

U. S. DEPARTMENT OF LABOR
Wage and Hour Division
Washington

REVISED LEARNERS' REGULATIONS ANNOUNCED

Revised regulations governing the issuance of special certificates to employers permitting their employment of learners at wages lower than the minimum wage applicable under the Fair Labor Standards Act were announced yesterday by Administrator Elmer F. Andrews, Wage and Hour Division, U. S. Department of Labor.

The procedure was revised in the light of the experience gained since the Wage and Hour Law became effective on October 24, 1938. The amended regulations permit employment of learners at rates below the minimum when found necessary to prevent curtailment of employment opportunities.

Under the regulations as revised, an application form is prescribed on which full information must be provided for the guidance of the Wage and Hour Division in dealing with the application. These forms and instructions for their use will be mailed to employers who have previously applied and to others upon request.

Mr. Andrews stressed the fact that learners' certificates, if and when granted, cannot be retroactive.

"The Act permits employment of learners at a wage lower than the minimum only under a special certificate issued by the Administrator," Mr. Andrews said. "In accordance with Section 14 of the Act, the employment of learners at such a lower wage, when no special certificate has been issued, cannot be made lawful by the subsequent issuing of a special certificate. Consequently, it is a violation of the Act to employ any employee at less than the minimum wage (now 25 cents an hour) even though a proper application for a special certificate has been made."

"Learners," as used in the Fair Labor Standards Act, include only beginners at a skilled occupation. Applications for exemptions as learners must set forth the factors in the occupation which demand training and skill on the part of the worker. Usually this is proven in higher earnings for experienced workers based on a higher rate of production.

The application must state the wage lower than the statutory minimum at which it is sought to employ learners, and in no case, after the learner's certificate has been issued, may the wage paid be lower than that determined by the Administrator or his representative.

"It was not the purpose of the Act to make employment of learners more advantageous to the employer than employment of experienced workers," Mr. Andrews explained. "Consequently, if experienced workers at the occupation for which learners' certificates are sought are paid by the applicant on a piece-work basis, the learners must be paid at the same piece rate as the experienced workers, with an additional guarantee of the minimum hourly wage provided in the special certificate."

The length of the learning period will be fixed by the Administrator, or his representative, but the application in each case must show the length of time for which the learner's certificate is sought. The learning period will not be longer than the time required by the learner to develop sufficient skill to earn the statutory minimum wage, if paid at a rate equal to the piece

rate paid experienced workers.

The Administrator may issue no learner's certificate unless it is necessary to prevent curtailment of opportunities for employment. Therefore, proof of this must be provided in the application. The application must show that experienced workers are not available to do the work for which learners are requested, and must establish that the payment of the statutory minimum would so increase the applicant's cost of production that additional inexperienced persons would not ordinarily be employed, or that the employer would be so burdened by hiring inexperienced help at the statutory minimum as to make probable a curtailment of opportunities for employment. In presenting this proof, the showing may be made in the accounting or statistical terms customarily used in the applicant's business.

The procedure adopted by the Wage and Hour Division for consideration of applications and the issuance of certificates is contained in Sections 522.4, 522.5, and 522.12 of the Regulations, which will appear in the Federal Register for Tuesday, May 23. Under it, applications may be acted upon individually or considered jointly where the applications concern plants similarly situated. The Division may, prior to granting an application, call an industry hearing to consider questions of fact common to an industry.

When an application is received, the Administrator may deny the application as failing to show that it is warranted, may grant a special certificate based on the facts shown in the application or hold a hearing on the application. Where a special certificate is granted immediately, public notice will be given to this fact and objection may be filed within the following fifteen days. Should the objection be sustained at a hearing the special certificate will be cancelled as of the date it was issued and the persons employed as learners under it reimbursed to bring their pay up to the statutory minimum. Such objections may be filed by employees, competitors or others, individually or through groups or labor unions.