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SB-639 Minimum wages: persons with disabilities. (2021-2022)

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Senate Bill No. 639

CHAPTER 339

An act to amend Section 1191 of, and to amend and repeal Section 1191.5 of, the Labor Code, relating to employment.

[Approved by Governor September 27, 2021. Filed with Secretary of State September 27, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 639, Durazo. Minimum wages: persons with disabilities.

(1) Existing law establishes a minimum wage for all industries and makes it a crime to pay an employee less than the minimum wage fixed by the Industrial Welfare Commission. Existing law, however, permits the commission to issue an employee who is mentally or physically disabled, or both, a special license authorizing the employment of the licensee for a period not to exceed one year from date of issue, at a wage less than the minimum wage. Existing law requires the commission to fix a special minimum wage for the licensee, which may be renewed on a yearly basis.

This bill would prohibit new special licenses from being issued after January 1, 2022. The bill would permit a license to only be renewed for existing licenseholders who meet requisite benchmarks. The bill would make the above-described provision authorizing a lesser minimum wage for an employee who is mentally or physically disabled inoperative on January 1, 2025, or when the multiyear phaseout plan as described below is released, whichever is later. The bill, commencing on the later of January 1, 2025, or when the plan is released, would prohibit an employee with a disability from being paid less than the legal minimum wage or the applicable local minimum wage ordinance, whichever is higher.

The bill would require the State Council on Developmental Disabilities, in consultation with stakeholders and relevant state agencies, to develop a multiyear phaseout plan with stakeholder involvement, by January 1, 2023, to pay any employee with a disability, as defined, by January 1, 2025, no less than the state minimum wage otherwise required. The bill would require the multiyear phaseout plan to contain specified components, including benchmarks and desired outcomes for each year of the plan and a list of resources to ensure employees with disabilities can receive services based on their needs.

The bill would require the State Council on Developmental Disabilities, in developing the multiyear phaseout plan, to engage with and seek input from people with developmental disabilities who have experience working for subminimum wage and various stakeholder organizations. The bill would require the State Council on Developmental Disabilities to release and publicly post on its internet website a report by January 1, 2023. The bill would also require the State Council on Developmental Disabilities to submit a copy of the report on its multiyear phaseout plan to the appropriate policy committees of the Legislature for review on or before January 1, 2023. The bill would further require the State Council on Developmental Disabilities to publicly post on its internet website and submit to the Legislature an annual report beginning on January 1, 2024, as specified, detailing specified information about the multiyear phaseout plan.

By expanding the scope of a crime, the bill would impose a state-mandated local program.

(2) Under existing law, the Industrial Welfare Commission is authorized to issue a special license to a nonprofit organization such as a sheltered workshop or rehabilitation facility to permit the employment of disabled employees who the commission has determined meet the requirements for paying less than the state minimum wage without requiring individual licenses of those employees. Existing law requires the commission to fix a special minimum wage for those employees, subject to renewal, as specified.

This bill would repeal that provision on January 1, 2025.

This bill would also include related legislative findings about the need to afford equal pay and equal treatment in the workplace to all Californians, including those with disabilities.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature finds and declares as follows:

(1) In 1938, President Roosevelt signed the Fair Labor Standards Act (FLSA) into law. It was a landmark piece of civil rights legislation designed to protect the rights of workers. At the time, there was a fear that people with disabilities would be disadvantaged by the law and experience high rates of unemployment if employers had to pay comparable wages to people with and without disabilities. Therefore Section 14(c) of the FLSA (14(c)) was written into the law to allow employers to pay workers with disabilities lower wages. Accordingly, California also included similar exemptions in its state Labor Code, in Sections 1191 and 1191.5.

(2) According to the September 2020 findings from the United States Commission on Civil Rights, “[a]s currently utilized, the U.S. Department of Labor has repeatedly found 14(c) providers limiting people with disabilities participating in the program from realizing their full potential while allowing providers and associated businesses to profit from their labor. This limitation is contrary to 14(c)’s purpose.”

(3) Today, unemployment rates among people with disabilities remain disproportionately high, despite the continued use of 14(c) and California exemptions. In 2019, California ranked 22nd in the nation for its employment of people with disabilities. People with disabilities experienced employment rates at 36.9 percent compared to 75.6 percent for their peers. Additionally, people with disabilities also represent a larger portion of the population not included in the labor force. Nationally, about 8 in 10 were not in the labor force in 2019, compared with about 3 in 10 of those with no disability.

(4) Further, there are over 5,000 Californians with disabilities who do work and are doing so in segregated settings, and are paid sometimes as low as 15 cents an hour for their work. This leads to continued poverty and dependence throughout their working years and once they are of retirement age. In 2019, the poverty rate of Californians with disabilities was 18.4 percent and 11 percent for Californians with no disabilities.

(5) California’s continued reliance on 14(c) and exemptions in our Labor Code undermine our modern principles of, and protections for, equality. It serves to reinforce the false notion that people with disabilities are less capable than their peers without disabilities. It is also subject to substantial misuse with subjective measures of how much individuals should be paid.

(6) As a result, a growing number of states have insisted that people with disabilities deserve equal pay and have banned use of exemptions that allow for subminimum wage.

(7) The California Legislature has already acted to protect the rights and dignity of Californians, including those with the most significant disabilities.

(8) In 1969, Governor Ronald Reagan signed the Lanterman Developmental Disabilities Services Act, which declares that Californians with developmental disabilities have the same legal rights and responsibilities guaranteed all other persons by the United States and California Constitutions and federal and state laws, and charges regional centers with advocacy for, and protection of, these rights.

(9) On October 9, 2013, Governor Brown signed Assembly Bill 1041 (Chapter 677 of the Statutes of 2013), which codifies California’s Employment First Policy that provides that opportunities for integrated, competitive employment shall be given the highest priority for working age individuals with developmental disabilities, regardless of the severity of their disabilities.

(b) It is the intent of the Legislature to afford all Californians, regardless of whether they have disabilities, with protections to ensure equal pay and equal treatment in the workplace.

SEC. 2. Section 1191 of the Labor Code is amended to read:

1191. (a) For any occupation in which a minimum wage has been established, the commission may issue to an employee who is mentally or physically disabled, or both, a special license authorizing the employment of the licensee for a period not to exceed one year from date of issue, at a wage less than the legal minimum wage. The commission shall fix a special minimum wage for the licensee. That license may be renewed on a yearly basis. No new licenses may be issued after January 1, 2022. Upon release of the plan, as described in subdivision (c), a license may only be renewed for existing licenseholders who meet the requisite benchmarks in the development plan established in accordance with subdivisions (c) and (d). This subdivision shall remain operative only until January 1, 2025, or until the plan as described in subdivision (c) is released, whichever is later, and as of that date is inoperative.

(b) Commencing January 1, 2025, or when the plan as described in subdivision (c) is released, whichever is later, an employee with a disability shall not be paid less than the legal minimum wage required by Section 1182.12 or the applicable local minimum wage ordinance, whichever is higher.

(c) The State Council on Developmental Disabilities, in consultation with stakeholders and relevant state agencies, as appropriate, including, but not limited to, the Department of Finance, the Labor and Workforce Development Agency, the Department of Rehabilitation, the State Department of Education, and the State Department of Developmental Services, shall develop a multiyear phaseout plan with stakeholder involvement, by January 1, 2023, in accordance with the procedures set forth in subdivision (d), to pay any employee with a disability, by January 1, 2025, no less than the minimum wage otherwise required for an employee under Section 1182.12 or the applicable local minimum wage ordinance, whichever is higher.

(d) The multiyear phaseout plan, as described in subdivision (c) shall include, but not be limited to, all of the following:

(1) Benchmarks and desired outcomes for each year of the plan.

(2) A list of the resources necessary to ensure that employees with disabilities can receive services and support according to their needs and preferences of the individuals and in an integrated setting, regardless of the nature or severity of each individual's disabilities, including an assessment of the financial investment needed to transition individuals to competitive integrated employment or other services, the development of new rates for new service models or additional rates necessary for competitive integrated employment supports, and suggestions for revenue streams.

(3) A road map for applying to and using all federal funding programs, including, but not limited to, programs available under Medicaid waiver amendments, technical assistance grants under the Office of Disability Employment Policy, and resources under the federal Workforce Innovation and Opportunity Act, to assist individuals with disabilities to obtain competitive, integrated employment.

(4) Data collection and reporting requirements for tracking the following outcomes for the individual employees with disabilities who are transitioned out of subminimum wage employment:

(A) Wages earned.

(B) Hours worked each month.

(C) Type of job.

(D) Length of employment.

(E) Services utilized to obtain competitive integrated employment.

(5) Data collection and reporting requirements that will track the following aggregate outcomes of employees with disabilities who transition out of subminimum wage employment:

(A) Total number of individuals with disabilities who are employed and paid subminimum wage.

(B) Employment rates.

(C) The number of individuals who were participating in a subminimum wage position that are not participating in job search activities.

(D) The number of individuals who move from subminimum wage positions to nonpaying activities.

(E) The number of individuals who move from subminimum wage positions to positions that are paid at or above minimum wage.

(e) In developing the multiyear phaseout plan pursuant to subdivisions (c) and (d), the State Council on Developmental Disabilities shall engage with and seek input from people with developmental disabilities who have experience working for subminimum wage and stakeholder organizations, including, but not limited to, the protection and advocacy agency designated by the Governor in this state to fulfill the requirements and assurances of the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, other self-advocate and family organizations, provider organizations, including representatives of organizations utilizing the special minimum wage license and those who previously utilized special minimum wage licenses and have successfully transitioned to other employment models, employer and business organizations, and vocational training programs representing those impacted by the changes made to wages for individuals with disabilities.

(f) (1) By January 1, 2023, the State Council on Developmental Disabilities shall release and publicly post a report detailing its multiyear phaseout plan as described in subdivision (c) on its internet website. The State Council on Developmental Disabilities shall also submit a copy of the report on its multiyear phaseout plan to the appropriate policy committees of the Legislature for review on or before January 1, 2023. The report shall include, but not be limited to, all of the following:

(A) Planned benchmarks developed to achieve the outcomes of the plan.

(B) Recommendations for funding levels or other resources necessary to implement the plan.

(C) Outreach and follow up for each employee with a disability who is being paid less than the minimum wage to ensure that the employee's wages are brought up to the minimum wage. This outreach and followup may include consultation with members of the employee's hiring or service coordination team, as appropriate.

(2) The requirement for submitting a report imposed under paragraph (1) is inoperative on January 1, 2027, pursuant to Section 10231.5 of the Government Code.

(3) A report to be submitted pursuant to paragraph (2) shall be submitted in compliance with Section 9795 of the Government Code.

(g) (1) The State Council on Developmental Disabilities shall publicly post on its internet website and submit to the Legislature an annual report beginning on January 1, 2024, and continuing for each year of the multiyear phaseout plan, detailing at least, but not limited to, all of the following:

(A) Status updates on the progress made to meet the developed benchmarks.

(B) Recommendations for funding levels or other resources necessary to implement the plan and an accounting of the resources invested in the multiyear phaseout plan to date.

(C) The data collected in accordance with paragraphs (4) and (5) of subdivision (d).

(2) A report to be submitted pursuant to paragraph (1) shall be submitted in compliance with Section 9795 of the Government Code.

(h) For purposes of this section, "employee with a disability" means an employee who has a "physical disability" or "mental disability" as defined in Section 12926 of the Government Code.

SEC. 3. Section 1191.5 of the Labor Code is amended to read:

1191.5. (a) Notwithstanding the provisions of Section 1191, the commission may issue a special license to a nonprofit organization such as a sheltered workshop or rehabilitation facility to permit the employment of employees who have been determined by the commission to meet the requirements in Section 1191 without requiring individual licenses of such employees. The commission shall fix a special minimum wage for such employees. The special license for the nonprofit corporation shall be renewed on a yearly basis, or more frequently as determined by the commission.

(b) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.