

Fact Sheet #39A: How to Obtain a Certificate Authorizing the Payment of Subminimum Wages to Workers with Disabilities under Section 14(c) of the Fair Labor Standards Act (FLSA)

This Fact Sheet provides general information concerning the establishment of prevailing wages and commensurate wages as they pertain to the employment of workers with disabilities at subminimum wages. Please read [Fact Sheet # 39](#), The Employment of Workers with Disabilities at Subminimum Wages, for an overview of the general provisions of FLSA Section 14(c). Please consult the Regulations, [29 CFR Part 525](#), Employment of Workers with Disabilities under Special Certificates, for detailed information concerning Section 14(c).

What is the difference between a certified and a noncertified employer?

Employers who are certified - who have received a certificate from the U. S. Department of Labor - may choose to pay subminimum wages (SMW) to workers who have disabilities when those disabilities diminish their productivity for the work being performed. A SMW will be lower than the applicable [minimum wage](#) required by the FLSA, except in certain cases when the work being performed is subject to the [McNamara-O'Hara Service Contract Act \(SCA\)](#). Without a current certificate, employers must pay workers with disabilities at least the applicable FLSA [minimum wage](#) or [SCA prevailing wage](#), where appropriate, for all covered work, regardless of the productivity of the workers.

Where and how do I apply for a certificate?

Employers wishing to obtain a certificate under Section 14(c) must complete and submit the following forms, along with certain required supporting documentation:

- Application for Authority to Employ Workers with Disabilities at Special Minimum Wages (Form WH-226). Using this form, the applicant reports information regarding the work that will be performed, the prevailing wage surveys conducted by the employer, and the productivity evaluations conducted to establish the commensurate pay rates the firm pays the workers with disabilities. If workers with disabilities will be paid a SMW for work subject to the McNamara-O'Hara Service Contract Act (SCA), data must also be provided regarding such contract work.
- Supplemental Data Sheet for Application for Authority to Employ Workers with Disabilities at Special Minimum Wages (Form WH-226A). This form requires the applicant to list the names of the individuals that will be paid SMWs, identify the disabilities that impair their productivity, and report their average earnings. A separate WH-226A must be submitted for each branch establishment (physically separate location) at which employees with disabilities will receive SMWs.

Instructions for completing the above forms are included on the last page of each form. The forms may be obtained from any Wage and Hour Division Office (addresses may be found in the blue pages of the telephone directory). In addition, these forms may be [viewed and "downloaded"](#) from the Wage and Hour Division Homepage.

Where do I submit my completed application?

The Midwest Regional Office of the Wage and Hour Division is the only office that processes applications under Section 14(c) and issues certificates authorizing the payment of SMWs to workers with disabilities. Completed applications must be mailed to the following address: U.S. Department of Labor, Wage and Hour Division, 230 South Dearborn Street, Room 530, Chicago, Illinois 60604-1757.

What types of certificates are issued and how long do they remain in effect?

Certificates under section 14(c) are issued to employers on an establishment basis. The certificates will indicate whether the establishment is a work center, also known as community rehabilitation program; a hospital/residential care center (a facility that employs patient workers); a business establishment that is not a work center or an employer of patient workers; or a School Work Experience Program (SWEP).

Work centers - formerly referred to as "sheltered workshops" - historically have provided rehabilitation services, day treatment, training, and employment opportunities at their facilities to individuals with disabilities. Work centers need submit only one application (WH-226), but must include a separate supplemental sheet (WH-226A) for each physically separate branch location where workers with disabilities are employed at SMWs. The Wage and Hour Division will issue separate certificates for each location. Work center certificates remain in effect for two years.

Hospitals/residential care facilities which employ patient workers may be issued certificates authorizing the payment of SMWs. These certificates remain in effect for two years. If the facility also operates a work center, however, it must apply for a separate certificate for the work center. If the hospital or residential care facility places patients in jobs at business establishments in the community, it must either obtain a work center certificate or ensure that the business establishment has its own certificate if those workers are to receive SMWs.

A **business establishment** (not a work center or a hospital/residential care facility) that chooses to employ workers with disabilities at SMWs must also obtain a certificate from the Department of Labor. If the employer has multiple establishments, a certificate must be obtained for each establishment in which workers with disabilities will be employed at SMWs. Business establishment certificates expire annually. But if an individual with a disability is placed at a business by a work center, supervised by work center staff, and carried on the work center's payroll, the business establishment need not obtain a certificate - the authorization to pay a SMW to the worker will stem from the certificate held by the work center. Such placements are sometimes called "supported employment" or "an enclave" worksite.

School Work Experience Programs (SWEP) place students with disabilities who receive SMWs at work sites in the community. Certificates for this program are issued to the school administering the program and expire annually.

Do certificates expire?

Certificates are issued with both an effective date and an expiration date. The certificate, along with the employer's authorization to pay subminimum wages, will expire on the indicated date unless the employer properly files an application for renewal with the Wage and Hour Division before the expiration date. If an application for renewal has been properly and timely filed, an existing subminimum wage certificate shall remain in effect until the application for renewal has been granted or denied. Should a certificate to pay subminimum wages expire and no application of renewal has been properly and timely filed, an employer would be required to pay all workers covered by the FLSA at least the full minimum (or where applicable, the full McNamara-O'Hara Service Contract Act prevailing wage) for all work performed after the certificate expiration date.

How are existing certificates renewed?

An expiration date is printed on each certificate. Approximately two months before a certificate expires, the employer will be notified by the Wage and Hour Division that it is time to apply for a new certificate. Renewal applications are submitted on the same forms (WH-226 and WH-226A) and in the same manner as the initial application. If the renewal application is properly filed with the Wage and Hour Division before the existing certificate expires, the employer's existing authority to pay SMWs continues in effect until the renewal application is either granted or denied.

How are applications for certification processed?

Department of Labor Wage Specialists, employed by the Wage and Hour Division's Midwest Regional Office located in Chicago, Illinois, will review each application for completeness, accuracy and compliance with the provisions of the FLSA, including Section 14(c). Once these criteria have been met, the certificate will be issued and mailed to the applicant. In an effort to expedite issuance of the certificate, the reviewing Wage Specialist frequently will contact an applicant by telephone for clarification or to request required supporting documentation. All submitted materials are reviewed to ensure each applicant understands the requirements of Section 14(c) and has achieved and maintained compliance with the provisions of the FLSA. Occasionally, based on the information provided on the application, the Wage Specialists will identify and supervise the payment of back wages due workers with disabilities.

What if I have questions as I complete the application?

Both the WH-226 and the WH-226A include detailed instructions. Read them carefully. However, if you still have questions regarding processing of the certificates, you may wish to contact the Certification Team member who covers your state.

- (312) 596-7198: Alabama, Missouri, Tennessee, Utah, West Virginia, Arkansas, Georgia, North Dakota, Oklahoma.
- (312) 596-7202: California, North Carolina, District of Columbia, Guam, Louisiana, Montana, New Jersey, Puerto Rico, South Dakota, Virgin Islands.
- (312)596-7182: Ohio, New York, Alaska, Arizona, Florida, Iowa, Nebraska, Rhode Island.
- (312) 596-7027: Illinois, Oregon, South Carolina, Connecticut, Maine, Michigan, Nevada, Virginia, Wyoming.
- (312)596-7189: Indiana, Massachusetts, Pennsylvania, Hawaii, Idaho, Kentucky, Minnesota, Mississippi, New Mexico.
- (312) 596-7229: Colorado, Kansas, New Hampshire, Texas, Delaware, Maryland, Vermont, Washington, Wisconsin.

Certificate process questions may be submitted in writing and mailed to ATTN: National FLSA Certification Team Supervisor at the U.S. Department of Labor, Wage and Hour Division, National FLSA Certification Team, 230 South Dearborn Street, Room 514, Chicago, IL 60604-1757.

What can an employer do to expedite the certification process?

- Designate an individual within your organization who understands both the certification and compliance principles of Section 14(c) to oversee the creation and submission of the application.
- Submit a complete, accurate and timely application that includes all the required supporting documentation.
- Communicate with the Wage and Hour Division Section 14(c) Certification Team before, during and after the submission of the application.
- Communicate with your [local Wage and Hour Division Office](#) concerning interpretations of the regulations and enforcement (non-certification) issues. You may also call 1-866-4US-WAGE (1-866 487-9243).

Can my application/renewal application be denied or my certificate be revoked?

Yes. The granting of a certificate is not a statement of compliance by the Wage and Hour Division. Possession of a certificate does not convey a good faith defense should violations of the law occur. A certificate will be denied if the application is incomplete, makes 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 under [29 CFR Part 525.18](#). SMW certificates may be revoked or an application to renew an existing certificate may be denied if it is found that false statements were made or facts were misrepresented in obtaining the certificate; any of the provisions of the FLSA, SCA, or the terms of the certificate have been violated; or it is determined that the certificate is no longer necessary to prevent the curtailment of employment opportunities for workers with disabilities. Except in cases of willfulness or those in which the public interest requires otherwise, before an application for renewal is denied facts or conduct which may warrant such actions shall be called to the attention of the employer in writing and such employer shall be afforded an opportunity to demonstrate or achieve compliance with all legal requirements.

Can an employer whose certificate has been revoked or renewal application denied appeal these actions?

Yes. Any person aggrieved by any action of the Administrator of the Wage and Hour Division having to do with the issuance of certificates under Section 14(c) of the FLSA may file with the Administrator, within 60 days of the action, a petition for review. Such review, if granted, shall be made by the Administrator. Other interested parties, to the extent it is deemed appropriate, may be afforded an opportunity to present data and views.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

For more information about these provisions, review the other Fact Sheets in this series which address Section 14(c) compliance issues located at <http://www.dol.gov/whd/fact-sheets-index.htm>.

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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1-866-4-USWAGE
TTY: 1-866-487-9243
[Contact Us](#)