

Instructions for Form WH-226: The Payment of Special Minimum Wages to Workers with Disabilities Under Section 14(c) of the Fair Labor Standards Act

Section 14(c) of the Fair Labor Standards Act (FLSA) authorizes the payment of special minimum wages - wages less than the Federal minimum wage - to workers with disabilities whose productivity is impaired by their disabilities after the employer has applied for and received an authorizing certificate from the U. S. Department of Labor. The special minimum wage paid a worker with a disability must be commensurate with that worker's individual productivity as compared to the wage and productivity of experienced workers who do not have disabilities performing essentially the same type, quality, and quantity of work in the vicinity where the worker with a disability is employed.

The term *worker with a disability* is defined in FLSA section 14(c)(1) as an individual "whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury." Some examples of disabilities that may affect a worker's earning or productive capacity include **blindness, mental illness, mental retardation, cerebral palsy, alcoholism, drug addiction and age**. Age may be considered to be an impairment to earning or productive capacity only when the individual is at least 70 years old and age impairs his or her productivity for the work to be performed. The fact that a worker is over 70 years of age does not, in and of itself, constitute a disability under section 14(c). Vocational, social, cultural, or educational disabilities, standing alone, are not disabilities under section 14(c). Examples include chronic unemployment, receipt of welfare benefits, nonattendance at school, juvenile delinquency, and correctional parole or probation. However, these conditions could meet the section 14(c) definition of a disability if they exist in conjunction with some other physical/mental deficiency or injury.

For more detailed information about section 14(c), you may wish to review Regulations 29 CFR Part 525 (*Employment of Workers With Disabilities Under Special Certificates*) or read a series of fact sheets developed on this topic which are located at <http://www.dol.gov/esa/sec14c/index.htm>.

Employers apply for subminimum wage certificates using form WH-226 and supplemental form WH-226A.

**WH-226A Supplemental Data Sheet for Application for Authority to
Employ**

Workers with Disabilities at Special Minimum Wages. A separate WH-226A must be submitted along with the WH-226 for each site where workers with disabilities are (will be) employed at special minimum wages as listed in Block 6 of the WH-226. The directions for completing the WH-226A are contained on page 2 of the form.

Completed applications should be forwarded to:

U. S. Department of Labor
Employment Standards Administration
Wage and Hour Division
230 South Dearborn Street, Room 524
Chicago, Illinois 60604

INSTRUCTIONS FOR COMPLETING FORM WH-226A

Complete this form for every establishment/worksites where you employed workers with disabilities for the work performed at special minimum wages during your most recently completed fiscal quarter and submit with the *Application for Authority to Employ Workers with Disabilities at Special Minimum Wages (WH-226)*.

- Item 1. Enter the name of the worksite/establishment covered by this form. Remember that your main establishment is also considered a worksite if workers with disabilities are employed there at special minimum wages. The worksite/establishment covered by this form must also appear in either item 2 or item 6 of the WH-226.
- Item 2. Enter the address of the worksite covered by this form. This same address must appear in item 2 or item 6 of the WH-226. Remember that a separate WH-226A must be submitted for each worksite/establishment.
- Item 3. Indicate the type of worksite covered by this data sheet.

ME: Your Main Establishment. The establishment named in Item 2 of the WH-226.

BR: Branch Establishment. A **branch establishment** is an establishment or facility operated by the enterprise, that is physically separate from the main establishment, where workers with disabilities are employed at special minimum wages.

SE: Supported Employment Site, including Enclaves. A **supported employment work site** is a location, outside of the work center or rehabilitation center, often on the premises of an enterprise separate from the work center or rehabilitation center, where workers with disabilities paid special minimum wages are placed in employment settings along with work center staff (job coaches). An **enclave** is a supported employment work site where a group of workers with disabilities is working and supervised by staff from the work center.

SWEP: School Work Experience Program Site. A **school work experience program (SWEP)** site is a workplace in the community in which a school system has placed a student(s) with disabilities to work in a job(s) at special minimum wages.

- Item 4. Enter the date (month/day/year) your most recently completed fiscal quarter ended. This is the quarter for which you are providing information in Items 6 through 9.
- Item 5. Indicate whether workers with disabilities perform work subject to the Service Contract Act (SCA) at this worksite.
- Item 6. Individually list by name all those workers whose disabilities impaired their productive capacity for the work performed during your most recently completed fiscal quarter and who earned less than the statutory minimum wage or SCA wage determination rate.
- Item 7. Identify the primary disability of each worker identified in Item 6. You may use the codes provided in item 5 of the WH-226 or mention the disability by name--for example you could list NM (neuromuscular) or cerebral palsy.
- Item 8. Clearly identify the primary type of work performed by each worker with a disability. Possible examples include truck helper, assembler, janitor, or machine operator.
- Item 9. For workers paid hourly wage rates, list the rate or rates paid at the end of the fiscal quarter.

For workers paid by piece rates, list the average earnings per hour. Average earnings are computed by dividing the total earnings of the individual worker by the number of hours worked during that fiscal quarter. For example: John Jones earned \$900.00 during the quarter ending 6/30/01. He worked 300 hours that quarter, so his average earnings per hour are \$3.00. \$3.00 should then be entered in item 9.

The following is an example of how Items 6, 7, 8 and 9 on the WH-226 might be completed:

6. Worker with a Disability	7. Primary Disability	8. Type of Work	9. Average Earnings per Hour
John Jones	MR	Assembles bags of bolts	\$3.00
Robert Smith	Neuromuscular	Material Handler	\$3.50
Mary Evans	Mental Retardation	Janitor	\$4.15

- Item 10. Enter the total number of employees employed at this work site who are paid special minimum wages. Count each employee only once. Remember, each of these employees must be reported in items 6 through 9.

The completed WH-226 and all accompanying form(s) WH-226A should be mailed to U. S. Department of Labor, Wage and Hour Division, Employment Standards Administration, 230 South Dearborn Street, Room 524, Chicago, Illinois 60604.