

## **Fact Sheet #39C: Hours Worked and the Payment of Special Minimum Wages to Workers with Disabilities under Section 14(c) of the Fair Labor Standards Act (FLSA)**

This fact sheet provides general information concerning the FLSA concept of hours worked as it pertains to the employment of workers with disabilities at special minimum wages. Please read [Fact Sheet #39, \*The Employment of Workers with Disabilities at Special Minimum Wages\*](#), for an overview of the general provisions of FLSA Section 14(c) and [Fact Sheet #22, \*Hours Worked Under the Fair Labor Standards Act \(FLSA\)\*](#) for a general overview of the concept of hours worked. Please consult the Regulations, [29 CFR Part 525 \(\*Employment of Workers with Disabilities under Special Certificates\*\)](#), and [Part 785 \(\*Hours Worked\*\)](#) for detailed explanations of both Section 14(c) and the concept of hours worked.

The general provisions of the FLSA concept of hours worked - determining when an employee is performing work for which he or she must be compensated - apply to workers with disabilities who receive special minimum wages under Section 14(c). But the unique characteristics of the work places operated by employers under Section 14(c) can cause confusion as to when an employee is performing compensable work. This fact sheet addresses several issues that often impact the employment of workers with disabilities.

### **Down Time**

Down time refers to compensable time when the worker with a disability is on the job but is not producing because of factors not within his or her control - such as lack of work, equipment breakdowns, etc. Workers with disabilities, including those paid piece rates, are required to be paid for down time at a rate equal to their average hourly earnings during the most representative period, not to exceed a quarter (calendar or fiscal). An employer must be consistent in the method used when computing the employee's average hourly earnings.

As a practical matter, workers with disabilities employed by Community Rehabilitation Programs are often unable to leave their place of employment because of special transportation arrangements or other reasons unique to their condition. The employer may provide rehabilitation services to workers with disabilities during periods of extended down time and such time need not be considered compensable so long as the services provided are not primarily for the purpose of increasing job productivity; such time is clearly identified, recorded, and segregated on time records; and the services are provided in an area away from the production area.

### **Work Samples and Work Simulations**

Work samples and work simulations are types of rehabilitation services that are structured to resemble the work performed in the employer's facility but are performed away from the normal production area. These activities do not yield a product used to fulfill any of the employer's contracts and the employer does not derive any economic benefit from the product. Such samples and simulations are supervised by non-production personnel and are a specific part of a well-defined program of rehabilitation.

The Wage and Hour Division does not consider work samples or work simulations, as described above, to be hours worked or compensable when performed by workers with disabilities who receive special minimum wages under Section 14(c) provided none of the material, goods, or services produced enters into the stream of commerce by being intermingled with the normal production of the employer. Typically, such materials would be discarded or recycled for future use in work simulation.

### **Travel Time**

The time spent by workers with disabilities being transported to and from the work site and their homes (including group homes and dormitories) by the employer at the beginning and end of the day is not hours worked. Such transportation retains the characteristic of "normal home to work travel" and need not be compensated.

When workers with disabilities report to a centralized pick-up spot to get a ride in their facility's vehicle to a remote job site that may not be readily accessible by public transportation, such transportation retains the characteristic of "normal home to work travel." Such travel does not constitute hours worked so long as the workers with disabilities do not perform any work at the pick-up spot, they do not engage in any task that could be considered an integral part of their principal activity, and they retain the option to transport themselves to the job site. At times, because of their disabilities, the workers' option to transport themselves to the job site may be only theoretical. For example, the worker with a disability may not be eligible for a driver's license or his or her guardian may be unable to provide transportation. The fact that the transportation option is only theoretical does not change the Department's position that such travel is not hours worked nor compensable.

Any time spent in transportation between job sites during the course of the workday is hours worked and the employee shall be paid a wage rate that is at least equal to his or her average hourly earnings during the most recently completed representative period, not to exceed a quarter (calendar or fiscal). An employer must be consistent in the method used when computing the employee's average hourly earnings.

### **Rest Periods and Coffee Breaks**

Although the FLSA does not require rest periods or coffee breaks, it is customary in industry for employees to be given such breaks, which last generally between 5 and 20 minutes. Such breaks are considered to be primarily for the benefit of the employer since they tend to promote the efficiency of the employee and are considered to be working time. Whether or not a worker with a disability receiving special minimum wages must be paid for such break periods depends on the method of compensation. Hourly paid workers must be compensated for breaks at their normal hourly wage. But no additional compensation is due workers with disabilities paid piece rates if the piece rate was properly established because such piece rates include time for personal time, fatigue, and unavoidable delays (PF&D). The PF&D allowance will also take into account the time workers spend on traditional breaks or rest periods. Please see [Fact Sheet #39D](#), *Incorporating Personal Time, Fatigue and Delay (PF&D) Allowances When Determining Piece Rates to be Paid Workers with Disabilities Receiving Special Minimum Wages under Section 14(c) of the Fair Labor Standards Act (FLSA)*, for more information on PF&D.

### **[Recording Hours Worked](#)**

The FLSA requires employers to keep records of both the daily and weekly hours worked (see Subpart A of Regulations, [29 CFR Part 516](#)). The employer must also clearly distinguish in its records non-compensable hours from hours that would be considered hours worked, regardless of the category of non-compensable time involved.

## Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

For more information about these provisions, review the other Fact Sheets in this series which address Section 14(c) compliance issues located at <http://www.dol.gov/esa/whd/fact-sheets-index.htm>.

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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