

EMPLOYEE RIGHTS

FOR WORKERS WITH DISABILITIES PAID AT SUBMINIMUM WAGES

This establishment has a certificate authorizing the payment of subminimum wages to workers who are disabled for the work they are performing. Authority to pay subminimum wages to workers with disabilities generally applies to work covered by the **Fair Labor Standards Act (FLSA)**, **McNamara-O'Hara Service Contract Act (SCA)**, and/or **Walsh-Healey Public Contracts Act (PCA)**. Such subminimum wages are referred to as "commensurate wage rates" and are less than the basic hourly rates stated in an SCA wage determination and/or less than the FLSA minimum wage of **\$7.25 per hour**. A "commensurate wage rate" is based on the worker's individual productivity, no matter how limited, in proportion to the wage and productivity of experienced workers who do not have disabilities that impact their productivity when performing essentially the same type, quality, and quantity of work in the geographic area from which the labor force of the community is drawn.

Employers shall make this poster available and display it where employees and the parents and guardians of workers with disabilities can readily see it.

WORKERS WITH DISABILITIES

Subminimum wages under section 14(c) are not applicable unless a worker's disability actually impairs the worker's earning or productive capacity for the work being performed. The fact that a worker may have a disability is not in and of itself sufficient to warrant the payment of a subminimum wage.

For purposes of payment of commensurate wage rates under a certificate, a worker with a disability is defined as: An individual whose earnings or productive capacity is impaired by a physical or mental disability, including those related to age or injury, for the work to be performed.

Disabilities which may affect productive capacity include an intellectual or developmental disability, psychiatric disability, a hearing or visual impairment, and certain other impairments. The following do not ordinarily affect productive capacity for purposes of paying commensurate wage rates: educational disabilities; chronic unemployment; receipt of welfare benefits; nonattendance at school; juvenile delinquency; and correctional parole or probation.

WORKER NOTIFICATION

Each worker with a disability and, where appropriate, the parent or guardian of such worker, shall be informed orally and in writing by the employer of the terms of the certificate under which such worker is employed.

KEY ELEMENTS OF COMMENSURATE WAGE RATES

- **Nondisabled worker standard**—The objective gauge (usually a time study of the production of workers who do not have disabilities that impair their productivity for the job) against which the productivity of a worker with a disability is measured.
- **Prevailing wage rate**—The wage paid to experienced workers who do not have disabilities that impair their productivity for the same or similar work in the area. Most SCA contracts include a wage determination specifying the prevailing wage rates to be paid for SCA-covered work.
- **Evaluation of the productivity of the worker with a disability**—Documented measurement of the production of the worker with a disability (in terms of quantity and quality).

The wages of all workers paid commensurate wages must be reviewed, and adjusted if appropriate, at periodic intervals. At a minimum, the productivity of hourly-paid workers must be reevaluated at least every six months and a new prevailing wage survey must be conducted at least once every twelve months. In addition, prevailing wages must be reviewed, and adjusted as appropriate, whenever there is a change in the job or a change in the prevailing wage rate, such as when the applicable state or federal minimum wage is increased.

WIOA

The Workforce Innovation and Opportunity Act of 2014 (WIOA) amended the Rehabilitation Act by adding section 511, which places limitations on the payment of subminimum wages to individuals with disabilities by mandating the completion of certain requirements prior to and during the payment of a subminimum wage.

EXECUTIVE ORDER 13658

Executive Order 13658, Establishing a Minimum Wage for Contractors, established a minimum wage that generally must be paid to workers performing on or in connection with a covered contract with the Federal Government. Workers covered by this Executive Order and due the full Executive Order minimum wage include workers with disabilities whose wages are calculated pursuant to certificates issued under section 14(c) of the FLSA.

FRINGE BENEFITS

Neither the FLSA nor the PCA have provisions requiring vacation, holiday, or sick pay nor other fringe benefits such as health insurance or pension plans. SCA wage determinations may require such fringe benefit payments (or a cash equivalent). Workers paid under a certificate authorizing commensurate wage rates must receive the full fringe benefits listed on the SCA wage determination.

OVERTIME

Generally, if a worker is performing work subject to the FLSA, SCA, and/or PCA, that worker must be paid at least 1 1/2 times their regular rate of pay for all hours worked over 40 in a workweek.

CHILD LABOR

Minors younger than 18 years of age must be employed in accordance with the child labor provisions of the FLSA. No persons under 16 years of age may be employed in manufacturing or on a PCA contract.

PETITION PROCESS

Workers with disabilities paid at subminimum wages may petition the Administrator of the Wage and Hour Division of the Department of Labor for a review of their wage rates by an Administrative Law Judge. No particular form of petition is required, except that it must be signed by the worker with a disability or his or her parent or guardian and should contain the name and address of the employer. Petitions should be mailed to: Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue NW, Washington, D.C. 20210.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

1-866-487-9243
TTY: 1-877-889-5627
www.dol.gov/whd



WH1284 REV 01/18

EMPLOYEE RIGHTS

EMPLOYEE POLYGRAPH PROTECTION ACT

The Employee Polygraph Protection Act prohibits most private employers from using lie detector tests either for pre-employment screening or during the course of employment.

PROHIBITIONS

Employers are generally prohibited from requiring or requesting any employee or job applicant to take a lie detector test, and from discharging, disciplining, or discriminating against an employee or prospective employee for refusing to take a test or for exercising other rights under the Act.

EXEMPTIONS

Federal, State and local governments are not affected by the law. Also, the law does not apply to tests given by the Federal Government to certain private individuals engaged in national security-related activities.

The Act permits polygraph (a kind of lie detector) tests to be administered in the private sector, subject to restrictions, to certain prospective employees of security service firms (armored car, alarm, and guard), and of pharmaceutical manufacturers, distributors and dispensers.

The Act also permits polygraph testing, subject to restrictions, of certain employees of private firms who are reasonably suspected of involvement in a workplace incident (theft, embezzlement, etc.) that resulted in economic loss to the employer.

The law does not preempt any provision of any State or local law or any collective bargaining agreement which is more restrictive with respect to lie detector tests.

EXAMINEE RIGHTS

Where polygraph tests are permitted, they are subject to numerous strict standards concerning the conduct and length of the test. Examinees have a number of specific rights, including the right to a written notice before testing, the right to refuse or discontinue a test, and the right not to have test results disclosed to unauthorized persons.

ENFORCEMENT

The Secretary of Labor may bring court actions to restrain violations and assess civil penalties against violators. Employees or job applicants may also bring their own court actions.

THE LAW REQUIRES EMPLOYERS TO DISPLAY THIS POSTER WHERE EMPLOYEES AND JOB APPLICANTS CAN READILY SEE IT.



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WH1462 REV 07/16

EMPLOYEE RIGHTS

UNDER THE DAVIS-BACON ACT

FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

PREVAILING WAGES

You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.

OVERTIME

You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

ENFORCEMENT

Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

APPRENTICES

Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

PROPER PAY

If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:

MATT LINNEMAN
DEPUTY DIRECTOR OF ENGINEERING
NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
608 EAST BOULEVARD AVE
BISMARCK, NORTH DAKOTA 58505-0700

or contact the U.S. Department of Labor's Wage and Hour Division.



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UNITED STATES DEPARTMENT OF LABOR

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WH1321 REV 10/17

EMPLOYEE RIGHTS UNDER THE FAMILY AND MEDICAL LEAVE ACT

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

LEAVE ENTITLEMENTS

Eligible employees who work for a covered employer can take up to 12 weeks of unpaid, job-protected leave in a 12-month period for the following reasons:

- The birth of a child or placement of a child for adoption or foster care;
- To bond with a child (leave must be taken within one year of the child's birth or placement);
- To care for the employee's spouse, child, or parent who has a qualifying serious health condition;
- For the employee's own qualifying serious health condition that makes the employee unable to perform the employee's job;
- For qualifying exigencies related to the foreign deployment of a military member who is the employee's spouse, child, or parent.

An eligible employee who is a covered servicemember's spouse, child, parent, or next of kin may also take up to 26 weeks of FMLA leave in a single 12-month period to care for the servicemember with a serious injury or illness.

An employee does not need to use leave in one block. When it is medically necessary or otherwise permitted, employees may take leave intermittently or on a reduced schedule.

Employees may choose, or an employer may require, use of accrued paid leave while taking FMLA leave. If an employee substitutes accrued paid leave for FMLA leave, the employee must comply with the employer's normal paid leave policies.

While employees are on FMLA leave, employers must continue health insurance coverage as if the employees were not on leave.

Upon return from FMLA leave, most employees must be restored to the same job or one nearly identical to it with equivalent pay, benefits, and other employment terms and conditions.

An employer may not interfere with an individual's FMLA rights or retaliate against someone for using or trying to use FMLA leave, opposing any practice made unlawful by the FMLA, or being involved in any proceeding under or related to the FMLA.

ELIGIBILITY REQUIREMENTS

An employee who works for a covered employer must meet three criteria in order to be eligible for FMLA leave. The employee must:

- Have worked for the employer for at least 12 months;
- Have at least 1,250 hours of service in the 12 months before taking leave;* and
- Work at a location where the employer has at least 50 employees within 75 miles of the employee's worksite.

*Special "hours of service" requirements apply to airline flight crew employees.

REQUESTING LEAVE

Generally, employees must give 30-days' advance notice of the need for FMLA leave. If it is not possible to give 30-days' notice, an employee must notify the employer as soon as possible and, generally, follow the employer's usual procedures.

Employees do not have to share a medical diagnosis, but must provide enough information to the employer so it can determine if the leave qualifies for FMLA protection. Sufficient information could include informing an employer that the employee is or will be unable to perform his or her job functions, that a family member cannot perform daily activities, or that hospitalization or continuing medical treatment is necessary. Employees must inform the employer if the need for leave is for a reason for which FMLA leave was previously taken or certified.

Employees can require a certification or periodic recertification supporting the need for leave. If the employer determines that the certification is incomplete, it must provide a written notice indicating what additional information is required.

EMPLOYER RESPONSIBILITIES

Once an employer becomes aware that an employee's need for leave is for a reason that may qualify under the FMLA, the employer must notify the employee if he or she is eligible for FMLA leave and, if eligible, must also provide a notice of rights and responsibilities under the FMLA. If the employee is not eligible, the employer must provide a reason for ineligibility.

Employers must notify its employees if leave will be designated as FMLA leave, and if so, how much leave will be designated as FMLA leave.

ENFORCEMENT

Employees may file a complaint with the U.S. Department of Labor, Wage and Hour Division, or may bring a private lawsuit against an employer.

The FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law or collective bargaining agreement that provides greater family or medical leave rights.



For additional information or to file a complaint:

1-866-4-USWAGE

(1-866-487-9243) TTY: 1-877-889-5627

www.dol.gov/whd

U.S. Department of Labor | Wage and Hour Division



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