

SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION  
DIVISION OF LABOR AND MANAGEMENT  
123 W. Missouri Ave. Pierre, South Dakota 57501  
Tel: 605.773.3681 Fax: 605.773.4211 dlr.sd.gov

**APPLICATION FOR SUB-MINIMUM WAGE PERMIT  
To Employ Persons with Disabilities Under SDCL 60-11-5**

EMPLOYER

1. Name of Establishment
2. Address Phone
3. Manager's Name
4. Type of Establishment
5. Number of experienced employees in trainer's business

EMPLOYEE

Note: All employees must be working for employer listed at establishment listed on line #1. If employee is training, put a "T" by the dates requested.

NAME	DISABILITY	AVERAGE EARNINGS	TYPE OF WORK	DATES REQUESTED
(John Doe)	(Cerebral Palsy)	(\$2.00/hour or .5/piece)	(assembly)	(01/05/2012 to 02/05/2012)

FOR SIGNATURE OF VOCATIONAL REHABILITATION COUNSELOR:

I hereby certify that the above information is, to the best of my knowledge, true and correct and I further state that a required wage higher than that indicated hereon will curtail this and other employment opportunities for named employee.

I recommend that these permits be granted.

COUNSELOR NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

REHABILITATION AGENCY: \_\_\_\_\_

COUNSELOR SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

ADDRESS OF JOB SERVICE OFFICE:

\_\_\_\_\_  
\_\_\_\_\_

Department of Labor and  
Regulation  
Division of Labor & Management  
Missouri River Plaza  
123 W. Missouri Ave.  
Pierre SD 57501

cc: employer  
counselor

## STATEMENT OF POLICY

WHEREAS, SDCL 60-11-5 provides that the Division of Labor and Management shall issue permits which shall allow the employment of apprentices, persons learning the business in which they are employed, and mentally and physically handicapped persons, be drawn for the issuance of such permits to insure equality and fairness of treatment, the following:

### GUIDELINES FOR THE ISSUANCE OF SUBMINIMUM WAGE PERMITS:

For the hiring of For the hiring of developmentally disabled persons are hereby adopted.

#### Section 1. Definitions.

As used in these guidelines, the following terms shall mean:

- (A) "Developmentally disabled person" is a person who has been recommended for employment by any Federal or State Agency working with individuals with developmental disabilities.

#### Section 2. Conditions Governing Issuance of Permit.

- (A) Permits will be issued only when it is necessary to prevent curtailment of opportunities for employment.
- (B) Permits will be issued to employers of developmentally disabled persons only upon the recommendation of the State or Federal Agency working with that person.
- (C) No permits will be issued to an establishment which has an outstanding violation of the minimum wage law or which has had a past history of disregard of the minimum wage law.
- (D) The sub-minimum wage rate shall not be less than 25% of the statutory rate. 29 CFR Part 525 (9) (10) (12)
- (E) No permit may be issued retroactively.

Section 3. Procedure for Obtaining Permits.

- (A) Applications for permits must be made on forms approved by the Division of Labor and Management. Failure to complete the form will be grounds for denying a permit.
- (B) An application for a permit shall constitute a temporary authorization for the employment of the named person at a sub-minimum wage, effective from the date such application is forwarded to the Division of Labor and Management, until a permit is issued or denied; provided that the following conditions are satisfied:
  - (1) The application is in conformance with the requirements of a permit as laid down by the Statement of Policy, and
  - (2) If the permit is denied, the employee shall be reimbursed to the extent that his wages did not meet the statutory minimum wage.

Section 4. Reconsideration and Review.

- (A) Any person aggrieved by the action of the Division of Labor and Management in denying or granting a permit, may, within fifteen (15) days from such action, file a written request for reconsideration.
- (B) Such request shall state the grounds upon which the applicant believes the decision should be revoked or modified.
- (C) The Director may reaffirm, modify or revoke his previous decision upon said written request.
- (D) All interested parties have the right to a hearing under the Administrative Procedures Act (SDCL 1-26).

DOL-LM-03/04

## **General Questions and Answers**

### **How do I determine "commensurate wage rates"?**

A commensurate wage rate is a special minimum wage paid to a worker with a disability which is based on the worker's individual productivity, no matter how limited, in proportion to the wage and productivity of experienced non-disabled workers performing essentially the same type, quality, and quantity of work in the geographic area from which the labor force of the community is drawn. An example of a commensurate wage rate would be as follows:

If an experienced non-disabled worker makes boxes and can produce 40 boxes in an hour, but a worker with a disability can only produce 10 boxes an hour; then, the worker with a disability is considered 25% as productive as the experienced non-disabled worker and should receive at least 25% of the prevailing wage rate for such work. If the prevailing wage rate is determined to be \$6.00 an hour, the worker with the disability employed under a special certificate should receive at least 25% of that wage rate or \$1.50 an hour for performing the box production work. This is an extremely simple example but it demonstrates the principle of commensurate wage rates.

Properly established piece rates yield commensurate wage rates. A piece rate fixes a price on each completed unit of work. This rate is derived by dividing the prevailing wage rate by the average hourly production of individuals not disabled for the work to be performed. For example, if three non-disabled persons worked a total of ten "fifty-minute" hours and produced 2800 units in total, the average production would be 280 units per hour (2800 units divided by 10 hours). Assuming the test involved unskilled work, and the prevailing unskilled labor rate in the vicinity is \$6.55 per hour, the piece rate would be \$0.023392 per unit (\$6.55 divided by 280 units). A disabled worker producing 185 pieces in an hour would earn \$4.33 for that hour (185 pieces x \$0.020893 = \$4.33).

### **Where are the requirements for commensurate wage rates found in the federal regulations?**

The requirements for setting commensurate wage rates are found in sections 525.9 and 525.12 of Regulations, 29 CFR Part 525; and the procedures for determining prevailing wage rates are found in section 525.10.

**What conditions are considered "disabilities" for purposes of obtaining a certificate? What conditions are excluded?**

Individuals are considered workers with a disability when their earnings or productive capability is impaired by a physical or mental incapacity **for the work to be performed**, including aged or injured workers. Disabilities which may affect earning or productive capacity include blindness, mental illness, mental retardation, cerebral palsy, alcoholism, and drug addiction. They also may include disabilities due to physical injuries to the head, spine, skeletal system, amputations or other losses of muscle, bone, etc. which may cause an individual to be incapable of meeting full productivity.

The following are not considered disabilities: vocational, social, cultural or educational disabilities; chronic unemployment; receipt of welfare benefits; nonattendance at school; juvenile delinquency; and correctional parole or probation. (However, these conditions taken together with some other mental, physical or psychological condition may be considered as a disability.)

**What if my state's minimum wage law is greater than the federal minimum wage?**

You should be aware that certain states or localities have wage and hour laws that establish a statutory minimum wage higher than the FLSA standard or establish other standards stricter than those set by the FLSA. Your certificate issued under section 14(c) of the FLSA does not relieve you from your obligation to comply with applicable state or local laws which establish other requirements regarding the employment of workers with disabilities. On the other hand, you are not relieved from compliance with the FLSA by state or local laws that establish different standards from the FLSA.