

803 KAR 1:090. Handicapped and sheltered workshop employee's wages.

RELATES TO: KRS 337.275, 337.285

STATUTORY AUTHORITY: KRS 337.295

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.295 authorizes the executive director to issue administrative regulations permitting handicapped workers and sheltered workshop employees to be employed at less than the established minimum wage. KRS 337.010(2)(a)5 requires that the wages be set for a period of time fixed by the executive director. The function of this administrative regulation is to set certain standards to be used in obtaining these special rates.

Section 1. As used in this administrative regulation, unless the context requires otherwise:

- (1) "Executive director" means Executive Director of Workplace Standards or any person authorized to act in his behalf, having jurisdiction over laws or administrative regulations governing wages and hours of employees working in this state;
- (2) "Office" means Office of Workplace Standards;
- (3) "Handicapped worker" means an individual whose earning or productive capacity is impaired by age or physical or mental deficiency or injury for the work he is to perform;
- (4) "Sheltered workshop" means a charitable organization or institution conducted not for profit, but for the purpose of carrying out a recognized program of rehabilitation for handicapped workers, and/or providing such individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature.

Section 2. (1) No employer shall employ a handicapped worker or sheltered workshop employee at less than the applicable minimum wage, unless such employment has been authorized by a special certificate issued by the executive director or by the U.S. Department of Labor. The rate of pay and the period of time effective shall be fixed by the certificate.

(2) When the minimum wage provided by KRS 337.275 is less than or equal to the federal minimum wage the executive director will not issue certificates for persons whose employment is subject to the federal minimum wage provisions of the Fair Labor Standards Act of 1938, as amended (FLSA). For such persons the employer shall request a certificate from the U.S. Department of Labor. Valid certificates issued by the U.S. Department of Labor, Wage Hour Division, which authorize rates of pay lower than the applicable Kentucky minimum wage, will be accepted as authority to pay such subminimum wage rates, provided that the information submitted in the applications is complete and accurate. If there is any reason to believe that the employment is, or may be in the future, subject to the FLSA minimum wage, the federal certificate shall be obtained and a state certificate will not be necessary.

(3) For handicapped workers or sheltered workshop clients not covered by the minimum wage provisions of the FLSA, certificates may be issued by the executive director if all of the requirements for federal certification are met. These requirements are published in Title 29, Part 525 of the Code of Federal Regulations. These regulations may be obtained from the U.S. Department of Labor Wage Hour Regional and Area Offices and Field Stations. The common use of the criteria and procedures outlined in this administrative regulation will serve to eliminate duplication and to standardize special minimum wage certification within the state. For state certification the executive director will generally exercise the authority and functions which the administrator has for the federal certificates.

(4) In the event an employer misuses a certificate in any way, the executive director reserves the right to revoke such certificate and to refuse to issue another certificate in the future. If the certificate was issued by the U.S. Department of Labor, the executive director will revoke any authority for payment of less than the minimum wage provided by KRS 337.275.

(5) Application for Kentucky special minimum wage certificates for handicapped and sheltered workshop employees will be submitted on Form ES-61 which is available from Division of Employment Standards and Mediation, Kentucky Office of Workplace Standards, Department of Labor, Frankfort, Kentucky 40601. In all cases the application will be accompanied by the completed federal special minimum wage certificate applications as appropriate under Title 29, Part 525 of the Code of Federal Regulations. (LAB 9; 1 Ky.R. 156; Am. 324; 455; eff. 1-8-75; 8 Ky.R. 196; eff. 11-5-81; 16 Ky.R. 2466; eff. 7-9-90; TAm eff. 8-9-2007.)