

Department of Industrial Relations
DIVISION OF LABOR STANDARDS ENFORCEMENT
Licensing & Registration Unit
1515 Clay Street, Suite 1902
Oakland, CA 94612
Sheltered Workshop: (510) 285-3399
Special Minimum Wage: (510) 285-3073; (510) 285-3501



**GENERAL INFORMATION AND INSTRUCTIONS FOR COMPLETING
APPLICATION FOR SHELTERED WORKSHOP LICENSE (DLSE 117(6/19))**

Or

APPLICATION FOR LICENSE – SPECIAL MINIMUM WAGE FOR DISABLED WORKER (DLSE 106 (6/19))

General Information:

Sheltered workshop licenses are issued by the Division of Labor Standards Enforcement (the "Division") to programs operated by non-profit organizations pursuant to Section 6 of the Industrial Welfare Commission (IWC) Wage Orders and Labor Code section 1191.5, which Code section provides:

Notwithstanding the provisions of Section 1191, the commission may issue a special license to a nonprofit organization such as a sheltered workshop or rehabilitation facility to permit the employment of employees who have been determined by the commission to meet the requirements in Section 1191 without requiring individual licenses of such employees. The commission shall fix a special minimum wage for such employees. The special license for the nonprofit corporation shall be renewed on a yearly basis, or more frequently as determined by the commission.

A license authorizing payment of a special minimum wage to a disabled worker is issued by the Division jointly to for-profit business establishments and disabled individuals pursuant to Section 6 of the Industrial Welfare Commission (IWC) Wage Orders and Labor Code section 1191, which Code section provides:

For any occupation in which a minimum wage has been established, the commission may issue to an employee who is mentally or physically handicapped, or both, a special license authorizing the employment of the licensee for a period not to exceed one year from date of issue, at a wage less than the legal minimum wage. The commission shall fix a special minimum wage for the licensee. Such license may be renewed on a yearly basis

For purposes of determining suitability for licensing, as well as standards for maintaining licensing status, the Division has, to the extent possible, adopted the criteria for certification for licensing and operation applied by the United States Department of Labor (DOL) for a special minimum wage certificate under section 14(c) of the Fair Labor Standards Act (FLSA), including regulations at 29 CFR, Chapter V, Part 525. For your reference, contact information and pertinent resource website links, are located at the end of this document.

When conducting its investigation to determine whether a license will be issued, the Division will take into consideration evidence of compliance with certification requirements and evidence of good standing of certification from the DOL. If you are required to be certified by DOL, your certification with this agency must be current and in good standing in order to be considered for licensing by the Division. However, the Division reserves the right to deny or revoke a license based upon its own investigation. Certification in good standing with the DOL, in and of itself will not guarantee the granting of a license by the Division. The Division may inspect the place of business of any organization and may request at any time additional documentation it deems necessary to conduct its investigation and make its determination.

The special minimum wage paid to disabled workers must be commensurate with the productivity of the disabled worker as compared to the wage and 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. Your license, if one is issued, will specify the duration of the license and the minimum wage that must be paid to clients employed in each program.

Employers who employ workers with disabilities are subject to the same IWC Order, Labor Code, and FLSA rules of coverage, employment relationship, exemptions, child labor restrictions, and principles regarding such things as hours worked and record keeping as those who employ workers who do not have disabilities. The issuance of a license authorizing payment of wages at less than the minimum wage does not constitute a statement of compliance to the employer by the Division of Labor Standards Enforcement nor does it convey a good faith defense to the employer should

violations of any IWC Orders, Labor Code and FLSA occur. The license will be issued upon the terms and conditions listed below.

Instructions:

1. Complete one application covering all branch establishments operating in the State of California, which branches shall be listed in No. 8 of the application form.
2. **It is mandatory that the following documents be provided along with your completed application form at the time of submission of your application. The Division cannot issue a temporary/provisional license pending completion of the application process. Your application cannot be processed and a license will not be issued until all documentation is complete:**
 - a. Evidence of current workers compensation insurance;
 - b. If applicable, evidence of current certification from DOL.
 - c. A list of all employee names for each location which list also includes for each employee the date hired, primary disability, type of work performed
 - d. Documentation evidencing wage rate requested, including detailed description of work to be performed and
 - i. As applicable for sheltered workshops: examples of work measurement evaluation for 3 current workers paid hourly including average earnings per hour based on last fiscal quarter; and/or prevailing wage information and piece rated standard productivity and time studies for 4 largest contracts during licensing period
 - ii. As applicable for special minimum wage applications: work measurement evaluation and prevailing wage surveys including current wage rate requested, date of last wage review, and if a renewal application, previous wage rate;
 - e. If applicable, list of all branch establishments, including address, telephone numbers and point of contact
 - f. If you are submitting a renewal application and are requesting a wage rate lower than that paid in the previous licensing period, documentation evidencing justification for reduced wage rate, including work measurement evaluation and prevailing wage surveys
3. Sign and date the application's certification section and send the original of the application, along with documentation requested above, to the mailing address listed above.

Terms and Conditions:

1. A copy of the license shall be maintained at each location where individuals will be employed
2. A copy of the DOL poster "Employee Rights for Workers with Disabilities Paid At Special Minimum Wages" shall be maintained at each location where individuals will be employed
3. No provision of the license shall excuse non-compliance with any other Federal or State law establishing higher standards
4. All provisions of the Industrial Welfare Commission Orders will be observed
5. Records shall be maintained as required by Section 7 of the Industrial Welfare Commission Orders
6. Consistent with requirements of DOL, a wage review must be completed at least once every six months and a prevailing wage survey must be performed annually.
7. Records shall be maintained for each worker which include:
 - a. Documentation consistent with the requirements of 29 CFR 525.16
 - b. The nature of each disabled worker's disability, including, where appropriate, medical reports and examinations
 - c. Evidence, if applicable, of each worker's piece-work production
 - d. Evidence of work measurement method and evaluation process
 - e. Evidence of dates and circumstances of review of each worker's wage rate
 - f. Evidence of methodology and dates of prevailing wage surveys
 - g. Evidence of written notification to worker and/or guardian of advice of wage rate being paid
8. Every employer shall maintain a Cal/OSHA Injury and Illness Prevention Program (IIPP) along with all required Cal/OSHA documentation and reports

Definitions:

Worker with a disability: An individual whose earning or productive capacity is impaired by age, physical or mental deficiency or injury. Examples of disabilities that may affect a worker's earning or productive capacity include blindness, mental illness, mental retardation, cerebral palsy, alcoholism, drug addition and age. Age may be considered an impairment to earning or productive capacity only when the individual is at least 70 years old and age impairs his or her productivity for the work performed. Age, as well as vocational social, cultural or educational disabilities (such as chronic

unemployment, receipt of welfare benefits, correctional parole, etc.) by themselves do not constitute a disability but may exist in conjunction with a physical or mental disability.

Special Minimum Wage: A wage authorized under a license issued to an employer that is less than the statutory minimum wage

Public Not For Profit Agency: A Public Agency is directly funded by the government such as a school or other social services agency.

Note: The Division does NOT license a Public Not for Profit Agency. If your organization falls within this category, STOP. You do not need to complete this application.

Private Not For Profit: An IRS and State of California approved Not For Profit organization.

Private For Profit Agency: A private licensed business, Private For Project Agencies can be utilized when necessary services from Public or Private Not For Profit Agencies are not available of sufficient.

Community Rehabilitation Program (CRP): An agency, organization or institution, or unit of an agency, organization or institution that provides directly, or facilitates the provision of vocational rehabilitation services as one of its major functions.

Regional Centers: Nonprofit private corporations that contracts with the Dept. of Developmental Services to help plan, access, coordinate and monitor services and supports for individuals with developmental disabilities.

Work Services Program (aka Habilitation): Addresses vocation needs of persons with developmental disabilities through services directed toward developing the individual's maximum potential for mainstreaming into generic vocational rehab programs through Work Activity Programs or supported employment services

Supported Employment: Services aimed at finding competitive work in a community integrated work setting for persons with severe disabilities who need ongoing support services to learn and perform the work. Can be individual placements, group placements (enclaves) and work crews. Usually provide a job coach who meets regularly with the individual on the job

Supported employment work site: A location outside of the work center or rehabilitation center, often on the premises of an enterprise separate from the work center or rehabilitation center, where workers with disabilities paid special minimum wages are placed in employment settings along with work center staff (job coaches)

Work Centers (aka Sheltered Workshop; Work Activity Programs): Services through DDS/Regional Center include paid work, work adjustment and supporting habilitation services in sheltered workshop setting. CRP owned businesses such as retail stores, restaurants, franchises, etc. Must be paid in accordance with Federal and State labor laws

Patient worker: A worker with a disability employed by a hospital or institution providing residential care where such worker receives treatment or care without regard to whether such worker is a resident of the establishment

Hospital or Institution: A public or private, nonprofit or for-profit facility, primarily engaged in providing residential care for the sick, aged or mentally ill or retarded, including but not limited to nursing homes, intermediate care facilities, rest homes, convalescent homes, homes for the elderly and infirm, halfway houses, residential centers for drug addicts or alcoholics, and the like, whether licensed or not licensed.

Business establishment: An employer in private industry who is not a work center or employer of patient workers that is seeking permission to employ workers with disabilities at special minimum wages

School work experience program: A school operated program by which students with disabilities may be placed in jobs with private industry within the community

Branch establishment: A physically separate establishment of the same enterprise

Enclave: A supported employment work site where a group of workers with disabilities is working and supervised by staff from the work center

Assessment Services: Provides information that will assist in eligibility determination, determine barriers to employment, and/or determine nature and scope of services, and may include vocational evaluation, situational assessment and/or vocational assessment

Training Services: Provides necessary interactions that remove employment barriers and/or provide specific occupational training and develop appropriate personal and work behaviors, and may include personal, vocational and social adjustment (PVSA), work adjustment and/or occupational skills training:

Commensurate wage: A special minimum wage paid to an individual with a disability which is based on the worker's individual productivity in proportion to the wage and productivity of experienced non-disabled workers performing essentially the same type, quality, and quantity of work in the vicinity in which the disabled worker is employed. Please reference DOL Fact Sheet #39E

Prevailing wage: Wage rate that is paid to an experienced worker not disabled for the work to be performed in a given area

Work measurement method: Must be verifiable through use of established industrial work measurement techniques, such as stopwatch time studies, Methods-Time Measurement (MTM), Modular Arrangement of Predetermined Time Standards (MODAPTS), factoring. Please reference DOL Fact Sheet #39E

Additional Resources and Contact Information:

U.S. Department of Labor (DOL)
Employment Standards Administration
Wage and Hour Division
230 South Dearborn St., Room 514
Chicago, IL 60604
(312) 596-7195
Toll free information and helpline: 1-866-487-9243
<http://www.dol.gov>

- ESA: Wage and Hour Division: <http://www.dol.gov/esa/whd>
- Workers with Disabilities section (including links to Fact Sheets series, Field Operations Handbook, Prevailing Wage guide and eLaw advisor): <http://www.dol.gov/esa/sec14c/index.htm>
- DOL Special Minimum Wage Compliance poster: <http://www.dol.gov/esa/regs/compliance/posters/pdf/disabc.pdf>
- Fair Labor Standards Act: <http://www.dol.gov/esa/whd/flsa/index.htm>
- 29 CFR, Part 525: http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_525/toc.htm

California Department of Occupational Safety and Health (DOSH) (Cal/OSHA)
Consultation service for employers
(800) 963-9424

- IIPP program information: http://www.dir.ca.gov/dosh/dosh_publications/iipp.html