



Special Sub-minimum Wages

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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Special Sub-minimum Wages

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The FLSA allows sub-minimum wages for learners, student-learners, messengers, apprentices, disabled workers, patient workers and full-time students of institutes of higher learning. Special certificates must be obtained from the Wage and Hour Division for workers to be employed at sub-minimum rates (except for workers qualifying for the youth “opportunity wage”). Employers may not displace other employees to hire workers at the lower rate of pay or make partial displacements by reducing hours, wages or employment benefits. 29 C.F.R. § 520.408(d).

“Employers are allowed to pay employees less than 20 years of age an ‘opportunity’ wage of \$4.25 per hour for the first 90 days of their employment. Similarly, hiring an employee less than 20 years of age and then discharging them at the end of the 90-day period is illegal. Approval/certificates of the ‘opportunity wage’ are not issued if lower wage rates limit full-time job opportunities for others in the work place.” 29 U.S.C. § 206(g); 29 C.F.R. §§ 520.201 – 520.503 also provide the procedures to apply for special certification. 29 C.F.R. § 520.506 provides information about how to comply with the terms of the certificate, and 29 C.F.R. § 520.508 provides record keeping compliance information.

“Students in institutions of higher education may be employed at a sub-minimum wage. If the appropriate certificate procedures are followed and regulatory requirements are met, then full-time students of institutions of higher education may be paid no less than 85 percent of the federal minimum wage for work they perform for their school.” 29 C.F.R. § 519.11. “Full-time students at any educational level (but at least 14 years of age) employed by retail or service establishments, or in agriculture, may be paid wages no less than 85 percent of the minimum wage.” 29 C.F.R. § 519.2(a). “Additionally, student-learners who receive instruction at an accredited school, college or university and work part-time in a bona-fide vocational training program may be paid no less than 75 percent of the minimum wage.” 29 C.F.R. Part 520, Subpart E.

Special certificates authorizing the employment of apprentices in skilled trades at sub-minimum wages may also be requested. Section 29 C.F.R. § 520.300 defines a “skilled trade” as one with the following characteristics:

1. It is customarily learned in a practical way through a structured, systematic program of on-the-job supervised training
2. It is clearly identified and commonly recognized throughout an industry
3. It involves manual, mechanical or technical skills and knowledge which require a minimum of 2,000 hours of on-the-job work experience
4. It requires related instruction to supplement the on-the-job training
5. It is not merely part of an apprentice occupation and does not fall into any of the following categories: marketing; sales administration; administrative support; executive and managerial; professional and semi-professional occupations (occupations for which entrance requirements customarily include education of college level)

A special sub-minimum wage also may be paid to learners. “A learner is a worker ‘who is being trained’ for an occupation, which is not customarily recognized as an apprentice trade, for which skill, dexterity and judgment must be learned and who, when initially employed produces little or nothing of value.” 29 C.F.R. § 520.300. “Learners must be paid no less than 95 percent of the minimum wage (special rules apply for piece rate wages). An employee cannot, however, be considered a learner once he or she has acquired 240 hours of job-related and/or vocational training with the same employer or training facility during the past three years. Employers must also apply to DOL for learners’ certificates prior to employing learners at the sub-minimum wage rate.” 29 C.F.R. §§ 520.201 – 520.503.

29 C.F.R. Part 525 provides greater flexibility in establishing the hourly wages paid to disabled workers in sheltered workshops. “A worker with a disability” is one whose earning or productive capacity is impaired by age, physical or mental deficiency or injury.” 29 C.F.R. § 525.3(d). “The regulations stipulate that certificates will be issued only to those individuals whose earning capacity is impaired to the extent that the individual is unable to earn at least the minimum wage.” 29 C.F.R. § 525.12. No fixed percentage is set. The rate is subject to DOL approval and may be appealed by the worker.

ELIGIBLE SUB-MINIMUM PAY		
TYPES OF EARNERS	ELIGIBLE EMPLOYERS	% OF MINIMUM WAGE
Students		
<ul style="list-style-type: none"> • Full-time students of institutions of higher education. 29 C.F.R. § 519.11. 	Institutions of higher education	No less than 85%
<ul style="list-style-type: none"> • Full-time students at any level, at least 14 years of age. 29 C.F.R. § 519.1. 	Retail, service or agricultural establishments	No less than 85%
<ul style="list-style-type: none"> • Part-time student-learners, at least 16 years old, working in a bona fide vocational training program. 29 C.F.R. § 520 Subpart E. 	Accredited school, college or university	No less than 75%
Disabled		
<ul style="list-style-type: none"> • Disabled or aged workers. 29 C.F.R. § 525.1. 	All employers	No fixed percentage; rate subject to DOL approval and may be appealed by the worker
Apprentices		
29 C.F.R. § 520 Subpart D	Most employers, with certain exceptions	No less than the special minimum wage specified in the Apprentice Program and Apprentice Agreement unless DOL administrators issue a certificate modifying the terms
Learners		
29 C.F.R. § Part 520 Subpart D	Most employers, with certain exceptions	No less than 95%; special rules for piece rate wages

DISCLAIMER: The letters and publications written by the MTAS consultants were written based upon the law at the time and/or a specific sets of facts. The laws referenced in the letters and publications may have changed and/or the technical advice provided may not be applicable to your city or circumstances. Always consult with your city attorney or an MTAS consultant before taking any action based on information contained in this website.

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