

**1000 DEPARTMENT OF LABOR
1100 DIVISION OF INDUSTRIAL AFFAIRS**

1102 Exemptions for Disabled Workers from the Minimum Wage Act

1.0 Applicability of Regulations

- 1.1 The Minimum Wage Act of the State of Delaware (Title 19, Delaware Code) among other things, makes substantial revisions in the provision of the Act for employment of disabled persons at special minimum wages. This provision is now codified at Chapter 9, §905 of that Act. It reads as follows:
- 1.2 For any occupation, the Department may provide by regulations, after public hearing, upon reasonable notice at which any person may be heard, for the employment of individuals whose earning capacity is impaired by age or physical or mental deficiency or injury at such wages lower than the minimum wage rate, under this chapter, as the Department may deem necessary or appropriate to avoid hardship or prevent curtailment of opportunities for employment. No employee shall be employed at wages fixed pursuant to this section except under special license issued under the applicable regulations of the Department. Such regulations shall, except as may be otherwise provided by the Department, take effect upon publication.

2.0 Definitions

“**Disabled worker**” or “**worker**” means an individual whose earning capacity is impaired by age or physical or mental deficiency or injury for work (s) he is to perform.

“**Disabled trainee**” or “**trainee**” means an individual whose earning capacity is impaired by age or physical or mental deficiency or injury, and who is receiving or is scheduled to receive on-the-job training in industry under any vocational rehabilitation program.

3.0 Application for a Certificate

- 3.1 Application shall be made to the Department of Labor, Division of Industrial affairs and shall be reviewed by the Secretary or his/her authorized representative.
- 3.2 The application shall set forth, among other things, the nature of the disability, a description of the occupation at which the worker is to be employed, and the wage the firm proposes to guarantee the worker per hour. The nature of the disability must be set out in detail. Vague statements such as “nervous condition,” “physically incapacitated,” “slow worker,” etc., are not sufficient.
- 3.3 The application shall be signed jointly by the employer and worker and be returned to the Department by the employer.

4.0 Special Provisions Applicable to Disabled Trainers

- 4.1 Temporary certificates authorizing the employment of such trainees at wages lower than the minimum wage applicable under the Act shall not be less than 50 percent of such wages paid nondisabled workers in industry in the vicinity for essentially the same type, quality, and quantity of work.
- 4.2 A temporary certificate will designate the employer, the trainee, and the special minimum wage rate. It shall be valid for a period not to exceed 90 days from the date of issuance.
- 4.3 A temporary certificate shall not be issued for a trainee if a satisfactory training opportunity for the desired training is available in the community at the minimum wage applicable under the Act as above.

5.0 Conditions for Granting a Certificate

- 5.1 The application must set forth facts showing:
 - 5.1.1 A special minimum wage is necessary to prevent curtailment of the worker's or trainee's opportunities for employment; and

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5.1.2 The earning or productive capacity of the worker for the work (s)he is perform is impaired by age or physical or mental deficiency or injury.

6.0 Additional Data When Required

To determine whether the facts justify the issuance of a certificate, the Secretary or his/her authorized representative may require the submission of additional information and may require the worker to take a medical examination.

7.0 Issuance of a Certificate

- 7.1 If the application and other available information indicate that the requirements of this part are satisfied, the Secretary or his/her authorized representative shall issue a certificate, otherwise, (s) he shall deny a certificate of exemption.
- 7.2 If issued, copies of the certificate shall be transmitted to the employer and the worker or trainee, and in the case of a certificate for a trainee, to the appropriate vocational rehabilitation agency. If a certificate is denied, the same parties shall be given written notice of the denied, the same parties shall be given written notice of the denial.

8.0 Terms of Certificate

- 8.1 A certificate shall specify, among other things, the name of the worker or trainee, the occupation in which (s) he is to be employed, the special minimum wage rate (s), and the period(s) of time during which such rate(s) may be paid.
- 8.2 A certificate shall be effective for a period to be designated by the Secretary or his/her authorized representative. Workers or trainees may be paid special minimum wages only during the effective period of the certificate.
- 8.3 The wage rate (s) set in the certificate shall be fixed at a figure designed to reflect adequately the individual worker's or trainee's earning or productive capacity. No wage rate shall be fixed at less than 75 percent of the applicable minimum wage under the Minimum Wage Act unless after investigation a lower rate appears to be clearly justified. In no event shall such wage be nor less than is commensurate with wages paid nondisabled workers in industry in the vicinity for essentially the same type, quality, and quantity of work.
- 8.4 In an establishment or a vicinity where non-disabled employees are employed at piece rates in the same occupation, the disabled worker or trainee shall be paid at least the same piece rate earnings or the earnings at the hourly rate specified in the certificate, whichever is the greater.
- 8.5 No provision of this part, or of any certificate issued under this part shall excuse noncompliance with any Federal, State law or municipal ordinance establishing higher standards.
- 8.6 The terms or any certificate, including the wage rate (s) specified therein, may be amended by the Secretary or his/her authorized representative upon written notice to the parties concerned if the facts justify such amendment.

9.0 Renewal of a Certificate

- 9.1 Application for renewal of any certificate shall be filed in the same manner as an original application.
- 9.2 If an application for renewal has been properly and timely filed prior to the expiration date of a certificate, the certificate shall remain in effect until the application for renewal has been granted or denied.

10.0 Records To Be Kept

- 10.1 Every employer who employs a disabled worker or disabled trainee pursuant to these regulations shall keep, maintain and have available for inspection by the Secretary or his/her authorized representative

a copy of the certificate and all other records required under the applicable provisions of the Minimum Wage Act.

11.0 Review

Any person aggrieved by an action of an authorized representative of the Secretary taken pursuant to this part, may within 15 days after such action, file with the Secretary a petition for review, setting forth grounds for seeking review. If such review is granted, the Secretary or an authorized representative who took no part in the action under review, may to the extent (s)he deems it appropriated, afford other interested persons an opportunity to present data and views.

12.0 Amendment Of This Part

The Secretary may at any time upon his/her own motion or upon written request of any interested person setting forth reasonable grounds therefore, and after opportunity has been given to interested persons to present their views, amend or revoke any of the terms of this part.

13.0 Relation to Other Laws

Nothing contained in this part shall be construed as authorizing any act that is contrary to any Federal or State law or municipal ordinance. These regulations shall not apply to any employer operating under a Certificate of Exemption issued by the U.S. Department of Labor pursuant to the Fair Labor Standards Act. The State of Delaware shall permit the payment of sub-minimum wages in the amount (s) authorized by federal law.

Approved this 4th day of February, 1971: James M. Rosbrow, Secretary of Labor

Amended this 4th day of April, 1990: Jan Ewing Robinson, Secretary of Labor