

Hawaii Administrative Rules

TITLE 12  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

Subtitle 4  
Wage Standards Division

**CHAPTER 20**  
WAGE AND HOUR

**Subchapter 5 Employment of Handicapped Persons**

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**SUBCHAPTER 5**

**EMPLOYMENT OF HANDICAPPED PERSONS**

Historical Note: Subchapter 5, chapter 20 of title 12 is based substantially upon "Regulation XXVIII, Relating to Employment of Handicapped Persons" of the Department of Labor and Industrial Relations. [Eff. 9/1/63; R Oct. 2, 1981]

**§12-20-91 Definitions.** As used in this subchapter:

"Handicapped trainee" or "trainee" means an individual whose employability is impaired by age, physical or mental deficiency, or injury, and who is receiving or is to receive on-the-job training in industry under vocational rehabilitation programs administered by any governmental agency.

"Handicapped worker" or "worker" means an individual whose employability is impaired by age, physical or mental deficiency, or injury. [Eff. Oct. 2, 1981] (Auth: HRS 0387-9, 387-10 (Imp: HRS §387-9)

**§12-20-92 Application for certificate.** Application for the employment of handicapped workers and handicapped trainees under special certificates authorizing employment at wages lower than the minimum wage under section 387-2, Hawaii Revised Statutes, shall be made by the employer to the director on forms furnished by the department.

- (1) The application for a handicapped worker certificate must be complete and be signed by the employer and the handicapped worker or guardian.
- (2) The application for a handicapped trainee certificate must be complete and be signed by the employer, the handicapped trainee or guardian, and a representative of the governmental agency. [Eff. Oct. 2, 1981] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

**§12-20-93 Issuance of certificate.** Upon receipt of an application for employment of a handicapped worker or handicapped trainee, the director may issue a special certificate to the employer under the following terms and conditions:

- (1) The special certificate shall be valid under the terms set forth in the certificate for a period of not more than twelve months from the date of issue as specified in the certificate;
- (2) The special certificate shall have no retroactive effect, but shall operate as an exception subsequent to the date of issue only;
- (3) The subminimum wage shall not be less than the wage specified in the certificate by the director;
- (4) The handicapped worker or handicapped trainee shall be paid at the hourly rate specified in the certificate, or not less than the piece rates paid non-handicapped workers employed in the same occupation, whichever is greater;
- (5) The handicapped worker or handicapped trainee shall be paid not less than one and one-half times the regular rate for all hours worked in excess of the maximum workweek under section 387-3, Hawaii Revised Statutes;
- (6) Money paid the handicapped trainee by any governmental agency for maintenance or other expenses shall not be considered as offsetting any part of the wage or other remuneration due the handicapped trainee by the employer; and
- (7) The terms of any special certificate may be amended for cause upon written request to the director by the parties concerned. [Eff. Oct. 2, 1981] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

**§12-20-94 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 workers and handicapped trainees may be paid a subminimum wage after notice that the application for renewal has been denied, if review of the denial is requested in accordance with section 12-20-97; provided that if the denial is affirmed on review, the employer 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 renewal of the certificate was denied. [Eff. Oct. 2, 1981] (Auth: HRS §§387-9, 387-1i) (Imp: HRS §387-9)

**§12-20-95 Record keeping requirements.** In addition to records required by section 12-20-8 and chapter 387, Hawaii Revised Statutes, the employer's records shall identify each handicapped worker or handicapped trainee. [Eff. Oct. 2, 1981] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

**§12-20-96 Revocation and cancellation.** (a) Any special certificate may be revoked or cancelled for cause at any time by the director after affording all interested parties an opportunity for a hearing. Cause shall mean violation of this subchapter or any applicable provision of chapters 387 or 388, Hawaii Revised Statutes, or a finding by the director that fraud has been exercised in obtaining the special certificate or in permitting a handicapped employee to work thereunder.

(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 employer in writing and the employer 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)

**§2-20-97 Reconsideration.** (a) Any person aggrieved by the director's action in denying, granting, revoking, or cancelling a special certificate may, within ten days after that action, file a written request for reconsideration by the director.

(b) A request for reconsideration shall be granted where the applicant shows that there is additional evidence which may materially affect the decision and that there were reasonable grounds for failure to offer that evidence prior to the director's action. [Eff. Oct. 2, 1981] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

**§12-20-98 to 12-20-100 (Reserved)**