

13 NCAC 12 .0202 **DISABLED WORKER CERTIFICATION**

(a) For purposes of this Rule, a "disabled worker" means an individual whose earning capacity is impaired by age or physical or mental deficiency or injury for the work he is to perform.

(b) An application for the issuance of a disabled worker certificate establishing a subminimum wage rate for an individual for a particular job may be made by an employer with the Administrator of the Wage and Hour Bureau and must include:

- (1) the name, address and nature of the business of the employer;
- (2) a description of the occupation at which the worker is to be employed;
- (3) the nature of the worker's disability and its relation to his work;
- (4) the wage the employer proposes to pay the worker (as a percentage of the State minimum wage);
- (5) signatures of the employer and the worker; and
- (6) certification of the applicant's disability by the Division of Employment and Independence for People with Disabilities of the Department of Health and Human Services.

(c) If the proposed subminimum wage is less than 50 percent of the applicable minimum wage, the application and evidence must establish that the individual has multiple disabilities or is so severely impaired that his earning or productive capacity would not yield wages equal to at least 50 percent of the minimum wage if compensated at wage rates which are commensurate with those for non-disabled workers in industry in the vicinity for essentially the same type, quality, and quantity of work.

(d) To determine whether the facts justify the issuance of a certificate, the Administrator may require the submission of additional information and may require the worker to take a medical examination.

(e) A Disabled Worker Certificate shall be issued by the Administrator only if a proper application has been made and the facts show:

- (1) A special subminimum wage is necessary to prevent curtailment of the worker's opportunities for employment.
- (2) The earning or productive capacity of the worker for the work he is to perform is impaired by age or physical or mental deficiency or injury.
- (3) The wage rate requested reflects adequately the individual worker's earning or productive capacity and is not less than 50 percent of the applicable minimum wage, unless a lower rate is justified in accordance with (c) of this Rule.
- (4) In an establishment or a vicinity where non-disabled employees are employed at piece rates in the same occupation, the disabled worker will be paid at least the same piece rates or at the hourly rate specified in the certificate, whichever is greater.

(f) When a certificate is issued, the subminimum wage rate shall be established as a percentage of the State minimum wage, so that the disabled worker's wage rate will adjust automatically with changes in the State minimum wage without reissuance of a new certificate. Copies of the certificate shall be transmitted to the employer and the worker. The employer shall keep, maintain and have available for inspection a copy of the certificate.

(g) A certificate shall not be issued retroactively and shall be issued for a period of three years, subject to renewal by the Administrator. The terms of a certificate, including wage rate, may be amended by the Administrator upon written notice to the parties concerned, if the facts justify such an amendment. A certificate expires automatically when there is a substantial change in the job description, employment is terminated, or due to a change in circumstances the Administrator determines that the certificate or the subminimum wage rate set by the certificate no longer complies with the requirements of this Rule.

(h) Any person aggrieved by an action of the Administrator pursuant to this Rule may, within 15 days after such action, file with the Administrator a written petition for review setting forth the grounds. The Commissioner of Labor or his designated hearing officer may conduct a hearing and offer aggrieved persons the opportunity to present data and views pursuant to Chapter 150B, Article 3 of the North Carolina General Statutes. Any person adversely affected by the decision of the Commissioner or his designee may appeal by filing a written petition for a contested case hearing with the Office of Administrative Hearings (OAH) under Chapter 150B, Article 3 of the North Carolina General Statutes.

(i) Certificates providing subminimum wage rates for sheltered workshops for persons with disabilities may be issued in accordance with the rules and regulations promulgated under the F.L.S.A. regulating and allowing for the issuance of such certificates.

History Note: *Authority G.S. 95-25.3; 95-25.15; 95-25.17; 95-25.19;*
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