

## § 520.507

less than 75 percent of the applicable minimum under section 6(a) of the FLSA.

(b) Compliance with items listed for favorable review of a student-learner application (§ 540.503) must be demonstrated.

(c)(1) The number of hours of employment training each week at subminimum wages pursuant to a certificate, when added to the hours of school instruction, shall not exceed 40 hours, except that authorization may be granted by the Administrator for a greater number of hours if found to be justified by extraordinary circumstances.

(2) When school is not in session on any school day, the student-learner may work a number of hours in addition to the weekly hours of employment training authorized by the certificate; provided,

(i) The total hours worked shall not exceed 8 hours on any such day, and

(ii) A notation shall be made in the employer's records to the effect that school not being in session was the reason additional hours were worked on such day.

(3) During the school term, when school is not in session for the entire week, the student-learner may work at his/her employment training a number of hours in the week in addition to those authorized by the certificate; provided,

(i) The total hours shall not exceed 40 hours in any such week, and

(ii) A notation shall be made in the employer's records to the effect that school not being in session was the reason additional hours were worked in such week.

(d) A special student-learner certificate shall not constitute authorization to pay a subminimum wage rate to a student-learner in any week in which he/she is employed for a number of hours in addition to the number authorized in the certificate, except as provided in paragraphs (c)(1), (2), and (3) of this section.

### § 520.507 How long does my certificate remain in effect?

(a) A special student-learner certificate shall be effective for a period not to exceed the length of one school year unless a longer period is found to be

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justified by extraordinary circumstances. These circumstances must be explained in detail at the time of application. 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;

(b) No certificate shall authorize employment training beyond the date of graduation.

(c) No special student-learner certificate may be issued retroactively.

### § 520.508 What records, in addition to those required by Part 516 of this chapter and section 520.203 of this part, must I keep when student-learners are employed?

Any worker employed as a student-learner shall be identified as such on the payroll records, with each student-learner's occupation and rate of pay being shown. Notations should be made in the employer's records when additional hours are worked by reason of school not being in session.

## PARTS 521-523 [RESERVED]

## PART 525—EMPLOYMENT OF WORKERS WITH DISABILITIES UNDER SPECIAL CERTIFICATES

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AUTHORITY: 52 Stat. 1060, as amended (29 U.S.C. 201-219); Pub. L. 99-486, 100 Stat. 1229 (29 U.S.C. 214).

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### § 525.1 Introduction.

The Fair Labor Standards Amendments of 1986 (Pub. L. 99-486, 100 Stat. 1229) substantially revised those provisions of the Fair Labor Standards Act of 1938 (29 U.S.C. 201) (FLSA) permitting the employment of individuals disabled for the work to be performed (workers with disabilities) at special minimum wage rates below the rate that would otherwise be required by statute. These provisions are codified at section 14(c) of the FLSA and:

(a) Provide for the employment under certificates of individuals with disabilities at special minimum wage rates which are commensurate with those paid to workers not disabled for the work to be performed employed in the vicinity for essentially the same type, quality, and quantity of work;

(b) Require employers to provide written assurances that wage rates of individuals paid on an hourly rate basis be reviewed at least once every six months and that the wages of all employees be reviewed at least annually to reflect changes in the prevailing wages paid to experienced individuals not disabled for the work to be performed employed in the locality for essentially the same type of work;

(c) Prohibit employers from reducing the wage rates prescribed by certificate in effect on June 1, 1986, for two years;

(d) Permit the continuance or establishment of work activities centers; and

(e) Provide that any employee receiving a special minimum wage rate pursuant to section 14(c), or the parent or guardian of such an employee, may petition for a review of that wage rate by an administrative law judge.

### § 525.2 Purpose and scope.

The regulations in this part govern the issuance of all certificates authorizing the employment of workers with

disabilities at special minimum wages pursuant to section 14(c) of FLSA.

### § 525.3 Definitions.

(a) *FLSA* means the Fair Labor Standards Act of 1938, as amended.

(b) *Secretary* means the Secretary of Labor or the Secretary of Labor's authorized representative.

(c) *Administrator* means the Administrator of the Wage and Hour Division, U.S. Department of Labor, or the Administrator's authorized representative.

(d) *Worker with a disability* for the purpose of this part means an individual whose earning or productive capacity is impaired by a physical or mental disability, including those relating to age or injury, for the work to be performed. Disabilities which may affect earning or productive capacity include blindness, mental illness, mental retardation, cerebral palsy, alcoholism, and drug addiction. The following, taken by themselves, are not considered disabilities for the purposes of this part: Vocational, social, cultural, or educational disabilities; chronic unemployment; receipt of welfare benefits; nonattendance at school; juvenile delinquency; and, correctional parole or probation. Further, a disability which may affect earning or productive capacity for one type of work may not affect such capacity for another.

(e) *Patient worker* means a worker with a disability, as defined above, employed by a hospital or institution providing residential care where such worker receives treatment or care without regard to whether such worker is a resident of the establishment.

(f) *Hospital or institution*, hereafter referred to as *institution*, is a public or private, nonprofit or for-profit facility primarily engaged in (*i.e.*, more than 50 percent of the income is attributable to) providing residential care for the sick, the aged, or the mentally ill or retarded, including but not limited to nursing homes, intermediate care facilities, rest homes, convalescent homes, homes for the elderly and infirm, halfway houses, residential centers for drug addicts or alcoholics, and the like, whether licensed or not licensed.