

Hawaii Administrative Rules

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

Subtitle 4

Wage Standards Division

CHAPTER 20

WAGE AND HOUR

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in Sheltered Workshops**

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SUBCHAPTER 3

**EMPLOYMENT OF HANDICAPPED CLIENTS
IN SHELTERED WORKSHOPS**

Historical Note: Subchapter 3, chapter 20 of title 12 is based substantially upon "Rule XXIV, Relating to Employment of Handicapped Clients in Sheltered Workshops" of the Department of Labor and Industrial Relations. [Eff. 10/24/59; R Oct. 2, 1981]

§12-20-61 Definitions. As used in this subchapter:

"Handicapped client" or "client" means an individual whose employability is impaired by age, physical or mental deficiency or injury, and who is being served in accordance with the recognized rehabilitation program of a sheltered workshop within the facilities of that agency or in or about the home of a client.

"Sheltered workshop" or "workshop" means a charitable organization or institution conducted not for profit, but for the purpose of carrying out a recognized program of rehabilitation for individuals whose employability is impaired by age, physical or mental deficiency or injury, and of providing these individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature. [Eff. Oct. 2, 1981] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

§12-20-62 Application for certificate. (a) Application for a special certificate may be made by a sheltered workshop to the director permitting the payment of wages lower than the minimum wage required under section 387-2, Hawaii Revised Statutes, to handicapped clients.

(b) The application shall be signed by an authorized official of the workshop and shall include the following:

- (1) A description of the types of handicapped clients accepted by the sheltered workshop;
- (2) A description of the types of work and the rehabilitation services offered by the workshop; and
- (3) The estimated earnings of each handicapped client who is unable to earn the minimum wage required under section 387-2, Hawaii Revised Statutes. [Eff. Oct. 2, 1981] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

§12-20-63 Factors for consideration. The following factors may be considered by the director or authorized departmental representative in determining the necessity of issuing a special certificate and the conditions to be specified therein:

- (1) The present and previous earnings of handicapped clients of the workshop;
- (2) The general nature and extent of the handicaps of clients served by the workshop;
- (3) The wages of non-handicapped employees employed in private industry engaged in work comparable to that performed in the workshop;
- (4) The cost, value, duration, and types of rehabilitative, medical, educational, therapeutic, and social work services given to handicapped clients;
- (5) The tuition, fees, or other charges made by agencies other than workshops for similar types of services;
- (6) The extent to which handicapped clients, other individuals, governmental agencies, or other organizations may pay dues, fees, or other monies to the workshop;
- (7) The extent to which clients share, through services or wages, in the receipts for work done in the workshop;

- (8) The extent to which the handicapped clients may also be learners or otherwise inexperienced; and
- (9) Whether there exists any workshop-customer arrangement which constitutes an unfair method of competition and which tends to spread or perpetuate substandard wage levels. [Eff. Oct. 2, 1981] (Auth: HRS §§387-9, 387-11) (Imp: §387-9)

§12-20-64 Issuance of certificate. (a) If the application and other available information indicate that the applicant is a sheltered workshop and that the clients of the workshop are paid commensurate with their productivity at the prevailing rates in the vicinity in regular commercial industry maintaining approved labor standards for the type of work being performed, the director, to the extent necessary in order to prevent curtailment of opportunities for employment, shall issue a special certificate authorizing the employment of handicapped clients under the terms and conditions set forth therein, at wages lower than the minimum required under section 387-2, Hawaii Revised Statutes. Otherwise the director shall deny a special certificate.

(b) A special certificate may be issued for an individual handicapped client, a division of the workshop, the entire workshop, or any combination thereof. [Eff. Oct. 2, 1981] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

§12-20-65 Terms of certificate. (a) The special certificate shall:

- (1) Specify the terms and conditions under which it is granted; and
- (2) Be effective for a period to be designated by the director. The special minimum wage rates may be paid only during the effective period of the certificate.

(b) The special certificate may provide the following rates:

- (1) A special minimum wage rate which may be paid during a specified period or periods, designated as "training periods", to allow for evaluation of the client's capacities and for job-training. The rate may apply during the specified training periods to a client who has never previously worked in the workshop, or to a client who is transferred to a job in the workshop at which the client has never previously worked, or to a client who has returned to the workshop after a period of separation and who would require retraining; and
- (2) A special minimum wage rate for the workshop or for divisions of the workshop which may be paid to a client following completion of the specified training periods, unless a lower special individual wage rate has been authorized in the special certificate for a client who is unable to earn the workshop or applicable division minimum wage rate.

(c) The wage rates paid clients working at piece rates shall not be less than the piece rates paid non-handicapped employees performing the same work in the vicinity in a regular commercial industry maintaining approved labor standards. The wage rates paid clients working at time rates shall be based on the prevailing rates in the vicinity in a regular commercial industry maintaining approved labor standards, taking into account the type, quality, and quantity of work produced by the client. In no instance shall wage rates be less than the minimum rates specified in the special certificate as provided in subsection (b)(1) and (2).

(d) Clients of the workshop shall be paid not less than one and one-half times the regular rate for all hours over forty worked in the workweek, as provided in section 387-3, Hawaii Revised Statutes.

(e) The terms of any special certificate may be amended upon request of the sheltered workshop or handicapped client or by the director. [Eff. Oct. 2, 1981] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

§12-20-66 Renewal of certificate (a) Application may be filed for renewal of any special certificate.

(b) If an application for renewal has been properly filed prior to the expiration date of a special certificate, the certificate shall remain in effect until the application for renewal has been granted or denied.

(c) Handicapped clients may be paid subminimum wages after notice that the application for renewal has been denied, if review of the denial is requested in accordance with section 12-20-70; provided that if the denial is affirmed on review, the sheltered workshop shall reimburse any person covered by the special certificate for the difference between the applicable minimum wage and any lower wage paid that person subsequent to the date as of which the renewal of the special certificate was denied. [Eff. Oct. 2, 1981] (Auth: HRS §§387-9, 387-11) (Imp: §387-9)

§12-20-67 Non-handicapped clients in sheltered workshops. No individual who is not a handicapped client shall be employed under any special certificate issued pursuant to this subchapter at wages lower than the minimum required under section 387-2, Hawaii Revised Statutes. [Eff. Oct. 2, 1981] (Auth: HRS §§387-9, 387-11) (Imp: HRS §§387-2, 387-9)

§12-20-68 Record keeping requirements. Every sheltered workshop at all times shall keep, maintain, and have available for inspection by the director or an authorized departmental representative a record of the nature of each client's handicap in addition to the records required under section 12-2-8. [Eff. Oct. 2, 1981] (Auth: HRS §§387-9, 387-11) (Imp: 387-6, 387-9)

§12-20-69 Revocation and cancellation. (a) The director may revoke or cancel any special certificate for cause. A special certificate may be cancelled:

- (1) As of the date of issue, if it is found that fraud has been exercised in obtaining the special certificate or in permitting a handicapped client to work thereunder; or
- (2) As of the date of violation, if it is found that any of the provisions of chapter 387, Hawaii Revised Statutes, or of the terms of the special certificate have been violated; or
- (3) As of the date of notice of revocation or cancellation, if it is found that the special certificate is no longer necessary in order to prevent curtailment of opportunities for employment, or that the requirements of this subchapter have not been complied with.

(b) Except in cases of wilful violations or those in which the public interest requires otherwise, before any special certificate is revoked or cancelled, facts or conduct which may warrant that action shall be called to the attention of the sheltered workshop in writing and it shall be afforded an opportunity to demonstrate or achieve compliance with all lawful requirements. [Eff. Oct. 2, 1981] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

§12-20-70 Reconsideration. (a) Within thirty days after mailing or delivery of notice of decision made pursuant to sections 12-20-64, 12-20-66, and 12-20-69 to the party entitled thereto, the director, upon application of any interested party, may reconsider the decision.

(b) If an application for reconsideration is made, the cancellation shall be postponed until action is taken thereon; provided that if the revocation or cancellation order is affirmed on review, the workshop shall reimburse any person covered by the special certificate for the difference between the applicable minimum wage and any lower wage paid that person subsequent to the date on which the special certificate was revoked or cancelled. [Eff. Oct. 2, 1981] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

§12-20-71 Submission of information; investigations; hearings. The director may require at any time the submission of information other than that specified elsewhere in this subchapter as is appropriate or may conduct an investigation, which may include a hearing, prior to taking any action pursuant to this subchapter. To the extent the director deems appropriate, all interested parties may be provided an opportunity to present data and views. [Eff. Oct. 2, 1981] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

§§12-20-72 to 12-20-80 (Reserved)