U.S. Department of Labor
Wage and Hour Division

U.S. Wage and Hour Division

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Fact Sheet #39B: Prevailing Wages and Commensurate Wages under Section 14(c) of the Fair Labor Standards Act (FLSA)

This Fact Sheet provides general information concerning the establishment of prevailing wages and commensurate wages as they pertain to the employment of workers with disabilities at special minimum wages. Please read Fact Sheet No. 39, **The Employment of Workers with Disabilities at Special Minimum Wages**, for a general overview of the provisions of Section 14(c). Please consult the Regulations, 29 CFR Part 525, **Employment of Workers with Disabilities under Special Certificates**, for detailed information concerning Section 14(c). These Regulations may be found at http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_525/toc.htm.

What is a commensurate wage?
A **commensurate wage** is a special minimum wage paid to a worker with a disability that is based on his or her individual productivity (no matter how limited) in proportion to the productivity of experienced workers who do not have disabilities performing essentially the same type, quality, and quantity of work in the vicinity where the worker with a disability is employed. The commensurate wage in the context of work subject to Section 14(c) is always less than the applicable minimum wage required by section 6(a) of the FLSA, or where applicable, the prevailing wage required by a McNamara-O'Hara Service Contract Act (SCA) Wage Determination.

How does an employer determine the proper commensurate wage for each employee with a disability?
In order to determine the commensurate wage, the employer must first examine the work to be performed by the employee with a disability, and through the use of an accepted work measurement technique, develop a **"standard"** that accurately measures the quality and quantity of that same work when performed by workers who do not have disabilities. Work measurement methods, such as time studies, *Modular Arrangement of Predetermined Time Standards (MODAPTS)*, and *Methods-Time Measurement*, are used by employers to determine the length of time it should take a worker who does not have a disability to perform an operation, or element of an operation. The commensurate rate is then determined by comparing the performance of the worker with a disability against that **"standard."** In very simple terms, if the worker with a disability is 60% as productive when performing a particular job as is the experienced worker who does not have a disability performing the exact same job, the commensurate wage for that worker with a disability would be at least 60% of the prevailing wage (the wage rate paid to the experienced worker who does not have a disability).

What is a prevailing wage under Section 14(c)?
The prevailing wage for a particular job performed by a worker with a disability who receives a special minimum wage is the wage paid experienced workers who do not have disabilities performing essentially the same type of work in the vicinity. An employer paying a special minimum wage must be able to demonstrate that the prevailing wage rate used to determine a commensurate wage was objectively determined. Normally, prevailing wage rates are based on the results of surveys conducted by the employer. The prevailing wage is not an entry-level wage or a training wage, but the wage rate paid experienced employees after completion of any training or probationary periods. An experienced worker is one who has learned the basic elements or requirements of the work to be performed, ordinarily by completion of a probationary or training period. Typically, such a worker will have received at least one pay raise after successful completion of the probationary or training period. The prevailing wage may not be lower than the applicable statutory minimum wage as established by section 6(a)(1) of the FLSA or, where applicable, a higher state minimum wage.

How does an employer conduct a prevailing wage survey under Section 14(c)?
To conduct a survey, the employer must obtain wage information for each job classification being performed by workers to be paid a special minimum wage. A brief job description should be prepared that defines the specific job duties, responsibilities and tasks; identifies the types of equipment and supplies used to perform the tasks; lists the types of skills, education or experience levels required; and indicates the location, and days and times of the week the work will be performed.

The employer should obtain wage data from comparable businesses in the vicinity that primarily employ workers who do not have disabilities performing the same work and utilizing similar methods and equipment as used by the worker with a disability. A *comparable business* is one that either employs a similar number of employees or competes for contracts of a similar size and nature. The appropriate size of the sample - the number of firms surveyed - will depend on the number of firms doing similar work in the vicinity, but normally should include no less than three. The prevailing wage information should be solicited, preferably in writing, and the employer conducting the survey should record the following information regarding each prevailing wage survey contact:

(1) date of contact;
(2) name, address and phone number of firm contacted;
(3) individuals contacted within each firm and the title of each individual;
(4) the wage rate information provided and the basis for concluding that each rate submitted was not based upon an entry level position;
(5) a brief description of work for which wage information was collected.

After contacting a sufficient number of comparable firms, the employer must average the wage information provided to determine the prevailing wage for a particular job. The employer may use either a weighted or simple average so long as he or she is consistent. See the following example:

Weighted Average vs. Simple Average

Employer	No. of Employees	Wage Rate Reported	Gross Wages (#Employees X Wage)
XYZ, Inc.	99	$7.55	$747.55
ABC, Inc.	17	$7.82	$132.94
RST, Ltd.	25	$8.00	$200.00
3 employers	141 employees	$23.37	$1,080.49

Weighted Average: $1,080.49 ÷ 141 employees = $7.66305 or $7.67*

Straight Average: $23.37 ÷ 3 employers = $7.79

*Note that in this example the weighted average yields a prevailing wage rate of $7.66305, but the employer rounded it up to $7.67 per hour. If the employer rounded to $7.66, he or she would be establishing a prevailing wage rate that is **less** than the true prevailing wage rate (less by $0.00305 per hour). The Wage and Hour Division will not normally question computations that are carried out to the fifth decimal point and then **rounded up** to four decimal places. The employer could, of course, round up (but not merely round off) sooner. For example, .04974 should be rounded to .0498 or .05.

Must all employers of workers with disabilities paid special minimum wages conduct prevailing wage surveys?

No. If an employer's workforce consists primarily of workers who do not have disabilities, the wage rate that the employer pays to his or her experienced workers who do not have disabilities who perform similar work may be adopted as the prevailing wage. Similarly, if an agency or community rehabilitation program places a worker with a disability on the premises of such an employer, the wage paid the employer's experienced workers who do not have disabilities performing similar work may be used as the prevailing wage.

In addition, the prevailing wage for workers with disabilities performing as service employees on contracts subject to the Service Contract Act would be the wage listed for the classification of work being performed on the Department of Labor Wage Determination included in the contract (if any). If a Wage Determination is included in the contract, all service employees (included those paid special minimum wages) must also receive the full fringe benefits listed on the Wage Determination. *Please see Fact Sheet 39F, The Payment of Special Minimum Wages to Workers with Disabilities Who Are Employed on Federal Service Contracts Subject to the McNamara-O'Hara Service Contract Act,* for more information concerning the Service Contract Act.

Finally, if the employer has a subcontract to perform a job in essentially the same way and with the same type of equipment as the prime contractor, the employer may use as the prevailing wage the wage rate the prime contractor pays to his or her experienced workers.

How often must an employer conduct a prevailing wage survey?

The prevailing wage survey must be conducted prior to paying a special minimum wage. It then must be reviewed and updated at least once a year - more frequently when a change in the prevailing wage has most likely occurred, such as when the FLSA minimum wage or a higher state minimum wage has been increased.

A word about the rules of ROUNDING when computing special minimum wages.

Section 14(c) requires that workers with disabilities for the work performed who receive special minimum wages must receive **at least** the commensurate wage for all hours worked. An employer who follows the normal business rules of rounding - rounding "up" only when the last decimal point is a five or higher - may actually be underpaying workers with disabilities. Although the underpayment per unit produced would be very small, the eventual back wage liability could be quite large considering the number of units that could be produced over an extended period of time by a number of different workers. This can be avoided by carrying computations out to the fifth decimal and then always rounding up to the fourth place. The 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 as compliance when computing special minimum wages due workers with disabilities under Section 14(c). Of course, an employer may round "up" sooner than the fifth decimal point.

How can I obtain more information about commensurate wages, prevailing wages, or other provisions of Section 14(c) and the FLSA?

For more information about these provisions, review the other fact sheets in this series which address Section 14(c) located at http://www.dol.gov/esa/sec14c/index.htm or call your local Wage and Hour Division Office. These offices can be found in the blue pages of your telephone directory. You may also call 1-866-4US-WAGE (1-866-487-9243). For more information about other laws enforced by the Wage and Hour Division, visit our e-laws Advisor at http://www.dol.gov/elaws/.

This fact sheet is intended as general information only and does not carry the force of legal opinion.

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