

TITLE 29 -- LABOR


CHAPTER V -- WAGE AND HOUR DIVISION

PART 524

REGULATIONS APPLICABLE TO EMPLOYMENT  
OF HANDICAPPED PERSONS PURSUANT TO  
SECTION 14 OF THE FAIR LABOR STAND-  
ARDS ACT.

The following amendments to Regulations -- Part 524 -- (regulations Applicable to Employment of Handicapped persons Pursuant to Section 14 of the Fair Labor Standards Act) are hereby issued. These amendments, amending various Sections of said Regulations, shall become effective upon my signing the original and upon publication thereof in the Federal Register and shall be in force and effect until repealed or modified by regulations hereafter made and published.

Signed at Washington, D. C., this 15th day of August, 1940.

  
Philip B. Fleming, Administrator  
Wage and Hour Division  
Department of Labor

Published in Federal Register, August 27, 1940.

REGULATIONS APPLICABLE TO EMPLOYMENT  
OF HANDICAPPED PERSONS PURSUANT TO  
SECTION 14 OF THE FAIR LABOR STAND-  
ARDS ACT.

Section 524.1 - Applications to be made to Regional Directors.

Application may be made to the Regional Director of the administrative region of the Wage and Hour Division, United States Department of Labor, in which the worker in question is employed, 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 opportunities for employment.

Section 524.2 - Application on Official Forms.

Such application shall be made upon official forms of the Wage and Hour Division and shall be signed by both the handicapped worker and the employer.\*/

Section 524.3 - Handicapped Persons Being Vocationally Rehabilitated.

Application shall be made in the manner provided in Section 524.1 but on a special form of the Wage and Hour Division to authorize the employment training of a handicapped worker under the supervision of the State Vocational Rehabilitation Agency at a rate lower than the minimum wage applicable under Section 6 of the Fair Labor Standards Act of 1938 to prevent curtailment of opportunities for employment.

Such application shall set forth the nature and length of training and the terms and conditions under which the handicapped rehabilitation trainee is to be employed. The application shall be signed by the employer, the employee, and the State Supervisor of Vocational Rehabilitation having jurisdiction and shall be transmitted to the Regional Director by such State Supervisor. No training period may be extended beyond the limits set in the certificate except upon the written report of the State Supervisor of Vocational Rehabilitation to the Regional Director setting forth:

- (1) the reasons for requesting such extension;
- (2) the degree to which the handicapped trainee has become vocationally rehabilitated;
- (3) the basis upon which a revised rate may be set;
- (4) the estimated additional time required to complete his training program.

A Handicapped Worker's Certificate shall not be issued for a Vocational Rehabilitation Trainee who has completed training, for employment in the establishment wherein he received his training, or in an industrial concern of similar character, except upon the written recommendation of the State Supervisor of Vocational Rehabilitation.\*/

#### Section 524.4 - 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 nature 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 opportunities for employment,

the authorized regional representative of the Administrator may accept the facts as presented and issue a Special Certificate authorizing the employment by the named employer 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 said authorized regional representative determines to be necessary to prevent curtailment of opportunities for employment, 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 524.5 - Preservation of Certificate by Employer.

A copy of the Certificate 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. If the handicapped worker dies or leaves the employment of the employer holding a Special Certificate for such worker, the employer shall nevertheless retain his copy of the Certificate. If any Special Certificate is cancelled or suspended, the employer holding such Certificate shall nevertheless retain it; provided, however, that he shall file with such Certificate the notice of its cancellation or suspension.\*/

#### Section 524.6 - Investigation May Be Ordered.

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

#### Section 524.7 - Requirements Relating to Rates.

No wage rate shall be fixed in any Special Certificate for a handicapped worker at less than 75 per cent of the minimum wage applicable under Section 6 unless after investigation such lesser wage rate appears to be clearly justified.

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

In establishments where non-handicapped workers in the same occupation are employed on a piece-rate basis, the handicapped worker shall be paid his full piece-rate earnings if in excess of the minimum wage established in the certificate.

If the wage rate established by a Special Certificate differs from the wage rate established by an applicable Federal or State law, or municipal ordinance, or order, or certificate or license issued thereunder, the higher wage rate shall prevail.\*

#### Section 524.8 - Termination of Certificates.

Special Certificates shall be valid under the terms set out in the Certificate for a period of not more than twelve months from the date of issuance or such shorter period as may be fixed in the Certificate. Application for renewal of any certificate shall be filed in the same manner as an original application under these regulations. Certificates in effect within the State of Pennsylvania, expiring on September 1, 1940 by their own terms or by action of the Administrator published in the Federal Register August 12, 1939, shall be subject to reexamination by a specially authorized representative of the Administrator, and may be extended for not more than a two months' period under the same terms in the discretion of such representative.\*

#### Section 524.9 - Revocation and Cancellation.

Any Special Certificate may be revoked by the authorized regional representative for cause at any time. 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 authorized regional 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.\*

Section 524.10 - 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.

As a general rule, no Special Certificate will be issued

- (a) for a worker with temporary 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, unless it is established that the earning capacity of the worker is impaired within the meaning of the Act and these regulations by reason of age;
- (d) for a worker (irrespective of handicap) whose piece-work earnings are generally equal to or above the statutory minimum;
- (e) 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.\*

Section 524.11 - 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 and any Certificate issued on such an application shall be null and void.\*

Section 524.12 - Petition for Review.

Any person aggrieved by any action of an authorized regional representative of the Administrator may within 15 days thereafter, or within such further time as the Administrator, for cause shown, may allow, file with the Administrator a petition for review of the action of the authorized regional representative praying for such relief as is desired. Each such petition for review, if duly filed, will be acted upon by the Administrator or an authorized representative of the Administrator who took no part in the action being reviewed. All interested parties will be afforded an opportunity to be heard, either in support of 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 or his authorized representative, 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.\*/

Section 524.13 - 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 of and in opposition to the proposed changes.\*/

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\*/ Issued under authority contained in Sec. 14, 52 Stat. 1060.

ERRATUM SHEET

(To be attached to copies of Part 524, R-962)

Change release date from August 27, 1940 to August 24, 1940, also published in Federal Register date from August 27, 1940 to August 24, 1940.