

Assembly Joint Resolution

No. 36

Introduced by Assembly Member Gonzalez
(Coauthor: Senator Hueso)

February 19, 2014

Assembly Joint Resolution No. 36—Relative to wages.

LEGISLATIVE COUNSEL'S DIGEST

AJR 36, as introduced, Gonzalez. Special Minimum Wage Certificate Program.

This measure would urge the United States Congress to phase out the use of the Special Minimum Wage Certificate provision and eventually repeal Section 14 (c) of the 1938 Fair Labor Standards Act.

Fiscal committee: no.

1 WHEREAS, Meaningful employment, and the wages associated
2 with it, can be an integral part of enabling human dignity and
3 creating more meaningful lives for disabled persons; and

4 WHEREAS, The 1938 federal Fair Labor Standards Act sets
5 out in Section 14(c) the ability for entities that employ disabled
6 persons to obtain special minimum wage certificates from the
7 United States Department of Labor's Wage and Hour Division
8 which entitle them to pay a disabled worker less than the legislated
9 minimum wage rate; and

10 WHEREAS, The 1938 Fair Labor Standards Act's subminimum
11 wage provisions were created in the era of the Great Depression
12 with the intent of subsidizing sheltered workshops which could
13 not afford to pay their workers full wages and, some may argue,
14 incentivizing private companies to employ disabled persons; and

1 WHEREAS, These special wage rates are calculated according
2 to productivity with no specified wage floor; and

3 WHEREAS, The productivity-based calculation of a special
4 minimum wage is generally done by a complicated “time study”
5 which entails an administrator comparing how fast a disabled
6 worker is able to complete a certain task compared to nondisabled
7 workers; and

8 WHEREAS, There differing work and equipment conditions
9 beyond the worker’s control, a lack of oversight and enforcement
10 by the Wage and Hour Division for the special minimum wage
11 certificates, a lack of consistency in the time study tests done by
12 employers, and a singling out of disabled workers given that the
13 general workforce is not subjected to standards of timed
14 productivity, the time study practice to determine that wages are
15 both inconsistent and unfair; and

16 WHEREAS, Time studies and the subminimum wages they
17 produce have been described by disabled workers throughout the
18 media as humiliating, degrading, and making them feel like
19 “second-class citizens”; and

20 WHEREAS, Some entities have claimed that the special
21 minimum wage certificates are an essential stepping stone to
22 permanent and fully paid employment in the general workforce.
23 The Psychiatric Rehabilitation Journal published empirical
24 evidence in 2004 which suggested that sheltered workshops are
25 generally ineffective at progressing the disabled workers, while
26 for other employers the special minimum wage certificates serve
27 as an incentive to exploit disabled workers rather than integrate
28 them into the mainstream economy; and

29 WHEREAS, It has been widely documented that many of the
30 organizations which employ disabled persons are in financial
31 situations that would enable them to pay minimum wage to all of
32 their disabled employees, evident in the high compensation
33 packages paid to their executives; and

34 WHEREAS, Some employers, such as the National Industries
35 for the Blind, have already recognized the exploitive nature of
36 paying disabled workers subminimum wage and have been able
37 to transition to the payment of Federal minimum wage, or higher,
38 to their disabled employees without a significant change in
39 profitability or a reduction in their workforce; now therefore, be
40 it

1 *Resolved by the Assembly and the Senate of the State of*
2 *California, jointly,* That the Legislature of California request that
3 the United States Congress should phase out the use of the Special
4 Minimum Wage Certificate provision and eventually repeal Section
5 14(c) of the 1938 Fair Labor Standards Act to support the goal of
6 competitive integrated employment of people with disabilities
7 through the use of modern practices of vocational training,
8 improved technology, and innovative rehabilitation and
9 employment strategies; and be it further

10 *Resolved,* That the Chief Clerk of the Assembly transmit copies
11 of this resolution to the Speaker of the House of Representatives,
12 to the Majority Leader of the Senate, and to each Senator and
13 Representative from California in the Congress of the United
14 States.

O