

LABOR CABINET
Department of Workplace Standards
(Amended After Comments)

803 KAR 1:091. Workers with Disabilities and Work Activities Centers' employee's wages.

RELATES TO: KRS 337.275, 337.285

STATUTORY AUTHORITY: KRS 337.295

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.295 authorizes the commissioner to issue administrative regulations permitting workers with disabilities and work activities centers' 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 commissioner. 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) "Commissioner" is defined by KRS 337.010(1)(a).
- (2) "Department" is defined in KRS 337.010(1)(b).
- (3) "Work Activities Centers" means centers planned and designed to provide therapeutic activities for workers with severe disabilities affecting their productive capacity. The purpose of work activities centers is carrying out a recognized program of rehabilitation for workers with disabilities and/or providing the individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature.
- (4) "Worker with a Disability" is defined by 29 C.F.R. 525.3(d).

Section 2.

- (1) No employer shall employ a worker with a disability or work activities center employee at less than the applicable minimum wage, unless the employment has been authorized by a special certificate issued by the commissioner 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 commissioner 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 these 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 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 workers with disabilities or work activities center employees not covered by the minimum wage provisions of the FLSA, certificates may be issued by the commissioner 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. For state certification the commissioner will 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 commissioner reserves the right to revoke the certificate and to refuse to issue another certificate in the future. If the certificate was issued by the U.S. Department of Labor, the commissioner 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 workers with disabilities and work activities center employees will be submitted to the Division of Wages and Hours, Kentucky Department of Workplace Standards, Kentucky Labor Cabinet, 500 Mero Street, 3rd floor, Frankfort, Kentucky 40601 and shall be accompanied by the completed federal special minimum wage certificate applications as appropriate under Title 29, Part 525 of the Code of Federal Regulations.

KIMBERLEE C. PERRY, Commissioner
JAMIE LINK, Secretary

APPROVED BY AGENCY: April 13, 2022

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