

U.S. Department of Labor

Wage and Hour Division
230 South Dearborn Street, Room 514
Chicago, Illinois 60604-1757



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Dear Employer:

A significant number of states, plus Washington DC, will increase the state minimum wage rate. Our records indicate that you hold a special certificate, as provided by Section 14(c) of the Fair Labor Standards Act (FLSA), which authorizes the payment of wages lower than the minimum wage applicable under the FLSA to workers with disabilities. Should your state's minimum wage rate change, this increase may impact prevailing wage rates for workers in your area, even those prevailing wages that already exceed the new state minimum wage rate. The Wage and Hour Division (WHD) would like to take this opportunity to work with you to ensure the commensurate wage rates you are paying are adjusted, if necessary.

The enclosed guide explains the steps certificate holders must take to ensure continued compliance with the terms of their certificates. If you have questions about how the increase in the state minimum wage affects the payment of commensurate wages to workers with disabilities please contact the Section 14(c) Certification Team at (312) 596-7198.

I hope you find this information helpful. We look forward to working with you to ensure all workers are paid properly.

Sincerely,

Nicole Howard
Supervisory Wage and Hour Investigator

Encl Guide to Adjusting Commensurate Wage Rates as a Result of Increases in the
Minimum Wage

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GUIDE TO ADJUSTING COMMENSURATE WAGE RATES AS A RESULT OF INCREASES IN THE MINIMUM WAGE

The Wage and Hour Division issues certificates authorizing the employment of workers with disabilities at special minimum wage rates which are less than the minimum wage established by section 6 of the Fair Labor Standards Act (FLSA). These special minimum wage rates are based on the prevailing wage rates paid experienced workers in the area. To ensure workers receive their proper compensation, certificate holders must review the special minimum wage rates for employees paid on an hourly basis at periodic intervals, not to exceed six months as per Regulations, 29 C.F.R. Part 525.9(b)(1). In addition, the wages for all employees must be adjusted at least once per year to reflect changes in prevailing wage rates paid to experienced nondisabled individuals employed in the locality for essentially the same type of work as per Regulations 525.12(f).

In the coming months a significant number of states, plus Washington DC, will increase the state minimum wage rate. Many of the changes will become effective on January 1, 2017. Other changes will occur throughout the rest of 2017. We urge you to regularly verify the minimum wage rate and its effective date with your state.

This increase in the state minimum wage rate will most likely impact the prevailing wages being paid in your area. This is true even if the current prevailing wage rates exceed the new statutory minimum wage rate. To ensure that your employees are properly paid and that you remain in compliance with the provisions of your certificate, you must review the prevailing wage rates that you use to determine the commensurate wage rates paid to your employees with disabilities. After this review, you are required to adjust the commensurate wage rates to reflect any increases in the prevailing wage rates. Rather than conduct a prevailing wage survey at this time, you may choose to simply raise your prevailing wage rates by the percentage of increase in the minimum wage and adjust commensurate wage rates paid workers with disabilities accordingly. More information concerning this blanket adjustment is provided later in this guide.

To help you through this process, we are providing the following information in a question and answer format.

How can an increase in the minimum wage affect wages being paid to workers with disabilities in my facility?

The certificate which authorizes you to pay special minimum wages requires that workers with disabilities receive wages commensurate with those paid experienced nondisabled workers. An increase in the minimum wage will most likely affect the prevailing wage rates paid to these workers. In order to assure continued payment of proper

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commensurate wage rates you should review these guidelines and take measures to determine if there is an increase in the prevailing wage rates. The mere adjusting of prevailing wage rates that are below the previous minimum wage may not be sufficient for compliance under section 14(c) of the FLSA. You must consider all of the appropriate issues discussed here.

What if my current computed prevailing wage rates are less than the new minimum wage?

Commensurate wage rates that are based on prevailing wage rates less than the new minimum wage will have to be adjusted upward to at least that level, effective on the date of the state minimum wage rate increase, and you need to compute commensurate wage rates based on the new (higher) prevailing wage rates. Section 525.10(h) of the regulations prohibits a prevailing wage rate that is less than the minimum wage specified in section 6(a) of the FLSA. Commensurate wage rates paid workers with disabilities must reflect these increases for all hours worked on or after the date of increase.

What if my current prevailing wage rates already exceed the new minimum wage?

Because the increase in the state minimum wage will probably impact most prevailing wage rates, including those already greater than the new minimum wage, certificate holders are still required to review and adjust if necessary the prevailing wage rates used to determine commensurate wage rates.

How do we determine what the new prevailing wage rates are in our area?

As mentioned above, all prevailing wage rates will need to be reexamined to assess the impact of the increase in the minimum wage. Your facility should contact the sources from which you originally obtained prevailing wage rate information to determine the effect of the increase of the minimum wage, or, if necessary, obtain this information from new sources. Once you have this information, you should adjust the wage rates of workers with disabilities no later than the next full pay period after the prevailing wage rates are reexamined. The adjustment should be made retroactive to thirty days after the date of the increase of the state minimum wage rate. You should make sure the data you collect on wage rates reflects the changes in the statutory minimum wage and advise the sources accordingly. As with all prevailing wage surveys, you should also document these contacts and have this information available for review by the Wage and Hour Division. These procedures are required under sections 525.9(b)(2), 525.10, 525.12(f) and 525.16(c) of the regulations.

What if we just conducted a survey and it is not convenient to make a new survey at this time? Is there any alternative method for adjusting commensurate wage rates?

Yes, you may elect to make a blanket adjustment to prevailing wage rates based on the percentage increase in the minimum wage. This change should be accomplished in the next complete pay period following the minimum wage increase. For example if the minimum wage increased from \$8.15 per hour to \$9.73 per hour the percentage increase would be 19.4% ($\$9.73 / \$8.15 = 1.1939$). In this example, your facility could elect to adjust all prevailing wage rates by 19.4% beginning on the effective date of the state minimum wage rate increase and not reexamine prevailing wage rates until your facility would be otherwise required to do so to maintain your authority to pay commensurate wage rates to workers with disabilities.

Using the example above, if the current prevailing wage rate used is \$8.50 per hour and an hourly paid worker with disabilities paid under a special certificate currently receives one-half of that rate (\$4.25 per hour), you could adjust the prevailing wage rate to \$10.15 per hour ($\8.50×1.194), raise that worker's commensurate wage rate to \$5.0750 or \$5.08 per hour (one-half of \$10.15) and meet the requirements of the regulations.

To make this blanket adjustment to piece rates, simply multiply the existing piece rate by the increase in the minimum wage (using the above example, $\$.0850$ per piece $\times 1.194 = \$.1015$). If piece rates have been established by time studies conducted by your facility, it is suggested that your records should show the prevailing hourly rate used to establish the piece rate has been increased by 19.4%. For example, the original $\$.0850$ piece rate was based on a prevailing wage of \$8.50 per hour and a time study showing the nondisabled worker is able to produce 100 widgets in a "fifty-minute" hour, allowing 10 minutes per hour for personal time and fatigue ($\$8.50$ divided by 100 = $\$.0850$). Your records should indicate the new piece rate, $\$.1015$, is based on the adjusted prevailing wage rate of \$10.15 per hour ($\10.15 divided by 100 = $\$.1015$).

Employers who choose to make blanket adjustments to the prevailing wage rates to accommodate the increase in the state minimum wage are still required to conduct annual reviews of the prevailing wage rates on or before the anniversary date of their last prevailing wage surveys. In the example above, the employer would be required to conduct the review on or before the anniversary date of the establishment of the \$8.50 prevailing wage rate – not the anniversary date of the blanket adjustment.

How much time does an employer have to complete this process?

An employer may not base a commensurate wage rate on a prevailing wage rate that is less than the statutory minimum wage. Therefore, any prevailing wage rate less than the new minimum wage must be raised to that level by the effective date of the state minimum wage rate increase. It is anticipated that the "ripple effect" of the increased minimum wage will not take place immediately. We are, therefore, advising employers to reexamine any prevailing wage rate equal to or greater than the new minimum wage no

sooner than 30 days and no later than 60 days after the effective date of the minimum wage increase. Upon completion of the survey process, any increases in prevailing wage rates must be reflected in the commensurate wage rates of workers with disabilities by the next complete pay period. If a facility decides to increase rates using the blanket adjustment percentage method described above, this should be completed by the next full pay period after the minimum wage increase occurs.

What will happen if these adjustments in wage rates are not completed in a timely fashion?

All adjustments to prevailing wage rates must be reflected by a corresponding increase to commensurate wage rates. These changes must be made no later than the next full pay period following the reexamination and/or adjustment of the prevailing wage rates. Failure to follow these procedures is likely to cause violations of the FLSA and affect the terms and conditions of your certificate authorizing the employment of workers with disabilities at commensurate wage rates. This may also result in the computation of back wages and a request for payment of any back wages due to such workers.

We do McNamara-O'Hara Service Contract Act (SCA) work for a federal agency and base our commensurate wage rates on the wage determination rate required by the contract. Do we need to adjust these rates?

No, wages based on a wage determination issued under SCA do not have to be increased unless the wage determination calls for a wage rate less than the new, increased minimum wage. In such instances, commensurate wage rates must be based on a prevailing wage rate at least equal to the minimum wage.

If you have an SCA contract without a wage determination please contact the Wage and Hour Division for more information.

I have read this Guide and I still have questions. Who can help me with my problems?

You may contact the Wage and Hour Division's Section 14(c) Certification Team at 312/596-7195.