

AMENDED IN SENATE AUGUST 5, 2014

AMENDED IN SENATE JUNE 18, 2014

AMENDED IN ASSEMBLY MARCH 25, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

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 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 who choose
4 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, Some employers, such as the National Industries
4 for the Blind, have already recognized the exploitive nature of
5 paying disabled workers subminimum wage and have been able
6 to transition to the payment of Federal minimum wage, or higher,
7 to their disabled employees without a significant change in
8 profitability or a reduction in their workforce; and

9 WHEREAS, These employers have proven that there are
10 workable alternative employment models to Section 14(c) of the
11 1938 Fair Labor Standards Act for disabled workers, such as
12 Employment First, which allow for the successful development of
13 individuals by providing quality training and supports for
14 individuals with disabilities to obtain competitive integrated
15 employment, as well as the successful operation of businesses and
16 programs; ~~now, therefore, be it and~~

17 *WHEREAS, The policy developments regarding disabled youth
18 and the need for additional support services, individualized
19 employment plans and training, and the prioritization of
20 competitive integrated employment in the Workforce Innovation
21 and Opportunity Act are consistent with the goals of this resolution
22 and the intent to shift away from the use of subminimum wages
23 and sheltered workshops for disabled individuals, for which the
24 United States Congress should be applauded and encouraged to
25 continue working on legislation to better fulfill these goals and
26 policy direction; now, therefore, be it*

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

36 *Resolved, That the Legislature of California requests that prior
37 to and during the phasing out of Section 14(c) of the 1938 Fair
38 Labor Standards Act the United States Congress (1) promote the
39 continuation of existing employment and support models for
40 disabled individuals other than Section 14(c) of the 1938 Fair*

1 Labor Standards Act, as well as further identify and develop
2 alternatives of access to a diverse range of employment
3 opportunities, to be in place and widely available prior to the
4 phasing out of Section 14(c) of the 1938 Fair Labor Standards Act;
5 (2) continue to collect comprehensive data that accurately reflects
6 the number of disabled individuals working, the number of disabled
7 individuals seeking employment, and the number of disabled
8 individuals who have expressed an interest in working but who
9 have not yet been successful in locating and securing gainful
10 employment; and (3) continue to utilize strategies which identify
11 the industries and types of work in demand in both the public and
12 private sector, and the skills and abilities of potential workers with
13 disabilities that either exist or need to be developed to move people
14 into these positions; and be it further

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