

**§ 522.102 Issuance of learner certificates.**

In the absence of exceptional circumstances applications for the employment of learners at wages lower than the statutory minimum wage in the small electrical products industry shall be denied.

[32 FR 665, Jan. 20, 1967]

**§ 522.103 Learner certificates in exceptional circumstances.**

In each case where a prima facie showing of exceptional circumstances is initially made to the Administrator, the applicant will be given an opportunity to demonstrate at a public hearing, by reliable, probative, and substantial evidence, that the denial of the applicant for a special learner certificate will curtail opportunities for employment and that the granting of such certificate will not give a competitive advantage to the applicant or tend to depress working standards for experienced workers in the industry. At the public hearing interested persons will have full opportunity to appear, testify, and conduct such cross-examination as may be required for a full and true disclosure of the facts. In each case in which exceptional circumstances are shown to exist under the standards provided in this section, a special certificate for the employment of learners at wages less than the statutory minimum wage shall be issued in accordance with the provisions of the general learner regulations (§§ 522.1 to 522.9).

[32 FR 665, Jan. 20, 1967]

MEN'S AND BOYS' CLOTHING INDUSTRY

**§ 522.104 General denial policy.**

All applications for the employment of learners at wages lower than the statutory minimum wage in the men's and boys' clothing industry shall be denied. For the purpose of this section, the men's and boys' clothing industry is defined as the industry which manufactures men's, youths', and boys' suits, coats, and overcoats.

[32 FR 666, Jan. 20, 1967]

OFFICE AND CLERICAL OCCUPATIONS IN ANY INDUSTRY

**§ 522.105 General denial policy.**

All applications for the employment of learners at wages lower than the statutory minimum wage in office and clerical occupations in any industry shall be denied.

[32 FR 666, Jan. 20, 1967]

## PART 523—EMPLOYMENT OF MESSENGERS

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AUTHORITY: Sec. 14, 52 Stat. 1068; 29 U.S.C. 214.

SOURCE: 3 FR 2485, Oct. 15, 1938, unless otherwise noted.

**§ 523.1 Application for messengers.**

Application may be made to the Administrator of the Wage and Hour Division, Department of Labor, Washington, DC 20210, to employ messengers to be engaged primarily in delivering letters and messages at a wage lower than the minimum wage applicable under section 6 of the Fair Labor Standards Act of 1938 (52 Stat. 1062; 29 U.S.C. 206) whenever employment at such lower rate is necessary to prevent curtailment of employment opportunities.

[3 FR 2485, Oct. 15, 1938, as amended at 15 FR 603, Feb. 3, 1950]

**§ 523.2 Applications by groups or individuals.**

Such application may be filed by an employer or employee or group of employers or employees. Preferential considerations will be given, however, to applications filed by groups or organizations which are deemed to be representative of the interests of a whole industry or branch thereof.

**§ 523.3 Consideration on basis of industry.**

All applications filed under this part will be considered and acted upon on the basis of the needs of the employees and employers in the industry as a whole rather than on the basis of the needs of individual employees or employers in the industry.

**§ 523.4 Information in applications.**

The application shall:

(a) Identify the industry in which messengers, to be engaged primarily in delivering letters and messages, are requested to be employed at a wage lower than those applicable under section 6;

(b) Set forth the proposed hourly wage rate at which messengers will be compensated;

(c) State why messengers should be employed at a wage less than those applicable under section 6; and

(d) Include any other information believed to be pertinent.

[3 FR 2485, Oct. 15, 1938, as amended at 15 FR 603, Feb. 3, 1950]

**§ 523.5 Hearings.**

A hearing will be held before the Administrator or his authorized representative on such application at which all interested parties will be afforded an opportunity to present evidence and to be heard. A notice of the time, place, and scope of the hearing will be published in the FEDERAL REGISTER and made public by a general press release at least five days before the date of such hearing.

**§ 523.6 Witnesses.**

The Administrator shall issue a subpoena for attendance at such hearings to any party upon request and upon a showing of general relevance and reasonable scope of the evidence sought. The Administrator may, on his own motion, or that of his authorized representative, cause to be brought before him or his authorized representative any witness whose testimony he deems material to the matters in issue.

[11 FR 9555, Aug. 30, 1946]

**§ 523.7 Burden of proof on applicants.**

The applicant or applicants shall have the burden of showing at such

hearing that the minimum wage applicable under section 6 will curtail employment opportunities for messengers in the industry designated in the application.

**§ 523.8 Further regulations for certificates.**

If upon the hearing the Administrator or his authorized representative determines that a lower wage rate than the rate applicable under section 6 is necessary to prevent curtailment of employment opportunities, the Administrator will issue rules and regulations providing for the employment of messengers in the industry under special certificates at such lower wage (subject to such limitations as to time, number, proportion and length of service) as the Administrator or his authorized representative has found to be necessary on the basis of the evidence presented at the hearing.

**§ 523.9 Petition for review.**

Any person aggrieved by the action of an authorized representative of the Administrator under this part may within fifteen days after the action of such representative file a petition with the Administrator requesting a review by the Administrator of the action of the representative. If the request for review is granted, all interested parties will be afforded an opportunity to be heard either in support or in opposition to the matters prayed for in the petition. A notice of the time and place and scope of the hearing will be published in the FEDERAL REGISTER and made public by general press release at least five days before the date of such hearing.

**§ 523.10 Petition for amendment of regulations.**

Any person wishing a revision of any of the terms of §§ 523.1 through 523.9 applicable to messengers may submit in writing to the Administrator a petition setting forth the changes desired and the reasons for proposing them. If, upon inspection of the petition, the Administrator believes that reasonable cause for amendment of the regulations is set forth, the Administrator will either schedule a hearing with due notice to interested parties, or will

make other provision for affording interested parties an opportunity to present their views, both in support and in opposition to the proposed changes.

## PART 525—EMPLOYMENT OF WORKERS WITH DISABILITIES UNDER SPECIAL CERTIFICATES

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AUTHORITY: 52 Stat. 1060, as amended (29 U.S.C. 201-219); Pub. L. 99-486, 100 Stat. 1229 (29 U.S.C. 214).

SOURCE: 54 FR 32928, Aug. 10, 1989, unless otherwise noted.

### § 525.1 Introduction.

The Fair Labor Standards Amendments of 1986 (Pub. L. 99-486, 100 Stat. 1229) substantially revised those provisions of the Fair Labor Standards Act of 1938 (29 U.S.C. 201) (FLSA) permitting the employment of individuals disabled for the work to be performed (workers with disabilities) at special minimum wage rates below the rate that would otherwise be required by statute. These provisions are codified at section 14(c) of the FLSA and:

(a) Provide for the employment under certificates of individuals with disabili-

ties at special minimum wage rates which are commensurate with those paid to workers not disabled for the work to be performed employed in the vicinity for essentially the same type, quality, and quantity of work;

(b) Require employers to provide written assurances that wage rates of individuals paid on an hourly rate basis be reviewed at least once every six months and that the wages of all employees be reviewed at least annually to reflect changes in the prevailing wages paid to experienced individuals not disabled for the work to be performed employed in the locality for essentially the same type of work;

(c) Prohibit employers from reducing the wage rates prescribed by certificate in effect on June 1, 1986, for two years;

(d) Permit the continuance or establishment of work activities centers; and

(e) Provide that any employee receiving a special minimum wage rate pursuant to section 14(c), or the parent or guardian of such an employee, may petition for a review of that wage rate by an administrative law judge.

### § 525.2 Purpose and scope.

The regulations in this part govern the issuance of all certificates authorizing the employment of workers with disabilities at special minimum wages pursuant to section 14(c) of FLSA.

### § 525.3 Definitions.

(a) *FLSA* means the Fair Labor Standards Act of 1938, as amended.

(b) *Secretary* means the Secretary of Labor or the Secretary of Labor's authorized representative.

(c) *Administrator* means the Administrator of the Wage and Hour Division, U.S. Department of Labor, or the Administrator's authorized representative.

(d) *Worker with a disability* for the purpose of this part means an individual whose earning or productive capacity is impaired by a physical or mental disability, including those relating to age or injury, for the work to be performed. Disabilities which may affect earning or productive capacity include blindness, mental illness, mental retardation, cerebral palsy, alcoholism, and drug addiction. The following, taken by