQUIREMENTS RELATING TO RATES

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 April 17, 1939 and published in the Federal Register April 21, 1939.)

A certificate, however, will not necessarily be issued at a rate as low as 75% of the minimum. In each case the rate will be set at a figure designed adequately to protect the individual worker's earning capacity. The rate proposed in the application should preferably be above 75% of, and as close to, the statutory minimum as feasible.

SECTION 524.6 TERMINATION OF CERTIFICATES

No Special Certificates for Handicapped Workers issued prior to July 1, 1939, shall terminate later than September 1, 1939.

(This section, as amended, approved by the Administrator April 17, 1939 and published in the Federal Register April 21, 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;
- (f) where it appears that the worker's earning capacity is impaired primarily because of the low piece rates paid and not in fact by age or physical or mental deficiency or injury. The earning capacity of the worker must be impaired in relation to that of the group of non-handicapped workers of minimum (rather than average or maximum) earning capacity performing similar work.

(This section, as amended, approved by the Administrator April 17, 1939, and published in the Federal Register April 21, 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 change 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 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 certain conditions, from October 24, 1938 to February 16, 1939, is not published herein.

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 regulations 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 pro-

vision 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 June 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 March 22, 1939 and published in the Federal Register March 28, 1939.)