

# 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. The Authority to pay subminimum wages to workers with disabilities generally applies to work covered by the **Fair Labor Standards Act (FLSA)**, the **McNamara-O'Hara Service Contract Act (SCA)**, and/or **Walsh-Healey Public Contracts Act (PCA)**. Such subminimum wages are "commensurate wage rates" and are less than the basic hourly rates stated in an SCA wage determination and/or less than the basic hourly rates 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 productivity of experienced workers who do not have disabilities that impact their productivity when performing essentially the same 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 see it.*

### WORKERS WITH DISABILITIES

Subminimum wages under section 14(c) are not applicable unless a worker's disability is a physical or mental impairment that significantly impairs the worker's earning or productive capacity for the work being performed. The fact that a worker has 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 is considered disabled if the worker is: An individual whose earnings or productive capacity is impaired by a physical or mental impairment, 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, a hearing or visual impairment, and certain other impairments. The following factors may be considered in determining a worker's productive capacity for purposes of paying commensurate wage rates: education; experience; unemployment; receipt of welfare benefits; nonattendance at school; juvenile delinquency; and parole or probation.

### WORKER NOTIFICATION

Each worker with a disability and, where appropriate, the parent or guardian of such worker must be notified 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 or other method) used to measure the productivity 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 and who are performing such work in the same or similar geographic area. It must include a wage determination specifying the prevailing wage rates to be paid to workers with disabilities.
- **Evaluation of the productivity of the worker with a disability**—Documentation of the worker's productivity and 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, at regular intervals. At a minimum, the productivity of hourly-paid workers must be reevaluated and a new prevailing wage survey must be conducted at least once every twelve months. Prevailing wages must be reviewed, and adjusted as appropriate, whenever there is a change in the prevailing wage rate, such as when the applicable state or federal minimum wage rate changes.

### WIOA

The Workforce Innovation and Opportunity Act of 2014 (WIOA) amended the Rehabilitation Act of 1973, section 511, which places limitations on the payment of subminimum wages to individuals with disabilities. WIOA is mandating the completion of certain requirements prior to and during the payment of subminimum wages.