

§ 520.402 How do I obtain authority to employ messengers, learners, or apprentices at subminimum wages?

(a) Employers wishing to employ messengers, learners, or apprentices as defined in subpart C of this part at subminimum wages must apply for authority to do so from the Administrator at the Wage and Hour Division's Regional Office having administrative jurisdiction over the geographic area in which the employment is to take place. To obtain the address of the Regional Office which services your geographic area, please contact your local Wage and Hour Office (under "Department of Labor" in the blue pages of your local telephone book).

(b) In the case of messengers, such application may be filed by an employer or group of employers. Preferential consideration will be given to applications filed by groups or organizations which are deemed to be representative of the interests of a whole industry or branch thereof.

§ 520.403 What information is required when applying for authority to pay less than the minimum wage?

(a) A separate application must be made for each plant or establishment requesting authorization for employment of messengers and/or learners at subminimum wages, on the official form furnished by the Wage and Hour Division, containing all information required by the form including:

- (1) Information concerning efforts made by the applicant to obtain experienced workers in occupation(s) for which learners are requested;
- (2) The occupations/industry in which the messenger(s) and/or learner(s) are to be employed;
- (3) A statement explaining why employment of messenger(s) and/or learners(s) at subminimum wages is needed to prevent curtailment of employment opportunities;
- (4) The number of messengers and/or learners the applicant anticipates employing at subminimum wages under special certificate;
- (5) If requesting authorization for the employment of learners at subminimum wages for a learning period greater than 240 hours, information pertinent to the extraordinary cir-

cumstances necessitating such a request. While each such request will be considered on its own merit, it is anticipated that such authorizations would be limited to occupations requiring an extended period of specialized training;

(6) The number of messengers and/or learners hired at subminimum wages during the twelve-month period prior to making application;

(7) Total number of nonsupervisory workers in the particular plant or establishment for which a certificate is requested;

(8) The number of experienced workers in the learner occupations and their straight-time average hourly earnings during the last payroll period and the corresponding payroll period in the prior year; and

(9) The type of equipment to be used by learners.

(b) For apprentices, the employer or apprenticeship committee must submit a copy of the registered apprenticeship program.

(c) Any applicant may also submit such additional information as may be pertinent. Applications which fail to provide the information required by the form may be returned to the applicant with a notation of deficiencies and without prejudice against submission of a new or revised application.

(The information collection requirements contained in paragraphs (a), (b) and (c) were approved by the Office of Management and Budget under control number 1215-0192.)

§ 520.404 What must I demonstrate in my application for a messenger, learner, or apprentice certificate to receive a favorable review?

(a) The application must demonstrate that a certificate is necessary in order to prevent the curtailment of opportunities for employment.

(b) The issuance of a messenger and/or learner certificate must not tend to create unfair competitive labor cost advantages nor have the effect of impairing or depressing wage rates or working standards of experienced workers performing work of a like or comparable character in the industry.

(c) Abnormal labor conditions such as a strike, lock-out, or other similar condition, must not exist at the plant

or establishment for which a messenger and/or learner certificate is requested.

(d) It must be shown that an adequate supply of qualified experienced workers is not available for employment in those occupations for which authorization to pay subminimum wages to learners has been requested; that the experienced workers presently employed in the plant or establishment in occupations in which learners are requested are afforded an opportunity, to the fullest extent possible, for full-time employment upon completion of the learning period; and that learners are available for employment.

(e) Reasonable efforts must have been made to recruit workers paid at least the minimum wage in those occupations in which certificates to employ learners at subminimum wages have been requested. This includes the placement of an order with the local State or Territorial Public Employment Service Office (except in possessions where there is no such office) not more than fifteen days prior to the date of application. Written evidence from such office that the order has been placed shall be submitted by the employer with the application.

(f) The occupation or occupations in which learners are to receive training must involve a sufficient degree of skill to necessitate an appreciable learning period.

(g) An apprenticeship program must conform with or substantially conform with the standards of apprenticeship as defined in subpart C of this part.

(h) There must be no serious outstanding violations involving the employee(s) for whom a certificate is being requested nor any serious outstanding violations of a certificate previously issued, nor any serious violations of the FLSA which provide reasonable grounds to conclude that the terms of a certificate may not be complied with, if issued.

§ 520.405 Must I notify my employees that I am applying for a certificate to employ messengers and/or learners at subminimum wages?

Upon making application for a messenger and/or learner certificate or for renewal thereof, an employer shall post a copy of the first page of the com-

pleted application form in a conspicuous place in each department of the plant or establishment where he/she proposes to employ messengers and/or learners at subminimum wage rates. Such notice shall remain posted until the application is acted upon by the Administrator.

(The information collection requirements contained in paragraphs (a), (b) and (c) were approved by the Office of Management and Budget under control number 1215-0192.)

§ 520.406 What happens once I have submitted my request for authorization to pay messengers, learners, or apprentices subminimum wages?

(a) All applications submitted for authorization to pay wages lower than those required by section 6(a) of the FLSA will be considered and acted upon (issued or denied) subject to the conditions specified in §§ 520.403 and 520.404 of this part.

(b) If, in the case of messengers and/or learners, available information indicates that the requirements of this part are satisfied, the Administrator shall issue a special certificate which will be mailed to the employer. If a special certificate is denied, the employer shall be given written notice of the denial. If a messenger and/or learner certificate is denied, notice of such denial shall be without prejudice to the filing of any subsequent application.

(c) If, in the case of apprentices, the apprenticeship agreement and other available information indicate that the requirements of this part are satisfied, the Administrator shall issue a special certificate. The special certificate, if issued, shall be mailed to the employer or the apprenticeship committee and a copy shall be mailed to the apprentice. If a special certificate is denied, the employer or the apprenticeship committee, the apprentice and the recognized apprenticeship agency shall be given written notice of the denial. The employer shall pay the apprentice the minimum wage applicable under section 6(a) of the FLSA from the date of receipt of notice of such denial.