

Technical Amendment
November 10, 2022
EDUCATION AND LABOR CABINET
(Technical Amendment)

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

RELATES TO: KRS 337.275 - 337.325, 337.285, 29 U.S.C. 201, 29 C.F.R. 525

STATUTORY AUTHORITY: KRS 337.295

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.295 authorizes the commissioner to promulgate 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 established for a period of time fixed by the commissioner. This administrative regulation establishes certain standards to be used in obtaining these special rates.

Section 1. Definitions.

- (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 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) An employer shall not 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 established by the certificate.
- (2) If the minimum wage established by KRS 337.275 is less than or equal to the federal minimum wage, the commissioner shall not issue certificates for persons whose employment is subject to the federal minimum wage provisions of the Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C. 201. 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, shall be accepted as authority to pay subminimum wage rates, if 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 shall 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 shall be as published in 29 C.F.R. Part 525. For state certification, the commissioner shall exercise the authority and functions that 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 shall

revoke any authority for payment of less than the minimum wage established by KRS 337.275.

(5) Application to Employ Workers with Disabilities at Subminimum Wages shall be submitted to the Division of Wages and Hours, Kentucky Department of Workplace Standards, Education and 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 29 C.F.R. Part 525.

Section 3. Incorporation by Reference.

(1) "Application to Employ Workers with Disabilities at Subminimum Wages", April 2022, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workplace Standards, Education and Labor Cabinet, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(48 Ky.R. 2347, 2774, 2987; eff. 8-30-2022; TAm eff. 11-10-2022.)

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