

AMENDED IN SENATE JUNE 18, 2014  
AMENDED IN ASSEMBLY MARCH 25, 2014  
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**Assembly Joint Resolution**

**No. 36**

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**Introduced by Assembly Member Gonzalez**  
(Coauthor: Senator Hueso)

February 19, 2014

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Assembly Joint Resolution No. 36—Relative to wages.

LEGISLATIVE COUNSEL'S DIGEST

AJR 36, as amended, 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~~; *persons who*  
4 *choose to work*; and  
5       WHEREAS, *The State of California has supported opportunities*  
6 *for employment for all disabled workers, specifically in the*  
7 *adoption of the Employment First Policy for the most vulnerable*  
8 *population of disabled workers, which states that “it is the policy*  
9 *of the state that opportunities for integrated, competitive*  
10 *employment shall be given the highest priority for working age*

1 *individuals with developmental disabilities, regardless of the*  
2 *severity of their disabilities”*; and

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

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

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

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

21 WHEREAS, There are differing work and equipment conditions  
22 beyond the worker’s control, a lack of oversight and enforcement  
23 by the Wage and Hour Division for the special minimum wage  
24 certificates, a lack of consistency in the time study tests done by  
25 employers, and a singling out of disabled workers given that the  
26 general workforce is not subjected to standards of timed  
27 productivity; and

28 WHEREAS, Time study practices used to determine special  
29 wage rates are both inconsistent and unfair and the subminimum  
30 wages they produce have been described by disabled workers  
31 throughout the media as humiliating, degrading, and making them  
32 feel like “second-class citizens”; and

33 WHEREAS, Some entities have claimed that the special  
34 minimum wage certificates are an essential stepping stone to  
35 permanent and fully paid employment in the general workforce.  
36 The Psychiatric Rehabilitation Journal published empirical  
37 evidence in 2004 which suggested that sheltered workshops are  
38 generally ineffective at progressing the disabled workers, while  
39 for other employers the special minimum wage certificates serve

1 as an incentive to exploit disabled workers rather than integrate  
2 them into the mainstream economy; and

3 ~~WHEREAS, It has been widely documented that many of the~~  
4 ~~organizations which employ disabled persons are in financial~~  
5 ~~situations that would enable them to pay minimum wage to all of~~  
6 ~~their disabled employees, evident in the high compensation~~  
7 ~~packages paid to their executives; and~~

8 WHEREAS, Some employers, such as the National Industries  
9 for the Blind, have already recognized the exploitive nature of  
10 paying disabled workers subminimum wage and have been able  
11 to transition to the payment of Federal minimum wage, or higher,  
12 to their disabled employees without a significant change in  
13 profitability or a reduction in their workforce; ~~now therefore, be~~  
14 ~~it and~~

15 *WHEREAS, These employers have proven that there are*  
16 *workable alternative employment models to Section 14(c) of the*  
17 *1938 Fair Labor Standards Act for disabled workers, such as*  
18 *Employment First, which allow for the successful development of*  
19 *individuals by providing quality training and supports for*  
20 *individuals with disabilities to obtain competitive integrated*  
21 *employment, as well as the successful operation of businesses and*  
22 *programs; now, therefore, be it*

23 *Resolved by the Assembly and the Senate of the State of*  
24 *California, jointly, That the Legislature of California request*  
25 *requests that the United States Congress should phase out the use*  
26 *of the Special Minimum Wage Certificate provision and eventually*  
27 *repeal Section 14(c) of the 1938 Fair Labor Standards Act to*  
28 *support the goal of competitive integrated employment of people*  
29 *with disabilities through the use of modern practices of vocational*  
30 *training, improved technology, and innovative rehabilitation and*  
31 *employment strategies; and be it further*

32 *RESOLVED, That the Legislature of California requests that*  
33 *prior to and during the phasing out of Section 14(c) of the 1938*  
34 *Fair Labor Standards Act the United States Congress (1) promote*  
35 *the continuation of existing employment and support models for*  
36 *disabled individuals other than Section 14(c) of the 1938 Fair*  
37 *Labor Standards Act, as well as further identify and develop*  
38 *alternatives of access to a diverse range of employment*  
39 *opportunities, to be in place and widely available prior to the*  
40 *phasing out of Section 14(c) of the 1938 Fair Labor Standards*

1 *Act; (2) continue to collect comprehensive data that accurately*  
2 *reflects the number of disabled individuals working, the number*  
3 *of disabled individuals seeking employment, and the number of*  
4 *disabled individuals who have expressed an interest in working*  
5 *but who have not yet been successful in locating and securing*  
6 *gainful employment; and (3) continue to utilize strategies which*  
7 *identify the industries and types of work in demand in both the*  
8 *public and private sector, and the skills and abilities of potential*  
9 *workers with disabilities that either exist or need to be developed*  
10 *to move people into these positions; and be it further*

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

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