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

STATEMENT ON PARTIAL EXEMPTIONS FOR LEARNERS, MESSENGERS, APPRENTICES  
AND HANDICAPPED WORKERS

A statement clarifying the situation involving exemptions for apprentices, learners, handicapped persons and messengers was issued today (Wednesday) by Administrator Elmer F. Andrews, of the Wage and Hour Division of the Department of Labor.

His statement follows: Regulations have been issued setting up the procedure under Section 14 for the issuance of certificates permitting the employment of apprentices, learners, messengers and handicapped persons at rates of pay less than the normal minimum rates prescribed by the law.

As it will be physically impossible, in the short time remaining before the effective date of the Act, for the Administrator to act upon the anticipated flood of applications and to issue certificates in appropriate cases, it has been asked what the legal situation will be on and after October 24, and before the issuance of the certificates.

It seems a clear interpretation of Section 14 that no exemptions are available until the same have been allowed by the Administrator.

In the case of messengers, where the administrative problem may be kept within manageable limits, a hearing has been scheduled for October 20 on the application of the Western Union Telegraph Company; and it may be possible for the Administrator to come to a conclusion on the evidence presented, before the effective date of the Act.

In the case of apprentices, provision can be made for a temporary exemption, until the regular procedure can be put into full operation. A supplementary regulation has been issued, providing, generally, that until February 1, 1939, apprentices, as defined in Section 521.1 of the Rules and Regulations Applicable to Apprentices, working under written agreements conforming to the description contained in said Section 521.1, may be employed at the rate or rates (less than the minimum wage applicable under Section 6) and for the length of time specified in the written agreements. Meanwhile, applications must be forwarded to the Administrator as prescribed in Title 29, Chapter V, Part 521, Regulations Applicable to the Employment of Apprentices. As soon as special certificates are issued thereon in accordance with the established procedure the temporary exemption will be superseded. If any such applications are denied, prior to February 1, 1939, the temporary exemption, as to such applicants, will become inoperative immediately upon notice to the applicants of such denial.

A temporary provision can also be made for the exemption of handicapped persons, in advance of administrative action on the individual applications. A temporary regulation has been issued authorizing employers to continue in their employ handicapped workers at wage rates less than the statutory minimum of 25 cents an hour, from October 24, 1938, to February 1, 1939, subject to the following conditions:

1. 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.
2. The handicapped worker must have been employed by the employer on or before October 17, 1938, at a rate less than the normal minimum rate of 25 cents an hour.
3. If the employer had in his employ on October 17, 1938, any non-handicapped worker or workers similarly employed, the handicapped worker must have been employed at that date at a rate less than the rate paid to such non-handicapped workers.

4. 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 of 25 cents an hour prescribed under Section 6 of the Act.
5. 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 does not apply in the case of employment by non-profit or semicharitable organizations.
6. The temporary exemption 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 any such application is denied by the Administrator, prior to February 1, 1939, the temporary exemption, as to the named employee, will become ineffective immediately upon notice to the employer of such denial.

No employment of any new employee as a handicapped worker, at a rate less than the normal statutory minimum in Section 6 of the Act, shall be allowed on or after October 24, 1938, until application has been made in the regular way and a Special Certificate has been issued thereon.

The exemption applicable to handicapped persons cannot be used as a device for breaking down the general standards sought to be established by the Act. One concern wrote us informally asking for an exemption for all its workers forty years of age or over on the theory that they were handicapped persons. Applications for exemptions such as these will, of course, be promptly denied by the Administrator. The Administrator will not give a loose interpretation to the language of Section 14 "individuals whose earning capacity is impaired by age or physical or mental deficiency or injury." The mere fact that an employee is slow or inexperienced does not render him a handicapped person within the meaning of the statute.

The Administrator cannot make any temporary exemption as applied to learners. "Learner" as distinguished from "apprentice" is a term of no generally accepted connotation. It will be a question in respect to each of the hundreds of occupations, whether there should be established a category of learners to be paid at rates less than the normal statutory minimum. The Administrator is empowered to make a dispensation in the case of learners "to the extent necessary in order to prevent curtailment of opportunities for employment." The factual basis is now lacking for making such a finding, in respect to the multitude of occupations. No blanket exemption for learners is now possible. The procedure set forth in Part 522, Title 29, Chapter V, Regulations Applicable to Employment of Learners, must be gone through before any exemption for learners is granted.

With our limited resources of personnel and money, the Wage and Hour Division is working to the limit of physical capacity to set the statute in operation on a sound administrative basis. Anyone familiar with our administrative problems will realize that this takes time. With full appreciation of difficulties and uncertainties which employers and employees alike must face in this transitory period of organization, we ask the continued forbearance and cooperation of all concerned.

