EMPLOYMENT OF HANDICAPPED WORKERS IN SUPPORTED WORK MODELS UNDER THE FAIR LABOR STANDARDS ACT

This fact sheet summarizes how the Fair Labor Standards Act (FLSA) applies to the employment of handicapped workers in community-based evaluation or training programs, particularly placements in supported work models. The Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, is responsible for enforcing the FLSA.

WHAT IS SUPPORTED WORK? -- The Office of Special Education and Rehabilitation Services of the U.S. Department of Education funds pilot supported work programs in selected states. While these programs are still in an experimental phase, they are expected to become an alternative vocational rehabilitative tool. In supported work programs, job coaches work with severely disabled individuals who are placed in private-sector employment settings with nonhandicapped workers. The job coaches typically provide 6 to 12 months of extensive training and actually perform the job where necessary.

WHAT DOES THE FLSA REQUIRE? -- The FLSA requires employers to: pay all covered and nonexempt employees the minimum wage for all hours worked; pay all covered and nonexempt employees at least one and one-half times their regular rates of pay for all hours worked over 40 in the workweek (except that employees of state and local public agencies may receive compensatory time off instead of overtime pay under certain conditions); comply with child labor standards; and comply with recordkeeping requirements.

WHO IS AN EMPLOYEE? -- An employee is any individual employed by an employer, regardless of whether the individual is handicapped or whether his or her productivity is impaired or diminished by a handicap. Employees may not waive their rights under the FLSA.

ARE THERE SPECIAL PROVISIONS UNDER THE FLSA FOR HANDICAPPED WORKERS?

--Section 14 of the FLSA allows handicapped workers to be employed at wage rates below the statutory minimum but commensurate with handicapped workers' productivity. The commensurate wage is determined by comparing a handicapped worker's productivity with the productivity expected of nonhandicapped workers and applying that ratio to the wage rate paid such nonhandicapped workers in the vicinity for the type and quality of work being performed.
In order to legally pay a wage rate below the statutory minimum to a covered, nonexempt employee, an employer must have an appropriate certificate from the Regional Office of the Wage and Hour Division having administrative jurisdiction over the area in which the handicapped worker is to be employed. Since certificates are not issued retroactively, the certificate must be obtained before employing a handicapped worker at less than the minimum wage. An employer who fails to obtain an appropriate certificate or to pay a commensurate wage rate will be held liable for any additional wages found due his or her employees.

**WHO IS A HANDICAPPED WORKER FOR PURPOSES OF SECTION 14?** -- Section 14 defines a handicapped worker as a person "whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury." This definition includes blindness, mental illness, mental retardation, cerebral palsy, learning disabilities, alcoholism and drug addiction. The definition does NOT include individuals who are vocationally, socially, culturally or educationally handicapped; chronically unemployed; or who are welfare recipients, school dropouts, juvenile delinquents or parolees.

**ARE TRAINEES AND STUDENTS CONSIDERED EMPLOYEES?** -- All persons who may work without compensation for their own advantage on the premises of another are not necessarily employees. Whether trainees or students, including individuals participating in a supported work model, they would not be considered employees within the meaning of FLSA if:

- the training (even though it includes the operation of the facilities of the employer) is similar to that which would be given in a vocational school;
- the training is for the benefit of the trainees;
- regular employees are not displaced but closely observe the trainees;
- the employer derives no immediate advantage from the activities of the trainees;
- the trainees are not necessarily entitled to jobs after training; and
- both the employer and trainees understand that the trainees are not entitled to wages.

**FOR MORE INFORMATION** -- Further information can be obtained from local offices of the Wage and Hour Division, which are listed in most telephone directories under U.S. Government, Department of Labor.