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Ind. 72

STATE OF WISCONSIN            )  
  ) SS.  
DEPARTMENT OF INDUSTRY,    )  
LABOR AND HUMAN RELATIONS' )

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Stephen J. Reilly, Executive Secretary of the Department of Industry, Labor and Human Relations, and custodian of the official records of said Department do hereby certify that the annexed rules and regulations, relating to definitions and subminimum wage licenses, were duly approved and adopted by this Department on September 3, 1969.

I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at the Capitol, in the city of Madison, this 19 day of September, A. D., 1969.

  
Executive Secretary

ORDER OF THE DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS  
REPEALING AND ADOPTING RULES

Pursuant to authority vested in the Department of Industry, Labor and Human Relations by section 101.01 to 101.29 Wis. Stats., the Department of Industry, Labor and Human Relations hereby adopts rules as follows:

Sections Ind 72.01 and Ind 72.14 are repealed and created to read:

Ind 72.01 DEFINITIONS. As used in this chapter:

- (1) "Department" means the Department of Industry, Labor and Human Relations.
- (2) "Agriculture" will mean the same as "farm premises" as defined in section 102.04 (3), Wis. Stats., of the workmen's compensation act.
- (3) A "minor" shall mean any person under 21 years of age.
- (4) Pursuant to section 104.01 (1), Wis. Stats., the term "employer" shall include any person, partnership, or corporation engaged in the processing of cucumbers into pickles, who is responsible directly or indirectly for the wages paid for the services of adult women and minor "workers" engaged in the harvesting of cucumbers providing:
  1. That the processor or his agent directly or indirectly pays each "worker" performing services in the harvesting of cucumbers or,
  2. That the processor or his agent has the right (whether exercised or not) to terminate the services of the "worker" or to transfer his services from one grower to another.
- (5) "Bona fide school training program" means a program sponsored by an accredited school and authorized and approved by the State Department of Public Instruction or the Board of Vocational, Technical and Adult Education or other recognized educational body and provides for part-time employment training which may be scheduled for a part of the workday or workweek, supplemented by and integrated with a definitely organized plan of instruction and where proper scholastic credit is given by the school.
- (6) "Evaluation Program" means a program of not more than 6 months duration, except that longer periods may be approved in unusual circumstances, using the medium of work to determine a client's potential, and which meets the Department of Health and Social Services, Division of Vocational Rehabilitation or equivalent standards.
- (7) "Handicapped Worker" means an individual whose earning capacity is impaired by age, or physical, or mental, or social disability.

- (8) "Industry" means a trade, business, industry, or branch thereof, or group of industries in which individuals are gainfully employed.
- (9) "Sheltered Workshop" means a charitable organization or institution conducted not for profit, but for the purpose of carrying out a recognized program of rehabilitation for handicapped workers providing such individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature.
- (10) "Student Learner" means a student of an accredited school who is employed on a part-time basis, under a bona fide written school-work training program agreement, to obtain both scholastic credit and employment training.
- (11) "Training Program" means a sheltered workshop program of not more than 12 months duration designed to (1) develop the patterns of behavior which will help a client adjust to a work environment, or (2) teach the skills and knowledge related to a specific occupational objective of a job family, and which meets the Department of Health and Social Services, Division of Vocational Rehabilitation or equivalent standards.
- (12) "Work Activity Center" means a workshop or a physically separated department of a workshop having an identifiable program, separate supervision and records, planned and designed exclusively to provide therapeutic activities for handicapped workers whose physical or mental impairment is so severe as to make their productive capacity inconsequential.

Ind 72.14 Subminimum Wage Licenses.

- (1) SHELTERED WORKSHOPS. Licenses may be issued for: the entire workshop, a department of the workshop, a work activities center, a training or evaluation program, and an individual handicapped worker or any combination thereof.

A. APPLICATION FOR A WORKSHOP LICENSE.

- 1. Applications for licenses may be filed with the Department.
- 2. The application shall contain answers to all questions presented on the form supplied by the Department, including, among other things, a description of the nature of the disabilities of the persons served by the workshop, a description of the type of employment and the programs and services provided by the workshop.
- 3. The application shall be signed by the president of the Board of Directors and by a duly authorized officer of the workshop.

B. RENEWAL OF LICENSE. Applications for renewal shall be filed 30 days prior to the expiration date.

C. CRITERIA FOR ISSUANCE OF A LICENSE.

1. The following criteria may be considered by the Department in determining the necessity of issuing a license and the conditions to be specified therein:

- (a) The present and previous earnings of handicapped workers of the workshop.
- (b) Whether the individual handicapped workers are being paid wage rates commensurate with those paid nonhandicapped workers in industry in the vicinity for essentially the same type, quality, and quantity of work.
- (c) The nature and extent of the disabilities of individuals served by the workshop.
- (d) The types and duration of medical, educational, therapeutic, social work, and other rehabilitative services given to handicapped workers.
- (e) The extent to which the handicapped workers share, through wages, in the receipts for work done in the workshop.
- (f) The extent to which the handicapped workers may be learners or otherwise inexperienced.
- (g) The extent to which earned operating income, other than normal depreciation allowances, is used for capital expenditures for equipment, buildings or expansion of activities in situations where the adequacy of the wage rates proposed by the workshop cannot clearly be established.
- (h) Whether there exists any workshop/customer arrangement or subcontract agreement which constitutes an unfair method of competition in commerce and which tends to spread or perpetuate substandard wage levels.
- (i) Whether, in the case of nongovernment operated workshops, the organization has obtained an exemption under section 501 (c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501 (c)(3)) and has registered as a nonprofit organization with the appropriate state or local agencies providing for such registration.

2. In addition, the following criteria will be considered in determining the advisability of issuing a special certificate for a training or evaluation program.
  - (a) Whether there is competent instruction or supervision.
  - (b) Whether there is a written curriculum or job description or plan of procedures designed to obtain the objectives of the program for the individuals.
  - (c) Whether there are written records made at periodic intervals of not more than three months, showing progress of individual clients; and
  - (d) Whether in the case of a training program, there is a provision for rate increases as the trainee advances through the steps of the program.

D. TERMS AND CONDITIONS OF LICENSE.

1. The license shall specify the terms and conditions under which it is granted.
2. The license shall apply to every handicapped woman and minor worker in the workshop or department thereof, for which the license is granted.
3. The license shall be effective for the period designated thereon. Handicapped workers may be paid wages lower than the rates prescribed in Ind 72.03 only during the effective period of the license.
4. Except for licenses for work activities centers and for training or evaluation programs, and unless a lower special individual wage has been authorized, the license shall provide a minimum wage, or different minimum wages for different departments, but none of them shall be less than 50% of the rates prescribed in Ind 72.03.
5. A license issued to a work activities center or for a training or evaluation program need not set a minimum rate except the rate paid must be commensurate with the individual's ability as provided under (6) and (7) of this section.
6. The wage rates paid handicapped workers working at time rates shall be commensurate with those paid nonhandicapped workers in the vicinity in industry maintaining approved labor standards for essentially the same type, quality, and quantity of work.

7. The wage rates paid handicapped workers working at piece rates shall not be less than prevailing piece rates paid nonhandicapped employes in the same work in the vicinity in industry maintaining approved labor standards. In the absence of industry piece rates, time studies or other tests may be used by the workshop to establish piece rates. Such time studies should be made with nonhandicapped persons, although handicapped workers may be used in those situations where they are not handicapped for the type of work being tested and their production is comparable to that of nonhandicapped persons of minimum ability. The base hourly rate used in making time studies must not be less than the prevailing rate in industry for work requiring similar skill. Each handicapped worker working at piece rates must be paid his full piece rate earnings. Pooling of earnings is not permitted except where piece rates cannot be established for each individual worker, in a team operation where each worker's individual contribution to the finished product cannot be separately tallied.
  8. An individual license may provide a lower minimum rate for a handicapped worker unable to earn the workshop or applicable department minimum rate. Such individual minimum rates may not be set at less than 50% of the rates in Ind 72.03, except for a handicapped worker whose earning capacity is so severely impaired that he is unable to engage in competitive employment. The individual minimum rate for a handicapped worker so certified may not be less than 25% of the minimum rates in Ind 72.03.
  9. The workshop may not compete unfairly in obtaining subcontract work or in the sale of its products.
  10. The terms of any license may be amended for cause, upon request of the workshop, handicapped worker, or upon the initiative of the Department.
- E. RECORDS TO BE KEPT. Every workshop shall maintain for three years, and have available for inspection by the Department, records of:
1. Disability, which show the nature of the handicapped worker's disability. Disabilities must be substantiated by medical or psychiatric reports or results of psychological tests, as appropriate.
  2. Productivity, which show the productivity of each handicapped worker on a continuing basis or at periodic intervals not exceeding six months. Where productivity is measured by means of progress reports, records must relate the worker's performance to that of a nonhandicapped person receiving the prevailing wage in industry for similar work requiring similar skills. Records of time studies made to establish piece rates must be kept.

3. Learning periods, when such periods are authorized by the certificate, which shows the daily hours worked by each handicapped worker during the learning period(s), and the cumulative total of such hours.
  4. Pricing of work, which show that part of the unit prices which are allocated to direct labor (labor rate) and the average expected earnings of nonhandicapped workers at a normal expected production rate. Records of time studies made to establish prices must be kept.
  5. Time records for women and minors who are not handicapped workers or clients shall be kept as required in Ind 72.16.
  6. Certification of state agencies, including copies of training or evaluation agreements, authorizations for extensions of such periods, progress reports made during such periods, and evaluation of other reports on which a judgment relating to certification was made.
- F. POSTING OF LICENSE. Every workshop having a license shall post the license, or a copy of it, in a conspicuous place where it may be readily observed by all workers.
- (2) HANDICAPPED WORKER. A license may be issued for a handicapped woman or minor employe engaged in work whose earning capacity is so impaired that they are unable to earn the rate prescribed in Ind 72.03.
- A. APPLICATION FOR AN INDIVIDUAL HANDICAPPED WORKER LICENSE.
1. Applications shall be filed with the Department by the employer.
  2. The application must be signed by the employer, the employe, and the appropriate sponsoring agency official if an agency is involved. It shall contain answers to all of the questions presented on the form furnished by the Department, including: a description of the employe's disabilities, type of work to be performed, schedule of the hours to be worked per day and per week, and proposed hourly rate or progressive wage schedule. If room or board are to be provided as part payment of wages, the number of meals and nights' lodging to be furnished must be stated.
- B. TERMS AND CONDITIONS OF LICENSE.
1. The license shall specify the terms and conditions under which it is granted.
  2. The rate shall not be less than 75% of the rates in Ind 72.03.
  3. The license shall be issued only on the basis of an hourly rate.

4. The license shall be effective for the period designated thereon, and, no license shall be issued retroactively, nor shall a license be issued for more than one year unless a longer period is found to be justified by extraordinary circumstances.
5. The Department may set a rate of less than 75% of the rates in Ind 72.03 based on justification of extraordinary circumstances. The rate set shall be commensurate with his or her ability. No licensee shall be employed at a rate less than the rate established.
6. The Department may request an evaluation or reevaluation of the worker's abilities by the Department of Health and Social Services, Division of Vocational Rehabilitation.
7. Where room and board are furnished by the employer as part of wages, the allowance may not exceed the amounts in Ind 72.03 (3).

C. EMPLOYMENT RECORDS TO BE KEPT. Permanent records shall be kept by the employer as required in Ind 72.16.

(3) STUDENT LEARNERS. A license may be issued for a student who is enrolled in a bona fide school training program.

A. APPLICATION FOR A STUDENT LEARNER LICENSE.

1. Applications shall be filed with the Department by the school on behalf of the employer.
2. The application must be made on a form provided by the Department, and accompanied by a copy of the training agreement, or, in the absence of such agreement, a copy of the program or curriculum may be submitted. The application must be signed by the employer, the appropriate school official, the student, and the student's parent or guardian.

B. CONDITIONS FOR ISSUING A LICENSE FOR A STUDENT.

1. Each program must be a bona fide school training program.
2. The employment at subminimum rates is necessary to provide employment opportunities under the program.
3. The student must be at least 14 years of age and obtain a work permit if under 18 years of age.
4. The occupation for which the student is receiving preparatory training must require a sufficient degree of skill to necessitate a learning period.



5. The training must not be for the specific purpose of acquiring manual dexterity and high production speed in repetitive operations.
6. The employment must not have the effect of displacing a worker employed in the establishment.
7. The employment must not tend to impair or depress the wage rates or working standards established for experienced workers for work of a like or comparable character.
8. The issuance of such license must not tend to prevent the development of apprenticeship nor impair established apprenticeship standards in the occupation or industry involved.

C. TERMS AND CONDITIONS OF LICENSE.

1. The license shall specify, among other things:
  - (a) The name and address of the student.
  - (b) The name and address of the employer.
  - (c) The name and address of the school which provides the related school instructions.
  - (d) The effective and expiration dates of the license.
2. The rate shall not be less than 75% of the applicable rates in Ind 72.03.
3. The license shall be effective for the period designated thereon, and, no license shall be issued retroactively.
4. A student may work a number of hours in addition to the daily and weekly hours of employment training authorized by the license provided the total hours of work shall not exceed the limits set forth in Ind 70.05, and that the pay for such hours is not less than that prescribed in Ind 72.03.
5. Students under 18 years of age may not serve at any job prohibited by statute or orders of the Department. (See Ind 70.03)
6. A training agreement shall set down the scheduled duties and responsibilities of the local school, the employer, the student, and the student's parents or guardian. The training agreement shall be signed by an appropriate school official, the employer, the student, and the student's parents or guardian.

7. The Department may set a rate of less than 75% of the rates in Ind 72.03 for handicapped student learners if justified by extraordinary circumstances. The rate granted shall be commensurate with the student's ability.

D. EMPLOYMENT RECORDS TO BE KEPT. In addition to the records required in Ind 72.16 the employer shall keep the following for each student employed at a subminimum wage rate:

1. The student shall be identified on the payroll records, showing his occupation and rate of pay.
2. The employer's copy of the license and training agreement must be available at all times for inspection for a period of three years.

(4) REFUSAL TO ISSUE AND REVOCATION OF LICENSE. The Department may refuse to issue a license or may revoke, amend or modify any license it has issued, if, in its opinion, conditions or extraordinary circumstances warrant such action.

The rules shall become effective on the first day of the month following publication in the Wisconsin Administrative Code as provided in Section 227 Wis. Stats.

DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS

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Stephen J. Reilly, Executive Secretary

September 19, 1969