

**DIVISION CIRCULAR #26  
(N/A)**

**DEPARTMENT OF HUMAN SERVICES  
DIVISION OF DEVELOPMENTAL DISABILITIES**

**EFFECTIVE DATE:** April 27, 2005

**DATED ISSUED:** April 29, 2005

- I. TITLE:** **Wages Below the Minimum (Rescinds Division Circular #26, “Wages Below the Minimum” issued March 1, 1997.)**
- II. PURPOSE:** To establish policy, standards and procedures for the compensation of persons receiving services in programs to train and employ individuals with developmental disabilities.
- III. SCOPE:** This circular applies to all components of the Division and agencies and entities under contract with the Division or regulated by the Department, who provide services to Division eligible individuals.
- IV. POLICIES:**
- A. All persons receiving services from the Division shall be compensated in compliance with Federal and State laws and regulations. For persons placed in out-of-state facilities, the applicable state regulations, in addition to Federal requirements, shall be followed.
1. In New Jersey, these include:
    - a. The Federal Fair Labor Standards Statute, 29 U.S.C. § 01 et seq.
    - b. 29 CFR § 525 “Employment of Workers with Disabilities Under Special Certificates” establishes the guidelines for the employment of persons at special minimum wages. This title applies to all employers paying less than minimum wage to any individual(s) served by the Division with Developmental Disabilities including private businesses and programs within community services, as well as, work activity and employment programs within developmental centers and in New Jersey private facilities.
    - c. N.J.S.A. 34:11-56a - New Jersey State Wage and Hour Law.
    - d. N.J.A.C. 12:56 - New Jersey State Wage and Hour law regulations establishes the requirements for work programs including those requirements for the employment of persons with a disability.

**V. GENERAL STANDARDS:**

- A. Definitions - For the purposes of this circular, the following terms shall have the meaning defined herein:
1. "Commensurate wage" is a special minimum wage, (below the statutory minimum wage) paid to a worker with a disability, which is based on the worker's individual productivity in proportion to the wage and productivity of experienced non-disabled workers performing essentially the same type, quality and quantity of work in the vicinity in which the individual under the certificate is employed.
  2. "Hourly wage" means an hourly rate of pay based upon a comparison of the individual's performance evaluation or the quantity and quality of work as compared to an experienced non-disabled worker. The hourly wage must be based on the prevailing wage and shall only be computed by a method that is acceptable to the US Department of Labor, Wage and Hour Division.
  3. "Minimum wage" means that wage established by the U.S. Department of Labor or NJ Department of Labor and Workforce Development, whichever is the higher wage.
  4. "Piece rate" means a rate of pay based upon the number of units an experienced non-disabled worker is expected to produce per hour. The standard is determined by an accepted industrial time study method. A piece rate is determined by dividing the prevailing wage by the standard number of units produced per hour.
  5. "Prevailing wage" means the wage rate paid to an experienced non-disabled worker for the work to be performed. A prevailing wage may not be less than the statutory minimum wage.
  6. "Special Minimum Wage Certificate" means a certificate issued by the U.S. Department of Labor, which permits a worker with a disability to be paid at a rate below the rate which would otherwise be required by statute.
- B. A worker, whose earning or production capacity is impaired to the extent that the individual is unable to earn at least the statutory minimum wage, may be paid a commensurate or special minimum wage but only after a Special Minimum Wage Certificate has been obtained by the agency and/or employer.
- C. Once an employment relationship is established, the worker with a disability shall be paid for all hours worked.

- D. Individuals paid on a piece rate basis shall have that rate reviewed whenever the prevailing rate is changed but no less than annually. The rate shall be reviewed if the work process and or job materials change.
- E. Any individual paid an hourly wage shall have a performance evaluation at least once every 6 months. His or her wage shall be adjusted no later than the first complete pay period following each review.
- F. Special Rounding practices apply when computing special minimum wages for piece and hourly wage rates. Traditional rounding (rounding "up" only when the last decimal is a 5 or higher) may result in underpaying workers with disabilities. The U.S. Wage and Hour Division will accept the practice of carrying out computations to the fifth decimal point and then rounding up to the fourth decimal place.
- G. The prevailing wage shall be reviewed at least annually and the worker's rate adjusted no later than the first complete pay period following completion of the prevailing wage survey, as required at 29 CFR § 525.10.
- H. No part of the minimum wage and overtime earned by a worker can be deducted for the cost of room, board or other services. The worker shall receive his or her wages free and clear, except for legal payroll deductions. However, this does not preclude the assessing or collecting of reasonable cost of room, board or others services actually provided to a worker to the extent permitted by applicable Federal or State law and on the same basis as it assesses and collects from non-working individuals.
- I. Persons who perform work, which is not of consequential economic benefit to the organization, are not required to receive wages. This includes:
  - 1. Personal household chores.
  - 2. Token economies (Refer to Division Circular #34)
  - 3. Production of craft projects in which the individual voluntarily engages and in which:
    - a. The products become the property of the individual making them, or;
    - b. The funding resulting from the sale of the products are divided among the individuals who made the product(s), or;
    - c. Funds resulting from the sale(s) are used in purchasing materials to make additional products.

## VI. **PROCEDURE:**

- A. Internal control procedures shall be developed by each provider/employer within the scope of this circular. Procedures shall include, but not be limited to, methods which:
1. Protect workers from exploitation while employed.
  2. Delineate the responsibilities for the disbursement of workers' payrolls.
  3. Delineate the responsibilities for inventory records and the processing of income.
- B. Where a dispute exists involving a special minimum wage, the individual shall have the right to obtain a review of that wage by a Federal Administrative Law Judge.

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Carol Grant, Acting Director  
Division of Developmental Disabilities

\*Note: Reference for Federal Resource for Workers with Disabilities, 29 CFR § 525, "Employment of Workers with Disabilities Under Special Certificates":

Upon entering the Federal Department of Labor's home page, [www.wagehour.dol.gov](http://www.wagehour.dol.gov), locate Special Initiatives on the right side of the page and click on "WORKERS WITH DISABILITIES" for more extensive information.