

Oregon Administrative Rules

839-020-0015 Fixed Minimum Hourly Wage Rates Lower than the Minimum Wage Rate

(1) Pursuant to ORS 653.025 and 653.030 the commissioner will consider the employment of specific types of persons or of individual persons themselves at a fixed minimum hourly wage rate lower than the rate required by ORS 653.025, when the commissioner has determined that the application of these requirements would substantially curtail employment opportunities for the specific types of persons or individuals involved. The types of persons for whom a lower rate may be set upon a showing of good cause as set out below include, but are not limited to, individuals with mental or physical disabilities who cannot perform all of the bona fide job requirements within a reasonable period of time expected of those at the entry level and student learners as defined in ORS 653.070.

(2) Rules for the employment of specific named individuals at less than the minimum wage:

(a) An employer must submit an application for the payment of a fixed minimum hourly wage rate lower than the rate required by ORS 653.025 on a form provided by the commissioner stating each and every reason why the employer believes a lower rate should be established. Forms may be obtained at any office of the Bureau of Labor and Industries;

(b) The application form must be signed by the employer, the prospective employee and legal guardian, or person legally empowered to act for such employee to whom the lower wage rate is proposed to be paid;

(c) The commissioner may require additional information from the employer or prospective employee to verify the conditions or reasons specified in the application including, but not limited to, medical reports;

(d) In considering the application, the Civil Rights Division of the Oregon Bureau of Labor and Industries, or other appropriate governmental agencies may be consulted for technical assistance to reasonably assure that no approval will be granted that will conflict with the rights of workers under other laws;

(e) The commissioner will grant the application only when the commissioner has determined that the application of ORS 653.025 would substantially curtail opportunities for employment of the prospective employee named in the application. The application may be granted under such terms and conditions as the commissioner deems appropriate;

(f) The commissioner will consider each application on an individual basis and will not grant blanket authorization in advance for a specific type or group of persons unless the conditions set out in section (3) of this rule are met.

(3) Rules for general authorization for an employer to employ unnamed individuals with mental or physical disabilities at less than the minimum wage:

(a) Under certain circumstances, the commissioner may grant blanket approval for an employer to employ persons with mental or physical disabilities or others when good cause is shown at a fixed minimum hourly wage rate lower than the rate required by ORS 653.025.

(b) An employer desiring blanket authority to employ individuals with mental or physical disabilities at less than the minimum wage must apply to the commissioner for such authority;

(c) The application should include:

(A) The name of the organization;

(B) The purpose for which it was created;

(C) A detailed statement of the organization and its activities;

(D) The method and procedure by which the applicant obtains its employees;

(E) A detailed statement of the duties the employees will perform and a description of the end product produced from the performance of such duties;

(F) The hours the employees will work;

(G) How many individuals it intends to employ under authorization, if granted, and for how long;

(H) The rate of pay it will pay such individuals if authorization is granted.

(d) The applicant will be required to submit such other information as the commissioner deems necessary;

(e) The commissioner will grant the application only when it has determined that the application of ORS 653.025 would substantially curtail opportunities for employment;

(f) If the commissioner grants the application the commissioner may do so under such terms and conditions as the commissioner deems appropriate;

(g) Employers operating nonprofit rehabilitation programs or organizations which are organized and conducted for the education and training of individuals with mental or physical disabilities, who desire blanket authorization to pay less than the minimum wage required by ORS 653.025, must apply for such authorization to the U.S. Department of Labor, Wage and Hour Division, Federal Office Building, 1111 Third Avenue, Suite 605, Seattle, WA 98101-3212, utilizing the application procedures set out in Title 29, CFR, Part

525. Pursuant to an agreement with the U.S. Department of Labor, the commissioner may review the application material submitted to the U.S. Department of Labor. A certificate issued by the U.S. Department of Labor authorizing the payment of special minimum wage rates under the Fair Labor Standards Act will be deemed by the commissioner to satisfy the requirements of this rule.

Stat. Auth.: ORS 183 & 653

Stats. Implemented: ORS 653.030

Hist.: BL 1-1987, f. & ef. 1-12-87; BL 10-1990, f. & cert. ef. 7-26-90; BLI 1-2002, f. & cert. ef. 1-9-02; BLI 41-2007, f. 12-28-07, cert. ef. 1-1-08

Oregon Revised Statutes

653.030 Commissioner may prescribe lower rates in certain cases; rules. The Commissioner of the Bureau of Labor and Industries shall issue rules prescribing the employment of other types of persons at fixed minimum hourly wage rates lower than the minimum wage rate required by ORS 653.025, when the commissioner has determined that the application of ORS 653.025 would substantially curtail opportunities for employment for specific types of persons. The types of persons for whom a minimum hourly wage rate may be set are limited to persons with mental or physical disabilities or who are student-learners, as defined in ORS 653.070. [1967 c.596 §5 (1); 1973 c.403 §4; 1979 c.886 §2; 1981 c.850 §1; 1985 c.99 §3; 2007 c.70 §282]

653.070 Student-learners special wage; conditions; rules; penalties. (1) As used in this section:

(a) "Bona fide professional training program" includes any professional training program approved by the Superintendent of Public Instruction pursuant to rules of the State Board of Education which provides for part-time employment training which may be scheduled for a part of the workday or workweek, for alternating weeks or for other limited periods during the year, supplemented by and integrated with a definitely organized plan of instruction designed to teach technical knowledge and related information given as a regular part of the student-learner's course by an accredited school, college or university.

(b) "Student-learner" means a student who is receiving instruction in an accredited school, college or

university and who is employed on a part-time basis, pursuant to a bona fide professional training program.

(2) Notwithstanding ORS 653.025, employers shall pay student-learners at least 75 percent of the minimum wage prescribed by ORS 653.025.

(3) The number of hours of employment training for a student-learner at subminimum wages, when added to the hours of school instruction, shall not exceed eight hours on any day or 40 hours in any week.

(4) The Commissioner of the Bureau of Labor and Industries may adopt rules prescribing the procedures and requirements for application and issuance of special certificates authorizing the employment of student-learners at subminimum wages. The rules shall require that the following conditions be satisfied before the issuance of such special certificates:

(a) The employment of the student-learner at subminimum wages authorized by the special certificate must be necessary to prevent curtailment of opportunities for employment.

(b) The occupation for which the student-learner is receiving preparatory training must require a sufficient degree of skill to necessitate a substantial learning period.

(c) The training must not be for the purpose of acquiring manual dexterity and high production speed in repetitive operations.

(d) The employment of a student-learner must not have the effect of displacing a worker employed in the establishment.

(e) The employment of the student-learners at subminimum wages must not tend to impair or depress

the wage rates or working standards established for experienced workers for work of a like or comparable character.

(f) The occupational needs of the community or industry warrant the training of student-learners.

(g) There are no serious outstanding violations of the provisions of a student-learner certificate previously issued to the employer, or serious violations of any other provisions of law by the employer which provide reasonable grounds to conclude that the terms of the certificate would not be complied with, if issued.

(h) The issuance of such a certificate would not tend to prevent the development of apprenticeship under ORS 660.002 to 660.210 or would not impair established apprenticeship standards in the occupation or industry involved.

(i) The number of student-learners to be employed in one establishment must not be more than a small proportion of its working force.

(5) Failure to comply with subsection (2) or (3) of this section shall subject the employer to a penalty of 75 percent of the minimum wage prescribed by ORS 653.025 for each hour of work time that the student-learner is gainfully employed. The Commissioner of the Bureau of Labor and Industries shall have a cause of action against the employer for the recovery of the penalty. [1979 c.886 §5; 1981 c.850 §3; 1989 c.491 §62; 1995 c.343 §50]