

**Introduced by Senator Durazo**

February 19, 2021

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

**LEGISLATIVE COUNSEL'S DIGEST**

SB 639, as introduced, 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, 2024. The bill, commencing January 1, 2024, would prohibit an employee with a disability from being paid less than the legal minimum wage.

The bill would require the Governor's office, in partnership with relevant state agencies, to develop and implement a phaseout plan with stakeholder involvement, by January 1, 2023, to pay any employee with a disability, as defined, by January 1, 2024, no less than the state

minimum wage otherwise required. The bill would require the 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 Governor's office, in developing and implementing the plan, to engage with and seek input from various statewide organizations. The bill would require the Governor's office, or another agency designated by the Governor's office as the lead agency for the plan, to publicly post its plan to implement the changes required by the bill on its internet website by January 1, 2023. The bill would also require the Governor's office, or the designated lead agency, to submit a report on its findings and the plan to implement these changes to the appropriate policy committees of the Legislature for review on or before January 1, 2023.

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, 2024.

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.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

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

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

12 (2) According to the September 2020 findings from the United  
13 States Commission on Civil Rights, “[a]s currently utilized, the  
14 U.S. Department of Labor has repeatedly found 14(c) providers  
15 limiting people with disabilities participating in the program from  
16 realizing their full potential while allowing providers and associated  
17 businesses to profit from their labor. This limitation is contrary to  
18 14(c)’s purpose.”

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

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

36 (5) California’s continued reliance on 14(c) and exemptions in  
37 our Labor Code undermine our modern principles of, and  
38 protections for, equality. It serves to reinforce the false notion that  
39 people with disabilities are less capable than their peers without

1 disabilities. It is also subject to substantial misuse with subjective  
2 measures of how much individuals should be paid.

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

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

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

16 (9) On October 9, 2013, Governor Brown signed Assembly Bill  
17 No. 1041 (Chapter 677 of the Statutes of 2013), which codifies  
18 California's Employment First Policy that provides that  
19 opportunities for integrated, competitive employment shall be  
20 given the highest priority for working age individuals with  
21 developmental disabilities, regardless of the severity of their  
22 disabilities.

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

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

27 1191. (a) For any occupation in which a minimum wage has  
28 been established, the commission may issue to an employee who  
29 is mentally or physically ~~handicapped~~, *disabled*, or both, a special  
30 license authorizing the employment of the licensee for a period  
31 not to exceed one year from date of issue, at a wage less than the  
32 legal minimum wage. The commission shall fix a special minimum  
33 wage for the licensee. ~~Such~~ *That* license may be renewed on a  
34 yearly basis. *No new licenses may be issued after January 1, 2022.*  
35 *A license may only be renewed for existing licenseholders who*  
36 *meet the requisite benchmarks in the development and*  
37 *implementation plan established in accordance with subdivisions*  
38 *(c) and (d). This subdivision shall remain operative only until*  
39 *January 1, 2024, and as of that date is inoperative.*

1     ***(b) Commencing January 1, 2024, an employee with a disability***  
2     ***shall not be paid less than the legal minimum wage, as established***  
3     ***pursuant to Section 1182.12.***

4     ***(c) The Governor's office, in partnership with relevant state***  
5     ***agencies, including, but not limited to, the Labor and Workforce***  
6     ***Development Agency, the Department of Rehabilitation, the State***  
7     ***Department of Education, the State Department of Developmental***  
8     ***Services, and the State Council on Developmental Disabilities,***  
9     ***shall develop and implement a phaseout plan with stakeholder***  
10    ***involvement, by January 1, 2023, in accordance with the***  
11    ***procedures set forth in subdivision (d), to pay any employee with***  
12    ***a disability, by January 1, 2024, no less than the minimum wage***  
13    ***otherwise required for an employee under Section 1182.12.***

14    ***(d) The plan for development and implementation, as described***  
15    ***in subdivision (c) shall include, but not be limited to, all of the***  
16    ***following:***

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

18    ***(2) A list of the resources necessary to ensure that employees***  
19    ***with disabilities can receive services and support according to***  
20    ***their needs and preferences of the individuals and in an integrated***  
21    ***setting, regardless of the nature or severity of each individual's***  
22    ***disabilities.***

23    ***(3) A plan to apply for and use all federal funding programs,***  
24    ***including, but not limited to, programs available under Medicaid***  
25    ***waiver amendments, technical assistance grants under the Office***  
26    ***of Disability Employment Programs, and resources under the***  
27    ***federal Workforce Innovation and Opportunity Act, to assist***  
28    ***individuals with disabilities to obtain competitive, integrated***  
29    ***employment.***

30    ***(4) A plan to track the individual outcomes of employees with***  
31    ***disabilities on the basis of all of the following:***

32    ***(A) Wages.***

33    ***(B) Hours worked each month.***

34    ***(C) Type of job.***

35    ***(D) Length of employment.***

36    ***(E) Services utilized to obtain competitive integrated***  
37    ***employment.***

38    ***(5) The tracking of aggregate outcomes of individuals with***  
39    ***disabilities on the basis of all of the following:***

40    ***(A) Employment rates.***

1     (B) *The number of individuals who are not participating in job*  
2 *search activities.*

3     (C) *The number of individuals who move from sub-minimum*  
4 *wage positions to nonpaying activities.*

5     (e) *In developing and implementing the plan pursuant to*  
6 *subdivisions (c) and (d), the Governor's office shall, as*  
7 *appropriate, engage with and seek input from statewide*  
8 *organizations, including, but not limited to, the protection and*  
9 *advocacy agency designated by the Governor in this state to fulfill*  
10 *the requirements and assurances of the federal Developmental*  
11 *Disabilities Assistance and Bill of Rights Act of 2000, and other*  
12 *self-advocate and family organizations, provider organizations,*  
13 *employer and business organizations, and vocational training*  
14 *programs representing those impacted by the changes made to*  
15 *wages for individuals with disabilities.*

16     (f) (1) *By January 1, 2023, the Governor's office, or another*  
17 *agency designated by the Governor's office as the lead agency*  
18 *pursuant to this section, shall publicly post its plan to implement*  
19 *the changes required by this section on its internet website. The*  
20 *Governor's office, or the designated lead agency, shall also submit*  
21 *a report on its findings and plan to implement these changes to*  
22 *the appropriate policy committees of the Legislature for review*  
23 *on or before January 1, 2023. The report shall include, but not be*  
24 *limited to, all of the following:*

25     (A) *Benchmarks and status updates on progress made to achieve*  
26 *the outcomes of the plan.*

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

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

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

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

1 (g) For purposes of this section, “employee with a disability”  
2 means an employee who has a “physical disability” or “mental  
3 disability” as defined in Section 12926 of the Government Code.

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

5 1191.5. (a) Notwithstanding the provisions of Section 1191,  
6 the commission may issue a special license to a nonprofit  
7 organization such as a sheltered workshop or rehabilitation facility  
8 to permit the employment of employees who have been determined  
9 by the commission to meet the requirements in Section 1191  
10 without requiring individual licenses of such employees. The  
11 commission shall fix a special minimum wage for such employees.  
12 The special license for the nonprofit corporation shall be renewed  
13 on a yearly basis, or more frequently as determined by the  
14 commission.

15 (b) This section shall remain in effect only until January 1, 2024,  
16 and as of that date is repealed.

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