



WHEN CAN MY EMPLOYER PAY ME LESS THAN THE MINIMUM WAGE? – A FACT SHEET FOR SOCIAL SECURITY BENEFICIARIES

There are many issues to consider if you are a Social Security Disability Insurance (SSDI or Supplemental Security Income (SSI) recipient and considering returning to work. This Fact Sheet will explain your right, like all employees, to be paid the minimum wage unless your employer gets special certification to pay you less than the minimum wage. This Fact Sheet also explains other rights that you have as an employee regardless of your rate of pay.

What are my rights to be paid the minimum wage?

Unless specifically exempted by federal or state law, all full-time, part-time, and temporary employees must be paid at least the minimum wage for hours worked. The most current rate of the minimum wage per hour for Pennsylvania can be found at <http://www.dli.pa.gov/Individuals/Labor-Management-Relations/llc/Pages/Wage-FAQs.aspx>.

There are special rules regarding your employer's ability to pay training, learner, or student wages, in other words, less than the minimum wage. Pennsylvania law prohibits a training wage from being paid after July 23, 2009. In addition, Section 511 of the Workforce Innovation and Opportunity Act (WIOA), which was signed into law on July 22, 2014 imposes limitations on the payment of subminimum wages. Specifically, students must, in most circumstances, be referred to employment that pays at least the minimum wage as part of their transition from school to work and cannot be placed with employers that hold a 14(c) certificate (discussed below).

When can my employer pay me less than the minimum wage?

Your employer must have a 14(c) special minimum wage certificate from the U.S. Department of Labor Wage and Hour Division (WHD), which is current (not expired), to be allowed to pay you less than the minimum wage, or a special minimum wage. To see if your employer's certificate is current, visit WHD's website at <https://www.dol.gov/whd/specialemployment/BusinessCertList.htm>.

The certificate covers employees with disabilities where the disability impairs the employee's earning or productive capacity for the work to be performed. The special minimum wage is a wage based on the productivity of the individual that is in proportion to the wages paid to employees without disabilities performing essentially the same work. If your earning or productive capacity is not impaired for the work being performed, then you cannot be covered by the certificate and must be paid at least the minimum wage.

If you are covered by your employer's 14(c) special minimum wage certificate, your employer must inform you verbally and in writing of the terms of the certificate. This could include providing you with a copy of the certificate. Your parent or guardian must also be informed where appropriate. Also, your employer must display the WHD poster "Notice to Workers with Disabilities Paid at Special Minimum Wages" at your workplace. You must be paid the special minimum wage for hours during which you are performing productive work or when your employer requires you to remain available for the next assignment.

Your employer must review your productivity and wages at least once every six months to decide if you should still be paid less than the minimum wage. At least annually, your employer must review the prevailing wage paid to persons without disabilities in the geographic area for the same type of work and adjust all wages accordingly, including your special minimum wage.

If your employer does not have a 14(c) special minimum wage certificate, your employer can also request a certificate from the Pennsylvania Bureau of Labor Law Compliance to be allowed to pay you less than the minimum wage. This certificate from the state is given on an individual basis for an employee whose earning capacity for the work to be performed is impaired by a physical or mental disability. You and your employer must make a joint application for this certificate. If approved, both you and your employer will get a copy of the certificate. The certificate will contain information on the job worked, wage to be paid, and other important information.

Your workplace may be licensed by the Department of Human Services as a vocational facility, which could include sheltered employment. The vocational facility must have the appropriate federal or state certificates, as described above, to pay less than the minimum wage to workers with disabilities whose work performance is impaired by disability.

What if I disagree with being paid less than the minimum wage?

Pennsylvania is taking steps towards ensuring that workers with disabilities have the opportunity for employment in integrated settings where they can earn at least the minimum wage. On March 10, 2016, Governor Tom Wolf signed Executive Order 2016-03, making Pennsylvania an “Employment First” state. This means that agencies under the Governor’s jurisdiction must ensure that competitive-integrated employment is the first consideration and preferred outcome of all publicly funded education, employment and training, and long-term supports and service programs for working-age Pennsylvanians with a disability. In addition, WIOA requires Pennsylvania’s Office of Vocational Rehabilitation (OVR) to visit every 14(c) certificate holder in the state annually to see if workers with disabilities want to seek competitive-integrated employment where they can earn at least the minimum wage. You can also contact OVR directly to seek competitive-integrated employment. To find the office closest to you go to <http://www.dli.pa.gov/Individuals/Disability-Services/ovr/Pages/OVR-Office-Directory.aspx> or call their toll-free number at 800-442-6351.

If you think that you should be paid at least the minimum wage for the job you are currently performing, you can ask your employer for a copy of its special minimum wage certificate and find out whether you were listed in your employer's application for the certificate. You must have been listed on the application to be paid less than the minimum wage. You can also ask your employer to review your productivity and wages to determine if you should still be paid less than the minimum wage. Also, if your employer has a federal 14(c) special minimum wage certificate, you or your parent or guardian have the right to petition the U.S. Secretary of Labor, via the WHD, for a review of your special minimum wage rate. To file a complaint with the WHD, call their toll-free number at 866-487-9243 or go to <https://www.dol.gov/whd/howtofilecomplaint.htm> to find additional information on the complaint process as well as a list of WHD offices where you can file a complaint in person.

What are my rights when I work overtime?

Regardless of your rate of pay, if you work more than 40 hours in a week, your employer must pay you at least 1-1/2 times your rate of pay for the overtime hours. This applies if you are paid the minimum wage or if you are paid a special minimum wage. If you perform piece rate work, your employer must pay you 1-1/2 times the regular piece rate when you work during overtime hours.

What deductions can the employer take from my paycheck?

Regardless of your rate of pay, your employer can only take paycheck deductions for goods, services, rent, or similar items provided by your employer or by a third party if authorized in writing by you or by a collective bargaining agreement. There are limits on the amount of deductions that can be taken. Also, your employer cannot charge you for accommodations required under the Americans with Disabilities Act. However, as with all employees, your employer can deduct federal and state taxes from your paycheck.

Contact Information

If you need more information or need help, please contact Disability Rights Pennsylvania (DRP) at 800-692-7443 (voice) or 877-375-7139 (TDD). The email address is: intake@disabilityrightspa.org.

The mission of Disability Rights Pennsylvania is to advance, protect, and advocate for the human, civil, and legal rights of Pennsylvanians with disabilities. Due to our limited resources, Disability Rights Pennsylvania cannot provide individual services to every person with advocacy and legal issues. Disability Rights Pennsylvania prioritizes cases that have the potential to result in widespread, systemic changes to benefit persons with disabilities. While we cannot provide assistance to everyone, we do seek to provide every individual with information and referral options.

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PLEASE NOTE: For information in alternative formats or a language other than English, contact Disability Rights Pennsylvania at 800-692-7443, Ext. 400, TDD: 877-375-7139 or intake@disabilityrightspa.org.

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