

# Section 14(c) of the Fair Labor Standards Act

## The Payment of Subminimum Wages to Workers with Disabilities



WAGE AND HOUR DIVISION  
UNITED STATES DEPARTMENT OF LABOR

[dol.gov/whd](https://dol.gov/whd)  
1-866-4US-WAGE

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# Wage and Hour Division (WHD)

It is the responsibility of WHD to carry out a vigorous, consistent, and effective compliance program with respect to employment of workers with disabilities under this provision.



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# Topics of Discussion

- **Section 14(c) Provisions**
- **Establishing Coverage**
- **The Employment Relationship**
- **Determining Hours Worked**
- **The Certification Process**
- **The Process to Determine SMW**
  - Record & Notice Requirements
  - Interaction with Related Federal Laws
    - WIOA, SCA, & Executive Orders
- **Common Errors**



# Section 14(c) Provisions



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# Provisions

- **Statute**
- **Key Terms**
- **Regulations**



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# Section 14(c) of the FLSA

Authorizes the employment of workers with disabilities at subminimum wages when their disabilities impair their productivity ***for the work being performed***

[See 29 U.S.C. 214\(c\)](#)



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# Subminimum Wage (SMW)

- A SMW can be paid to workers with disabilities when their disability impairs their productive and earning capacities for the work being performed
- SMW must be *commensurate* with the workers' productivity as compared to the wage and productivity of experienced workers who are not disabled for the work
- SMW can be paid only when authorized by a certificate issued to the employer by DOL



# Worker With a Disability

- Worker whose earning or productive capacity is impaired (*by age, physical, intellectual/ developmental, or psychiatric disability, or by injury*) for the work to be performed
- Although a disability may affect a worker's earning or productive capacity for one type of work, the same disability may have no impact on that worker's ability to perform another kind of work
- Employers remain responsible for compliance with all other labor laws, including the Americans with Disabilities Act and the Rehabilitation Act



# Community Rehabilitation Program (CRP)

- Provides rehabilitation services, day treatment, training, and/or employment opportunities to individuals with disabilities
- CRPs commonly refer to workers with disabilities who are employed pursuant to a section 14(c) certificate as “consumers”



# Regulations 29 CFR Part 525

Set forth the conditions and terms governing the employment of workers with disabilities at subminimum wages



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# FLSA Concepts



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# Key FLSA Concepts

- **Coverage**
- **Employment Relationship**
- **Hours Worked**



# FLSA Enterprise Coverage

- A firm with at least a \$500,000 annual dollar volume (ADV) of sales or business done that has at least two employees handling, selling or otherwise working on goods or materials moved in or provided for commerce, **OR**
- A for-profit or nonprofit firm engaged in the operation of a:
  - hospital;
  - nursing home/group home;
  - school for children with physical, intellectual/developmental, or psychiatric disabilities;
  - public or private elementary or secondary school or institution of higher education; or
  - preschool
- A Federal, State, or local government agency



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# FLSA Individual Coverage

An employee is covered individually if he or she is engaged in:

- Interstate commerce, **OR**
- The production of goods for interstate commerce, **OR**
- Work that is closely related and directly essential (CRADE) to such production

But only for the workweek in which those covered activities occur



# An Employee Under the FLSA

## FLSA Definitions

- Employee = “any individual employed by an employer”
- Employ = “to suffer or permit to work”

Time spent by an individual at a CRP receiving services does not have to be paid under the FLSA



# Workers



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# Patient Worker

- An individual with a disability who receives treatment at a hospital or residential care facility and is employed by that same hospital or residential care facility
  - Treatment may be received on an inpatient or outpatient basis
- A patient undergoing evaluation or training is not considered to be an employee during the first three months spent in work activities, if certain criteria are met



# Patient Worker (continued)

- Whether an employment relationship exists depends in part on whether the work performed is of any consequential economic benefit to the institution
  - Examples of work frequently done that are of consequential economic benefit include building maintenance, office work, and janitorial work
  - An employment relationship does not exist when the patient volunteers to perform services that the institution would not pay for if performed by someone other than the patient, such as helping another patient in a wheelchair get around, or tending a vegetable garden for the patient's own use



# Participants in Substance Abuse Programs

- An individual enrolled in a substance abuse recovery program may be classified as a patient worker if employed by the facility providing the treatment
- An employment relationship under the FLSA will not exist for the first four weeks (28 consecutive calendar days) of *residence* at the facility so long as the individual does not engage in activities that provide a consequential economic benefit to the facility
- Special provisions apply to participants in programs that are placed in “family setting” style residential care facilities



# Volunteers

Workers with disabilities may volunteer to perform certain tasks for the not-for-profit CRP without creating an employment relationship if:

- The worker is legally competent to freely volunteer (or, when appropriate, his or her parent or guardian approves)
- The task performed is substantially different from work that the individual performs during duty hours
- The task is performed outside normal duty hours
- The task is of the type that would normally be classified as “volunteer” work
- The task is not part of the business or commercial activities of a non-profit organization



# Hours Worked



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# FLSA Hours Worked

- The FLSA concept of hours worked – determining when an employee is performing work for which he or she must be compensated – applies to workers with disabilities who receive subminimum wages
- All time spent at a CRP by an individual may not be compensable (such as the time he or she spends in counseling, personal care, recreation, etc.)



# Down Time

Workers with disabilities are required to be paid for down time when the worker with a disability is on the job but is not producing because of factors not within his or her control, including:

- lack of work
- equipment breakdowns



# Extended Down Time

Rehabilitation services provided to individuals during periods of extended down time, need **NOT** be considered compensable when:

- The services provided are not primarily for the purpose of increasing job productivity
- The services are provided away from the production area
- Time is clearly identified, recorded, and segregated on time records



# Work Samples and Work Simulations

Work samples and work simulations are types of rehabilitation activities structured to resemble the work performed in the employer's facility and need **not** be considered compensable when:

- Performed away from the production area
- Completed product is not used to fulfill any of the employer's contracts
- The employer does not derive any economic benefit from the product
- Supervised by non-production personnel
- They are a specific part of a well-defined program of rehabilitation
- None of the products enter into commerce by being intermingled with the normal production of the employer



# Travel Time

Time spent to and from the work site and home at the beginning and end of the day is not considered hours worked

- This principle applies even when the transportation is provided by the employer for the benefit of workers with disabilities

Time spent in transportation between job sites during the course of the workday is considered hours worked and the employee must be compensated for that time



# Rest Periods and Breaks

- The FLSA does not require rest periods or breaks
- Breaks between 5 and 20 minutes are considered to be primarily for the benefit of the employer and are considered hours worked and are compensable
  - Workers with disabilities who are paid on an hourly basis must be compensated for such breaks
  - Workers with disabilities who are paid piece rates are NOT required to be compensated for such breaks, when the piece rate calculation includes a sufficient allowance for personal time, fatigue, and unavoidable delays (PF&D)



# Recording Hours Worked

- The FLSA requires employers to keep records of both the daily and weekly hours worked
  - 29 CFR Part 516
- The employer must clearly distinguish in its records non-compensable hours from hours that would be considered hours worked



# Certification Process



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# 14(c) Certification

- Only employers who have applied for and received a certificate from the Wage and Hour Division may choose to pay SMWs to workers who are disabled for the work being performed
- The granting of a certificate is **NOT** a statement of compliance by the Wage and Hour Division
- Certificates will **NOT** be issued retroactively



# Types of Establishments

## WHD issues 14(c) Certificates to:

- Community Rehabilitation Programs (CRPs)
  - 2-year certificates
- Establishments that employ patient workers
  - 2-year certificates
- Business establishments
  - 1-year certificates
- School Work Experience Programs (SWEPS)
  - 1-year certificates



# Establishments that Employ Patient Workers

- If the facility operates a work center, it must apply for a separate certificate for the work center
- If the facility places patients in jobs at business establishments in the community, it must either obtain a work center certificate or ensure that the business establishments have their own certificate



# Business Establishments

- If an individual with a disability is placed at a business by a CRP, is supervised by CRP staff, and is carried on the CRP's payroll (e.g., supported employment worksites, enclaves) the business establishment need not obtain a certificate
  - The authorization to pay SMWs will stem from the certificate held by the CRP



# School Work Experience Programs (SWEPE)

- Schools with SWEPE programs place students with disabilities at work sites in the community
- The community-based employer may pay students with disabilities SMWs if the school has a current section 14(c) certificate
- Certificates are issued to the schools administering the SWEPE, not the businesses at which the students are placed



# How to Apply for a Certificate

- Employers wishing to obtain a section 14(c) certificate must either:
  - Complete WHD forms WH-226 & WH-226A and mail to the Certification Team in Chicago, or
  - Complete the online application.
- Instructions are included with the forms and in the online application system for help in understanding the data collection required.



# Online Application Process



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Search in DOL



Wage and Hour Division

DOL Home > WHD > Workers with Disabilities > Section 14(c) Online Certificate Application > Login

## Section 14(c) Online Certificate Application

OMB NO: 1235-0001 EXPIRES: 07/31/2027 REV 12/2017

We are now accepting the Application for Authority to Employ Workers with Disabilities at Subminimum Wages electronically. This electronic form includes both forms WH-226 and WH-226A.

All employers, including current section 14(c) certificate holders, previous certificate holders, and new applicants, will have to create an account in order to submit the form electronically.

### What is the purpose of this application?

This application is to be used to apply for a certificate authorizing the payment of subminimum wages to certain workers with disabilities under section 14(c) of the Fair Labor Standards Act (FLSA) and related provisions of the McNamara-O'Hara Service Contract Act (SCA) and the Walsh-Healey Public Contracts Act (PCA). Payment of subminimum wages to workers with disabilities is only permitted under a valid certificate issued by the United States Department of Labor, Wage and Hour Division. State agencies and the Veterans Administration may also request immediate temporary certificate authority by completing this application.

### Log in

Email

Password

[Show Password](#)

Log in

[Forgot Your Password?](#)

[section14c.dol.gov](https://section14c.dol.gov)



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# Online Certificate Applications

- Users can submit a new application and see the account's online application history
- Applications can be started and progress saved to continue at another time
- Based on answers provided, the system will determine what information is required for a complete application
- A “review and submit” screen will identify any required fields left blank
- Upon submission, the user will receive an on-screen and email confirmation of the submission







# Paper Form Certificate Applications

- Employers wishing to apply by mail must complete both forms WH-226 and WH-226A
  - WH-226: application
  - WH-226A: supplemental sheet for each physically-separate location or worksite where workers with disabilities will be employed at subminimum wages
- Completed applications should be mailed to:
  - U.S. Department of Labor, Wage and Hour Division  
230 South Dearborn Street, Room 514  
Chicago, Illinois 60604-1591



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# Certification Attestations

## Every applicant must attest that:

- The employer has read the application form and to the best of his or her knowledge and belief, all answers and information given in the application and attachments are true
- The representations set forth in support of the application to obtain or continue the authorization to pay workers with disabilities at subminimum wage rates are true
- The authorization to pay SMWs, if issued or continued, is subject to revocation in accordance with the provisions of 29 CFR 525



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# Certification Attestations (continued)

## Every applicant must attest that:

- Workers employed (or who will be employed) under the authority in 29 CFR 525 have disabilities for the work to be performed
- Wage rates paid (or which will be paid) to workers with disabilities under the authority in 29 CFR 525 are commensurate with those paid experienced workers, who do not have disabilities that impair their performance, in industry in the vicinity for essentially the same type, quality, and quantity of work



# Certification Attestations (continued 2)

- The operations are (or will be) in compliance with the FLSA, the Walsh-Healey Public Contracts Act (PCA), the McNamara-O'Hara Service Contract Act (SCA) and the Contract Work Hours and Safety Standards Act (CWHSSA), an overtime statute for Federal contract work
- No deductions will be made from the commensurate wages earned by a patient worker to cover the cost of room, board or other services provided by the facility



# Certification Attestations (continued 3)

- Records required under 29 CFR 525 with respect to documentation of disability, productivity, time studies or work measurements, and prevailing wage surveys will be maintained
- The wage rates of all hourly rated employees paid in accordance with FLSA section 14(c) will be reviewed at least every six months
- Wages paid to all employees under FLSA section 14(c) will be adjusted at periodic intervals, at least once a year, to reflect changes in the prevailing wage paid to experienced workers employed in the vicinity for essentially the same type of work



# Application Processing

## **To expedite the certification process, employers should:**

- Designate an individual within their organization who understands both the certification and compliance principles of FLSA section 14(c) to oversee the completion and submission of the application
- Submit a complete, accurate, and timely application that includes all the required supporting documentation
- Communicate with the WHD Certification Team as needed before, during, and after the submission of the application



# Application Processing (continued)

- WHD Wage Specialists review each application for completeness, accuracy, and compliance with the provisions of section 14(c)
- Once the review is complete, a certificate will be issued or denied
- Issuance of a certificate is not a statement by the Wage and Hour Division the employer is in compliance with the provisions of the applicable Acts and does not provide the employer with a good faith defense should violations later be found



# Denial of Application

- A certificate will be denied if the application is incomplete, contains false statements, or does not include the proper supporting documentation and attestations
- If denied, the applicant will be advised in writing and told the reasons for the denial, as well as the right to petition for review



# Certificate Expiration

- Certificates are issued with both an effective date and an expiration date
- Certificates, along with the employer's authorization to pay SMWs, expire on the indicated date unless the employer properly files an application for renewal with the Wage and Hour Division **before** the expiration date



# Certificate Renewal

- The employer is responsible for filing a proper and timely renewal application prior to the expiration of its certificate.
- Renewal applications are submitted in the same manner as an initial application but require additional information



# Certificate Revocation

## **A certificate may be revoked by the Wage and Hour Administrator for the following reasons:**

- It is found that false statements were made or facts were misrepresented in obtaining the certificate. If this is the case, the certificate may be revoked back to the date of issuance.
- It is found that the certificate holder violated any of the provisions of the FLSA or the terms of the certificate. If this is the case, the certificate may be revoked back to the date the violations began.
- It is determined that the certificate is no longer necessary to prevent the curtailment of employment opportunities for workers with disabilities. If this is the case, the certificate will be revoked as of the date of the employer revocation notice.



# Certificate Revocation (continued)



A petition for review may be filed with the Wage and Hour Administrator within 60 days of the action.



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# Certification Questions

**Contact the Certification Team  
at  
(312) 596-7195**



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# Determining a Subminimum Wage

1. Develop a Job Description
2. Determine the Prevailing Wage
3. Define the Work
4. Establish the Standard
5. Measure the Worker
6. Calculate and Implement Rate of Pay



# Develop a Job Description



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# Job Description

- A job description is important when determining the prevailing wage and when setting the standard upon which the subminimum wage will be based.
- A detailed job description should:
  - Define the specific job duties, responsibilities, and tasks
  - Identify the types of equipment and supplies used to perform the tasks
  - List the types of skills, education, or experience levels required
  - Indicate the location and days and times of the week the work will be performed
  - Define and establish the minimum acceptable levels of quantity (how much production must be accomplished) and quality (how well the job must be performed)



# Determine the Prevailing Wage



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# Prevailing Wage Definition

- A wage paid to an experienced worker who does not have a disability that impairs his/her ability to do the work and who performs essentially the same type of work in the vicinity
  - An experienced worker is a worker who has learned the basic elements or requirements of the work to be performed, ordinarily by completing a probationary or training period
  - Vicinity means the geographic area from which the labor force of the community is drawn
- May **not** be lower than the federal minimum wage, or where applicable, a higher state minimum wage



# Prevailing Wage Source

- An employer may determine the prevailing wage for a job by surveying a representative number of comparable firms in the vicinity that employ primarily workers who do not have disabilities and who perform similar work



# Prevailing Wage Source (continued)

- Where surveys are not practical, the employer may obtain wage information from other sources such as the Bureau of Labor Statistics or private or State employment services
  - Employer must document and detail reasons why a survey could not be done
  - Employment services which only provide entry level wage data are not acceptable as sources for prevailing wage information



# How to Conduct a Prevailing Wage Survey

- Solicit wage data from comparable businesses in the vicinity, preferably in writing
- Document and maintain the following information for each survey conducted:
  - Date of contact
  - Name, address, and phone number of firm or other source contacted
  - Name and title of individual contacted at each firm or other source
  - The wage rate information provided and the basis for concluding that each rate submitted was not based upon an entry-level position
  - A description of work for which wage information was collected
- This information must be retained for at least three years



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# The Prevailing Wage

Special situations where prevailing wage survey would not be required:

- An employer whose workforce primarily consists of workers without disabilities may choose to use its established rate paid to experienced workers
- A subcontractor may choose to use the wage rate the prime contractor pays experienced workers performing the same work in essentially the same way and with the same type of equipment



# Sample Prevailing Wage Calculation

## WEIGHTED AVERAGE vs. STRAIGHT AVERAGE

	<u>EMPLOYER</u>	<u>NO. OF EMPLOYEES</u>	<u>ENTRY LEVEL WAGE</u>	<u>EXPERIENCED WORKER WAGE</u>	<u>GROSS WAGES</u>
	XYZ, Inc.	43	\$10.00	\$11.55	\$496.65
	ABC, Inc.	17	\$9.50	\$10.70	\$181.90
	<u>RST, Ltd.</u>	<u>22</u>	\$9.95	<u>\$10.95</u>	<u>\$240.90</u>
<b>TOTALS</b>	3	82		\$33.20	\$919.45

**Weighted Average**  $\$919.45 / 82 = \$11.21280$  or **\$11.22**

**Straight Average**  $\$33.20 / 3 = \$11.06667$  or **\$11.07**



# Calculating a Prevailing Wage

Note that in the straight average example, the prevailing wage rate of \$11.06667 is rounded up to \$11.07 per hour.

WHD will accept the practice of carrying out computations to the fifth decimal point and then rounding up to the fourth decimal place



# Frequency of the Prevailing Wage Survey

- The prevailing wage survey must be conducted prior to paying a subminimum wage
- It must be reviewed and updated at least once a year
  - More frequently when a change in the prevailing wage has most likely occurred, such as when the FLSA minimum wage or a state minimum wage has been increased
  - Although some certificates remain in effect for two years, the prevailing wage surveys must be conducted no less frequently than once a year



# Minimum Wage Increase

Whenever the minimum wage increases:

- Employers will have to review all prevailing wage rates
- Employers may have to conduct new prevailing wage surveys **OR** adjust old prevailing wage rates to accommodate for the increase in the minimum wage



# De-Skilling

- De-skilling means arbitrary downward adjustments made in prevailing wage rates to account for differences in duties, methods, equipment and responsibilities between the work of the worker with disabilities and the work of employees who do not have disabilities

De-skilling is **NOT** permitted by the Wage & Hour Division



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# Task Analysis



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# Define the Work: Developing a Task Analysis

## A task analysis identifies:

- Tasks and subtasks to be performed
- Methods and procedures to accomplish task
- The specific area where the work will be performed
- Supplies and equipment necessary to perform the work
- A definite start and stop point for the job/task
- Environmental considerations
- Minimum acceptable quality and quantity standards



# Developing a Task Analysis

The written analysis must match the methods used by the workers to complete the job/task

- “Standard procedures”



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# Establish the Standard



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# Work Measurement Standard

- Determine the time it takes a worker who does not have a disability for the work to perform the job as set out in the task analysis
- Time becomes the “standard” against which the productivity of the worker with a disability is compared to determine the hourly commensurate wage
- The commensurate wage rate will be proportionate to the prevailing wage based on productivity differences
- The employer is responsible for demonstrating the standard has been properly established



# Work Measurement Standard (continued)

- Must be performed by a qualified, competent worker who does not have a disability for the work being performed and who possesses the necessary skill and training required to perform the job
- Must be completed at a pace that can be maintained over an entire shift
- Must make allowance for personal time, fatigue, and unavoidable delays if used to set a piece rate



# Work Measurement Standard (continued 2)

- Work measurements must be conducted prior to paying a subminimum wage
  - As long as the job (and the equipment) remains the same, new work measurements are not required
  - It is good practice to periodically review and confirm performance standards



# Setting the Standard

- Employer must use an accepted method of industrial work measurement to determine the standard
  - Stopwatch time studies
  - Methods-Time Measurement (MTM)
  - Modular Arrangement of Predetermined Time Standards (MODAPTS)
- The work measurement accurately measures the quality and quantity of the same work when performed by workers who do not have disabilities



# Setting the Standard (continued)

- Select an individual to conduct the study (the observer)
- Select worker(s) without a disability for the job being measured to be timed (standard setters)



# Setting the Standard (continued 2)

## **The standard setter must be:**

- Allowed to practice the work until he/she is comfortable, familiar and can perform the work without hesitation
- Capable of maintaining a consistent, efficient pace



# Setting the Standard (continued 3)

## The observer must:

- Assure that the standard setter performs the task exactly as it will be performed by the worker with a disability as specified on the task analysis
- Compare the standard setter's actions to the written procedures
- Structure the study to avoid “lost time” situations
- Time the standard setter's work using the same starting and stopping point identified in the task analysis



# Setting the Standard (continued 4)

## The observer must:

- Read the stopwatch and make recordings
- Document the standard measurement (quality and quantity)
  - If the minimum standards are not met, the worker is advised of the shortcoming(s), and the study will resume with the worker performing **rework**
- Conduct the study three times and determine average time



# Work Measurements for Piece Rate

## Similar to procedures for hourly wages:

- Need accurate description of work to be performed
- Need to select a standard setter
- Need to conduct a work measurement of individual(s) who do not have disabilities that will evaluate their performance of the work being measured
- Need to consider both quantity and quality of production



# Work Measurements for Piece Rate (continued)

## Different from work measurements for hourly:

- The worker with a disability is not observed/evaluated – only the standard setter
- Standard setter must be measured for a period long enough to ensure pace may be sustained throughout the day
- Must make an allowance for personal time, fatigue, and unavoidable delays (PF&D)



# Personal Time, Fatigue and Unavoidable Delays (PF&D)

- PF&D must be taken into consideration when determining piece rates to account for certain nonproductive time
  - Breaks, cleanup time, unavoidable delay time, fatigue, etc.
- An allowance of at least 15% (9-10 minutes per hour) must be used
  - 9-minute PF&D = a 51-minute hour
  - 10-minute PF&D = a 50-minute hour



# Measuring PF&D – Method 1

- Conduct time studies of the standard setters for 25 minutes, and then multiply the number of completed units by 2
  - Averaged results will yield the standard and will include a properly computed 10-minute PF&D
- Verify accurate SMW by multiplying the standard “units per hour” by the established “piece rate” to ensure that the results **equal or exceed** the full prevailing wage



# PF&D – Method 1 Example

Prevailing wage = \$10.00

- 25-minute time studies resulted in an average of 40 units produced
- Standard = 40 units  $\times$  2 = 80 units
- Piece rate = \$10.00  $\div$  80 units = \$0.13



# Measuring PF&D – Method 2

- Multiply the standard time by an allowance factor of 1.20\* to incorporate a 10-minute PF&D
  - \*Using an allowance factor of 1.1764705 will provide a 9-minute PF&D
- Verify accurate SMW by multiplying the standard “units per hour” by the established “piece rate” to ensure that the results **equal or exceed** the full prevailing wage



# PF&D – Method 2 Example

- Prevailing wage = \$10.00; 20-minute time studies resulted in an average of 25 units produced
- Time to produce a single unit = 20 minutes  $\times$  60 seconds  $\div$  25 units = 48 seconds
- Time with 10-minute PF&D: 48  $\times$  1.20 = 57.6 seconds/unit
- Standard = 1 hour (3600 seconds)  $\div$  57.6 seconds/unit = 62.5  $\approx$  62 units
- Piece rate = \$10  $\div$  62 units = \$0.1612903 = \$0.1613



# Evaluating Hourly Paid Workers



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# Evaluating Productivity

- **Each hourly paid worker with a disability must:**
  - be evaluated within the first month of initial employment
  - be evaluated at least every six months thereafter, or whenever there is a change in the methods used or materials used or whenever the worker changes jobs
  - perform the same tasks and use the same equipment as the standard setter
- **Evaluation should not be done if:**
  - the worker is not familiar with the job
  - the worker is fatigued
  - conditions are different than normal



# Rework

- If quality and quantity standards have been met, the time as recorded is then compared to that of the standard setter
  - The percentage yielded is applied to the prevailing wage in order to determine the SMW



# Rework (continued)

- If the minimum standards are not met, the worker is advised of the shortcoming(s), and the study will resume with the worker performing rework
  - The clock will be started again and continue while the worker corrects/completes the work to that point where it meets the minimum acceptable standards
  - The time spent during the initial study and rework are then added together and compared to that of the standard setter



# Calculate and Implement the Hourly Commensurate Wage



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# Calculate Hourly Commensurate Rate

- Evaluate EACH worker's productivity within first month after employment (or beginning a new job)
- The productivity is compared to the established standard to calculate a percentage
- Prevailing wage is multiplied by worker's productivity percentage
- The worker's productivity must be re-evaluated every six months at a minimum
  - Must not be done when worker is fatigued
  - Recommend worker be timed on three different occasions and the results averaged



# Section 14(c) Online Calculators

- Thirteen (13) calculators available for use on WHD website to enable employers to accurately calculate the prevailing wage, piece rate, and commensurate wage
- Website address:
  - <https://www.dol.gov/whd/sec14c/calculators/>



# Thirteen Online Calculators

## Prevailing Wage

- Straight Average
- Weighted Average

## Hourly Wage Calculators

- Weighted Tasks w/ Standard Weight Factor
- Weighted Tasks w/ Worker with Disability Weight Factor
- Rework
- 90/10 – Variable Time
- 90/10 – Variable Units

## Piece Rate

- Fixed Units, Variable Time w/ 9-minute PF&D
- Fixed Units, Variable Time w/ 10-minute PF&D
- Fixed Time, Variable Units w/ 9-minute PF&D
- Fixed Time, Variable Units w/ 10-minute PF&D
- Piece Rate

## Minimum Wage Increase



# Recordkeeping, Notification, and Posting Requirements



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# Records

## The following must be maintained:

- Records that document that the workers who are paid SMWs have disabilities that impair their productivity
  - Medical, psychiatric, psychological tests that support nature of disability



# Records (continued)

## The following must be maintained:

- Records that document the accuracy and timeliness of the employer's establishment of prevailing wages
  - Contact between the employer and the businesses surveyed
  - The wage rate information provided by the comparable employers and the basis for concluding that each rate submitted was not based upon an entry-level position
  - A description of work for which wage information was collected



# Records (continued 2)

## The following must be maintained:

- Records that document the accuracy and timeliness of the employer's establishment of prevailing wages
  - Records of the time measurements the employer conducted to establish the standard for each job for which workers with disabilities are paid subminimum wages
  - Records of the productivity ratings of the workers with disabilities that document that the ratings were conducted properly and in a timely manner and that employee wages were adjusted accordingly by the end of the next pay period



# Records (continued 3)

## The following must be maintained:

- Records that document the accuracy and timeliness of the employer's establishment of prevailing wages
  - Records identifying time spent by employees with disabilities at the employer's establishment or in transit that are not considered hours worked and not compensable, such as receiving vocational or life skills training, receiving medical treatment, home-to-work travel, and performing simulated work



# Notification Requirements

- Each worker with a disability and, when appropriate, the parent or guardian of such a worker, shall be informed **orally** and **in writing** by the employer of the terms of the certificate under which such a worker is employed



# Posting Requirements

[FLSA Minimum Wage Poster](#)

[Notice to Workers with Disabilities Paid at SMW](#)

[Family and Medical Leave Act Poster](#) (if covered)

[Notice to Employees Working on Government Contracts](#) (if subject to SCA or PCA)

[Employee Polygraph Protection Act Poster](#)



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# Interaction with Related Federal Laws



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# Workforce Innovation and Opportunity Act (WIOA)

## Limitations on the Payment of Subminimum Wages to Individuals with Disabilities

- Enacted July 22, 2014
- Effective July 22, 2016
- Amended Title V of the Rehabilitation Act by adding new “section 511”
- Section 511 is codified at 29 USC 794g



# WHD Enforcement Authority

- Section 511 of the Rehabilitation Act
- Section 11 of the FLSA
- Department of Education also has authority under section 511



# Scope of Section 511 Requirements

- The section 511 service requirements apply to employees who are paid commensurate wages that are less than the FLSA Federal minimum wage
- The section 511 service requirements **do not apply** to commensurate wages paid under the SCA and Executive Order 13658 when those wages are above the FLSA Federal minimum wage



# Section 511's Two New Requirements

- Pre-Subminimum Wage Employment – Youth with a disability
- During Subminimum Wage Employment – **Any** subminimum wage employee



# Youth with a Disability (Pre-SMW Employment)

- Individual who is age 24 or younger (youth)
- Youth employed after July 22, 2016
- Youth employed as of July 22, 2016, may be “grandfathered in”



# Youth with a Disability (Pre-SMW Employment) – Requirement #1

Youth with disabilities employed at a subminimum wage after July 22, 2016, must complete and produce documentation indicating the completion of **all three** of the following actions:

1. Pre-employment transition services under the Rehabilitation Act or transition services under the Individuals with Disabilities Education Act (IDEA)



# Youth with a Disability (Pre-SMW Employment) – Requirement #2

2. Application for Vocational Rehabilitation (VR) services with either one of two results:
  - Found ineligible for services, OR
  - Determined to be eligible,
    - Had an individualized plan for employment (IPE),
    - Worked toward an employment outcome specified in the IPE for a reasonable time without success, and
    - Their VR case was closed



# Youth with a Disability (Pre-SMW Employment) – Requirement #3

3. Provided with career counseling, and information and referrals to Federal and State programs and other resources in the geographic area that offer employment-related services and supports

**Services cannot be for employment at a subminimum wage or directly result in employment at a subminimum wage.**



# Any Subminimum Wage Employee (During SMW Employment)

- Career counseling, and information and referrals
  - Provided by Designated State Unit (DSU)
- Information about self-advocacy, self-determination, and peer mentoring training opportunities.
  - Provided by Employer (14(c) certificate holder)
  - Employer with fewer than 15 employees can refer employee to DSU



# Any Subminimum Wage Employee (During SMW Employment) – Frequency

1. Once every six months for the first year of the individual's employment at a subminimum wage, ***and***
2. Annually thereafter



# Any Subminimum Wage Employee (During SMW Employment) – Timing

- All employees employed at SMWs *prior to* July 22, 2016 should have received both career counseling and training opportunities within one year of the effective date, *i.e.*, by July 22, 2017
- Services must then be received annually thereafter for the duration of SMW employment
- The deadline for these employees to receive the required services remains **July 22** of each year regardless of the actual date the career counseling and information about training opportunities are provided



# Any Subminimum Wage Employee (During SMW Employment) – Timing (continued)

- Employees receiving SMWs who were hired *on or after* July 22, 2016, must receive both career counseling and information about training opportunities once every six months for the first year of subminimum wage employment
- Services must then be received annually thereafter, for the duration of SMW employment
- The deadline for these employees to receive services is based on the **anniversary of the date** of their employment at an SMW



# Section 511 Records

- Employer must maintain documentation that an individual age 24 or younger has received required services
- Employer must verify that all individuals employed at a subminimum wage have received the required services and provide information to these workers



# Section 511 Restrictions on Schools

- A local or State educational agency is prohibited from entering into a contract or other arrangement with a 14(c) certificate holder for the purpose of operating a program for individuals who are age 24 or younger to work at a subminimum wage
- Contracting enforced by the Department of Education



# Section 511 Resources

- U.S. Department of Labor's WHD Employment of Workers with Disabilities website:
  - <https://www.dol.gov/agencies/whd/workers-with-disabilities>
    - Field Assistance Bulletins 2016-2 and 2019-1
    - Fact Sheet 39H
- U.S. Department of Education's Rehabilitation Services Administration website:
  - <https://rsa.ed.gov/>



# McNamara-O'Hara Service Contract Act (SCA)



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# Service Contract Act & Section 14(c)

## Prevailing Wage and Fringe Benefits

- SCA allows employers who hold a section 14(c) certificate to pay service employees with disabilities a SMW less than the prevailing wage required by the wage determination
- Employers **MUST** pay full fringe benefits, or the equivalent cash payment in lieu of providing the benefits



# Service Contract Act & Section 14(c) (continued)

- FLSA section 6(e) generally requires prime contractors or subcontractors on SCA contracts to pay all employees even if they are not working on or in connection with the service contract - at least the FLSA minimum wage for all hours worked
- Employers who have obtained a section 14(c) certificate may pay a SMW to SCA service employees and other employees not working on the contract who have disabilities for the work being performed



# Executive Order 13658



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# Executive Order 13658 Coverage

- Establishes a minimum wage to be paid to workers performing on or in connection with a covered contract with the Federal Government
- Workers covered by this Executive Order and due to the full Executive Order minimum wage include workers with disabilities whose wages are calculated pursuant to certificates issued under section 14(c)

[Fact Sheet: Raising the Minimum Wage for Workers with Disabilities Under Executive Order 13658](#)



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# Executive Order 13658 & Section 14(c)

- Certificate holders may continue to pay commensurate wages to workers with disabilities, as permitted by section 14(c), who are employed on or in connection with Executive Order-covered contracts only if the commensurate wage rate is higher than the Executive Order minimum wage



# Executive Order 13658 Application

## **Other staff employed by a certificate holder may also be covered by the Executive Order**

- The Executive Order minimum wage protections apply to all workers who directly perform the specific services called for by the contract's terms
- The Executive Order minimum wage protections also apply to FLSA-covered employees who are performing work activities that are necessary to the performance of a covered contract but who are not directly engaged in performing the specific services called for by the contract itself if at least 20% of their hours worked in a given workweek are in support of a covered contract



# Executive Order 13658 Resources

**Please see the following website for detailed information on Executive Order 13658 and its impact on section 14(c)**

- <https://www.dol.gov/agencies/whd/government-contracts/minimum-wage>
- Fact Sheet
- Frequently Asked Questions



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# Executive Order 13706



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# Executive Order 13706 Coverage

## **Paid Sick Leave for Federal Contract Workers**

- Provides that workers performing on or in connection with a covered contract with the Federal Government must have access to up to 56 hours of paid sick leave
- Workers entitled to leave under this Executive Order include workers with disabilities whose wages are calculated pursuant to certificates issued under section 14(c)



# Executive Order 13706 Provisions

- Employees accrue **1 hour of paid sick** leave for every **30 hours worked** on or in connection with a covered contract
- Unused sick leave can be carried over into the next accrual year, however, employees can be limited to having 56 hours of paid sick leave available at any point in time



# Executive Order 13706 Provisions (continued)

- Instead of tracking time on covered contracts week by week, contractors can “frontload” leave at the beginning of the accrual year by giving employees 56 hours of paid sick leave in a lump sum
- Where leave is frontloaded, employees can carry over up to 56 hours of unused paid sick leave into the next accrual year, and they still receive an additional 56 new hours of leave



# Executive Order 13706 Provisions (continued 2)

## Employees may use paid sick leave for

1. A physical or mental illness, injury, or medical condition
2. Obtaining diagnosis, care, or preventive care from a health care provider



# Executive Order 13706 Provisions (continued 3)

## Employees may use paid sick leave for

3. Caring for a family member, or someone who is the equivalent of family
4. An issue related to domestic violence, sexual assault, or stalking of the employee or the employee's family member, or someone who is the equivalent of family



# Executive Order 13706 Usage

- The employee can make an oral or written request to the contractor when paid sick leave is needed.
- The contractor can require that the employee provide proof of the need for paid sick leave only if the employee is absent for 3 or more consecutive, full workdays and the employee is informed of this requirement before returning from leave.



# Executive Order 13706 Resources

- **Please see the following website for detailed information on Executive Order 13706**
  - <https://www.dol.gov/whd/govcontracts/eo13706/>
    - Fact Sheet
    - Frequently Asked Questions
    - Poster
    - Regulations



# Common Errors to Avoid



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# Common Errors

- Use of entry level rates or minimum wage for prevailing wage rates
- Failure to conduct prevailing wage survey at least every year
- Failure to maintain an accurate task analysis
- Failure to evaluate the worker with a disability at least every 6 months
- Use of behavioral factors to establish hourly commensurate wages for workers with disabilities



# Common Errors (continued)

- Use of incorrect personal time, fatigue, and unavoidable delays (PF&D) allowance factor in calculating piece rates
- Improper rounding
- Failure to use correct wage determination rate for SCA work classification or pay full fringe benefits
- Continuing to pay SMW after a section 14(c) certificate expires



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## Employment of Workers with Disabilities

Section 14(c) Review

Key News

14(c) Certificate Application

Materials for Employers with Section 14(c) Certificates

Materials for Workers with Disabilities Paid Subminimum Wages under Section 14(c), Their Families, and Guardians

Reports to Congress

This website provides access to information about the Fair Labor Standards Act (FLSA) section 14(c) employment and provides links to additional resources that workers with disabilities and/or their family members, employers, and advocates may find useful.

### Introduction

The longstanding mission of the Wage and Hour Division (WHD) is to promote and achieve compliance with labor standards that protect and enhance the welfare of workers in the United States. This important mission serves to protect all workers in the United States, including workers with disabilities to the fullest extent of the law. Section 14(c) authorizes employers, after receiving a certificate from WHD, to pay wages that are less than the Federal minimum wage to workers who have disabilities for the work being performed. Through certificate processing, enforcement, and education and outreach, WHD helps ensure workers receive the wages they are due and receive career counseling and referral information required under section 511 of the Rehabilitation Act.

### Other Federal Laws Impacting Employment of Workers with Disabilities

Section 511 of the Rehabilitation Act of 1973, as added by the Workforce Innovation and Opportunity Act (WIOA), increases individuals with disabilities' access to workforce services to prepare them for competitive integrated employment. WIOA also requires better employer engagement and promotes physical and programmatic accessibility to employment and training services for individuals with disabilities.



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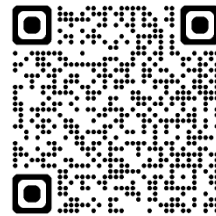


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# Thank you!

## Have questions later?

Please call us at 1-866-4US-WAGE  
Or go to our website: [dol.gov/whd](https://dol.gov/whd)



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