

**DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES**

**BUREAU OF SAFETY AND REGULATION**

**WAGE HOUR DIVISION**

**WAGE DEVIATION**

(By authority conferred on the director of labor by section 6 of Act No. 154 of the Public Acts of 1964, as amended, being S408.386 of the Michigan Compiled Laws)

**R 408.771 Scope.**

Rule 1. (1) These rules require that handicapped workers who are being paid sub-minimum wages shall receive wage rates commensurate with their productive capacity.

(2) These rules require that employers of handicapped workers who are being paid sub-minimum wages shall maintain records which substantiate the fact that the handicapped workers are being paid wage rates commensurate with their productive capacity.

(3) These rules establish procedures for an employer of handicapped workers to apply for wage deviation certificates under section 7 of the act.

(4) These rules establish administrative proceedings to grant wage deviation certificates under the act.

History: 1983 AACCS.

**R 408.772 Definitions.**

Rule 2. As used in these rules:

(a) "Act" means Act No. 154 of the Public Acts of 1964, as amended, being S408.381 et seq. of the Michigan Compiled Laws.

(b) "Board" means wage deviation board.

(c) "Commensurate wage" means the wage which is proportionate to the prevailing industry wage rate.

(d) "Department" means the department of labor.

(e) "Deviated wage rate" means an hourly wage or piece rate which is below the minimum wage rate prescribed in section 4 of the act, is based upon a handicapped worker's productive capacity, and is commensurate with the prevailing industry wage rate.

(f) "Director" means the director of the department or his or her authorized representative.

(g) "Handicapped worker" means an individual whose earning or productive capacity is limited by a physical or mental impairment.

(h) "Locality" means the county, city, village, or township in which the work is performed.

(i) "Prevailing industry wage rate" means the overall average wage rate paid to nonhandicapped workers in industry in the locality for essentially the same type of work.

(j) "Private sector employment" means remunerative employment within a setting other than a rehabilitation facility.

(k) "Rehabilitation facility" means a charitable or non-profit organization or institution or program including the state and its political subdivisions, agencies, and instrumentalities for the purpose of carrying out a recognized program of habilitation or rehabilitation for handicapped individuals and for providing such individuals with remunerative employment or other occupational habilitation or rehabilitation activity of an educational or therapeutic nature.

(l) "Wage deviation certificate" means a written document issued by the director to either a rehabilitation facility or a private sector employer which authorizes the payment of a deviated wage rate to a group of handicapped workers employed by a rehabilitation facility or to an individual handicapped worker employed by a private sector employer.

History: 1983 AACCS.

#### **R 408.773 Commensurate wage.**

Rule 3. (1) A handicapped worker covered by a wage deviation certificate shall be paid a commensurate wage.

(2) A handicapped worker covered by a wage deviation certificate shall not be paid less than 1 1/2 times his or her commensurate wage rate for all work in excess of the maximum hours as required by section 4a of the act.

History: 1983 AACCS.

#### **R 408.774 Prevailing industry wage rate; determination; documentation.**

Rule 4. (1) To determine the prevailing industry wage rate for a specific type of work, a rehabilitation facility shall utilize 1 of the following sources:

(a) The state employment service.

(b) Private sector employers in the locality performing similar work.

(c) Recent wages, or wages adjusted for wage increases, which were previously determined by the rehabilitation facility for previous work of a similar nature.

(2) Where the specific type of work is not performed in the private sector in the locality in which the rehabilitation facility is located, the prevailing industry wage rate shall be at least the minimum hourly rate established by the act.

(3) Where a variety of industry wage rates are paid for the work in question, the prevailing wage shall be the overall average wage paid.

(4) A rehabilitation facility shall document efforts to obtain prevailing wage information, and maintain such written documentation for not less than 3 years.

(5) A rehabilitation facility shall review and update prevailing wage information to reflect any changes not less than every 6 months.

History: 1983 AACCS.

**R 408.775 Time study for piece rate; conduct; purpose; retention of records; review.**

Rule 5. (1) Where a prevailing industry piece rate cannot be established in accordance with R 408.774, a rehabilitation facility shall conduct a time study to determine the piece rate to be paid to a handicapped worker. The following steps shall constitute an acceptable time study method for piece rates:

(a) Establish the steps of each type of work to be performed by the handicapped worker.

(b) Have the type of work performed by a nonhandicapped worker for a 50-minute period.

(c) Determine the hourly productivity of the nonhandicapped worker by computing the sum of pieces produced during the 50-minute period.

(d) Determine the piece rate to be paid to the handicapped worker by dividing the prevailing industry hourly wage rate by the hourly productivity of the nonhandicapped worker.

(2) If methods other than those in subrule (1) of this rule are used, the rehabilitation facility shall demonstrate that such methods accurately establish the commensurate wage to be paid to the handicapped worker.

(3) A rehabilitation facility shall retain records of time studies used to determine piece rates for 3 years.

(4) Piece rates shall be reviewed and updated not less than every 6 months to reflect changes in prevailing industry wage rates.

History: 1983 AACCS.

**R 408.776 Time studies for hourly rates; conduct; retention of records; review.**

Rule 6. (1) A rehabilitation facility shall conduct a time study to determine the deviated wage rate to be paid to the handicapped worker. The following steps shall constitute an acceptable time study method:

(a) Establish the prevailing industry wage rate for the work to be performed in accordance with R 408.774.

(b) Establish the steps of each type of work to be performed.

(c) Have the type of work performed by a nonhandicapped worker for a 50-minute period.

(d) Determine the hourly productivity of the nonhandicapped worker by computing the sum of tasks performed during the 50-minute period.

(e) Have the type of work performed by the handicapped worker for a 50-minute period.

(f) Determine the hourly productivity of the handicapped worker by computing the sum of tasks performed during the 50-minute period.

(g) Determine the percentage of the handicapped worker's productive capacity as compared to the hourly productivity established for the nonhandicapped worker.

(h) Determine the hourly rate to be paid to the handicapped worker by multiplying the percentage of the handicapped worker's productive capacity by the established prevailing industry wage rate.

(2) If methods other than those in subrule (1) of this rule are used, the rehabilitation facility shall demonstrate that such methods accurately establish the commensurate wage to be paid to the handicapped worker.

(3) A rehabilitation facility shall retain records of time studies used to determine hourly wages for 3 years.

(4) The handicapped worker's productivity shall be measured no less than every 6 months and the hourly rate shall be adjusted to ensure that the commensurate wage is paid to the handicapped worker.

(5) Hourly wage rates shall be reviewed and updated not less than every 6 months to reflect changes in prevailing industry wages.

History: 1983 AACCS.

**R 408.777 Wage deviation certificate; application; specifications; duration; issuance and denial; amendment.**

Rule 7. (1) An application for a wage deviation certificate shall be filed by a rehabilitation facility or by a private sector employer seeking to pay a deviated wage rate to handicapped workers not covered under section 14(c) of the fair labor standards act of 1938, as amended, 29 U.S.C. 214. A unit of rehabilitation facility having an identifiable program which operates at a different location under separate supervision shall file applications separately.

(2) A certificate shall specify the terms and conditions under which it is granted.

(3) A certificate shall take effect on the date issued and shall be effective for 12 months. Handicapped workers may be paid a deviated wage rate only during the effective period of the certificate.

(4) If a certificate is issued by the director, a copy shall be sent to the rehabilitation facility or private sector employer. If denied, the applicant shall be notified in writing of the denial and the reasons for the denial and of the appeal rights provided for in R 408.784 and R 408.785.

(5) The terms of a certificate may be amended upon written request from a rehabilitation facility or private sector employer and subsequent approval by the director.

History: 1983 AACCS.

**R 408.778 Certification of applications for private sector employment.**

Rule 8. (1) An application submitted by a private sector employer not covered by the definition of a rehabilitation facility shall be certified by either the Michigan rehabilitation service in the department of education or the commission for the blind in the department of labor, or both.

(2) Certification by the commission for the blind is required when the worker covered under the certificate is legally blind, as determined pursuant to section 1(a) of

Act No. 260 of the Public Acts of 1978, being S393.351(a) of the Michigan Compiled Laws. All other applicants shall be certified by the Michigan rehabilitation service.

(3) Certification shall involve a determination that the productive capacity of the handicapped worker to be covered by the certificate is genuinely impaired by a physical or mental disability and that the handicapped worker is to be paid a commensurate wage.

History: 1983 AACCS.

**R 408.779 Criteria for issuance of certificate.**

Rule 9. The following criteria as established by the board shall be considered by the director prior to the issuance of a wage deviation certificate:

(a) An applicant's previous and current compliance with the act.

(b) Whether the handicapped workers covered by the certificate are being paid a commensurate wage.

(c) Whether the applicant can document, for each worker covered by the certificate, that the individual's productive capacity is impaired and that the impairment is caused by a physical or mental disability.

History: 1983 AACCS.

**R 408.780 Renewal certificate.**

Rule 10. (1) A renewal certificate may be issued by the director to a rehabilitation facility or private sector employer whose current certificate is near expiration provided an application for renewal has been properly filed not less than 60 calendar days prior to the expiration date of the current certificate.

(2) The current certificate shall remain in effect until the application for the renewal has been granted or denied.

(3) The renewal certificate shall take effect on the expiration date of the current certificate and shall remain in effect for 12 months.

(4) Issuance of a renewal certificate shall be contingent upon a finding that the applicant meets the requirements of the act.

History: 1983 AACCS.

**R 408.781 Temporary certificate.**

Rule 11. A temporary certificate may be issued by the director to a rehabilitation facility or private sector employer applying for a certificate. Issuance of a temporary certificate shall be contingent upon a finding by the director that the applicant has provided satisfactory evidence that a commensurate wage will be paid to the handicapped workers covered by the certificate, and that the requirements of the act will be met. A temporary certificate shall be effective for no more than 6 months' duration.

History: 1983 AACCS.

**R 408.782 Records.**

Rule 12. (1) A rehabilitation facility granted a certificate shall maintain, and have available for inspection by the director, records including the following:

- (a) Documentation substantiating each handicapped worker's disability.
- (b) Total hours worked each pay period.
- (c) Total wages paid each pay period.

(d) For employees paid on a piece work basis, the piece rate paid and the total number of units produced at such piece rate for each pay period.

(e) Time studies and calculations made to determine each handicapped worker's productive capacity and the piece rate or hourly rate to be paid each handicapped worker.

- (f) Sources used to establish the prevailing industry wage rate.

(2) A private sector employer granted a certificate shall maintain and have available for inspection by the director records to include the following:

- (a) Documentation substantiating each handicapped worker's disability.
- (b) Total hours worked each pay period.
- (c) Total wages paid each pay period.

(d) Certification by Michigan rehabilitation services or the commission for the blind that the productive capacity of the handicapped worker is genuinely impaired by a physical or mental disability and that the handicapped worker is to be paid a commensurate wage.

- (3) These records shall be maintained for not less than 3 years.

History: 1983 AACCS.

**R 408.783 Cancellation of certificate.**

Rule 13. (1) If it appears that a provision of the act has been violated, the director shall issue a written notice stating the facts or conduct that constitute the alleged violation.

(2) This written notice shall provide the rehabilitation facility or private sector employer with an informal opportunity to demonstrate compliance with the act. Compliance shall be demonstrated within 30 calendar days after the date of the written notice.

(3) If the rehabilitation facility or private sector employer does not demonstrate compliance, the director shall issue a notice of hearing advising of the commencement of proceedings against the rehabilitation facility or private sector employer to determine whether its certificate should be cancelled. The director shall conduct a hearing pursuant to chapter 4 of Act No. 306 of the Public Acts of 1969, as amended, being SS24.271 to 24.287 of the Michigan Compiled Laws.

(4) Upon conclusion of the hearing if it is found that a provision of the act has been violated, the director may cancel the certificate.

History: 1983 AACCS.

**R 408.784 Appeal of decision denying certificate; hearing.**

Rule 14. If a decision to deny a certificate is appealed by written objection of a rehabilitation facility or private sector employer to the department within 30 calendar days after receipt of the notice pertaining to such denial, the director shall conduct a hearing pursuant to chapter 4 of Act No. 306 of the Public Acts of 1969, as amended, being SS24.271 to 24.287 of the Michigan Compiled Laws.

History: 1983 AACCS.

**R 408.785 Appeal to circuit court; finality of resolution.**

Rule 15. (1) A rehabilitation facility or private sector employer aggrieved by the decision of the director following a hearing under R 408.783 and R 408.784 may, within 60 days after date of mailing of the decision, appeal to the circuit court by filing a petition for review pursuant to the provisions of chapter 6 of Act No. 306 of the Public Acts of 1969, as amended, being SS24.301 to 24.306 of the Michigan Compiled Laws.

(2) If the decision of the director to cancel or deny a certificate in accordance with R 408.783 and R 408.784 is not appealed to circuit court within 60 days after the date of mailing, it shall be final.

History: 1983 AACCS.

**R 408.786 Inspections.**

Rule 16. (1) The director may enter upon the premises of a rehabilitation facility or private sector employer during normal business hours to conduct inspections to determine whether the rehabilitation facility or private sector employer is in compliance with the act.

(2) Inspection reports shall be utilized in evaluating the issuance of renewal certificates.

History: 1983 AACCS.

**R 408.787 Rescission.**

Rule 17. R 408.751 to R 408.767 of the Michigan Administrative Code, appearing on pages 3178 to 3181 of the 1979 Michigan Administrative Code, are rescinded.

History: 1983 AACCS.