

112TH CONGRESS
1ST SESSION

H. R. 3086

To phase out special wage certificates under the Fair Labor Standards Act of 1938 under which individuals with disabilities may be employed at subminimum wage rates.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 4, 2011

Mr. STEARNS (for himself and Mr. BISHOP of New York) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To phase out special wage certificates under the Fair Labor Standards Act of 1938 under which individuals with disabilities may be employed at subminimum wage rates.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fair Wages for Work-
5 ers with Disabilities Act of 2011”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Current Federal law allows the Secretary of
9 Labor to grant special wage certificates to entities

1 that provide employment to workers with disabilities,
2 allowing such entities to pay their disabled workers
3 at rates that are lower than the Federal minimum
4 wage.

5 (2) The practice of paying workers with disabili-
6 ties less than the Federal minimum wage dates
7 back to the 1930s, when there were virtually no em-
8 ployment opportunities for disabled workers in the
9 mainstream workforce.

10 (3) Today, advancements in vocational rehabili-
11 tation, technology, and training provide disabled
12 workers with greater opportunities than in the past,
13 and the number of such workers in the national
14 workforce has dramatically increased.

15 (4) Employees with disabilities, when provided
16 the proper rehabilitation services, training, and
17 tools, can be as productive as nondisabled employees.
18 Even those individuals that are considered most se-
19 verely disabled have been able to successfully obtain
20 employment earning minimum wage or higher.

21 (5) While some employers possessing special
22 wage certificates claim to provide rehabilitation and
23 training to disabled workers to prepare them for
24 competitive employment, the fact that such employ-
25 ers can pay their workers less than the Federal min-

1 imum wage gives them an incentive to exploit the
2 cheap labor provided by their disabled workers rath-
3 er than to prepare those workers for integrated em-
4 ployment in the mainstream economy.

5 (6) Many employers with a history of paying
6 subminimum wages benefit from philanthropic dona-
7 tions and preferred status when bidding on Federal
8 contracts. Yet they claim that paying minimum wage
9 to their employees with disabilities would result in
10 lack of profitability and forced reduction of their
11 workforces.

12 (7) Other employers, recognizing that the pay-
13 ment of subminimum wages is in fact exploitation of
14 disabled workers, are now paying the Federal min-
15 imum wage, or higher, to their employees with dis-
16 abilities without reducing their workforces, while still
17 maintaining their profitability. For example, Na-
18 tional Industries for the Blind (NIB) agencies ex-
19 ploited their blind employees for years through the
20 payment of subminimum wages, claiming they could
21 not maintain profitability otherwise. Now, “All NIB
22 associated agencies are committed to the NIB Board
23 policy to pay employees, whose only disability is
24 blindness, at or above the Federal minimum wage or
25 their state minimum wage, whichever is highest.”

1 (8) The Wage and Hour Division of the De-
2 partment of Labor is charged with the responsibility
3 for oversight of these special wage certificates. The
4 results from thorough investigations conducted by
5 the Government Accountability Office—“Stronger
6 Federal Efforts Needed for Providing Employment
7 Opportunities and Enforcing Labor Standards in
8 Sheltered Workshops, Report to the Congress,
9 Comptroller General of the United States” (HRD-
10 81-99) and “Report to Congressional Requesters,
11 Special Wage Program: Centers Offer Employment
12 and Support Services to Workers With Disabilities,
13 But Labor Should Improve Oversight” (GAO-01-
14 886)—explain that due to lack of capacity, training,
15 and resources, the Wage and Hour Division is in-
16 capable of enforcing compliance with the submin-
17 imum wage provision. Furthermore, the significant
18 appropriation that would be required to improve
19 oversight of the regulation would be better spent im-
20 proving employment outcomes for people with dis-
21 abilities.

22 (9) According to the rules established under
23 section 14(c) of the Fair Labor Standards Act of
24 1938, employers are to determine the special wage
25 to be paid to a disabled employee through a com-

1 plicated method that unfairly establishes a produc-
2 tivity benchmark that would be difficult for anyone
3 to maintain. The inability of many employers to cor-
4 rectly establish the wage pursuant to the rule has
5 regularly resulted in disabled employees receiving
6 even less than the special minimum wage (below the
7 federally established minimum wage) that they
8 should have received under the regulation.

9 **SEC. 3. TRANSITION TO FAIR WAGES.**

10 (1) DISCONTINUANCE.—Effective on the date of
11 enactment of this Act, the Secretary of Labor shall
12 discontinue issuing special wage certificates under
13 section 14(c) of the Fair Labor Standards Act of
14 1938 (29 U.S.C. 214(c)) to any new entities not
15 currently holding a certificate.

16 (2) TRANSITION.—All special wage certificates
17 held on the date of enactment of this Act—

18 (A) by private for profit entities shall be
19 revoked 1 year after such date of enactment;

20 (B) by public or governmental entities
21 shall be revoked 2 years after such date of en-
22 actment; and

23 (C) by non-profit entities shall be revoked
24 3 years after such date of enactment.

1 (3) REPEAL.—Effective 3 years from the date
2 of enactment of this Act, section 14(c) of the Fair
3 Labor Standards Act of 1938 (29 U.S.C. 214(c)) is
4 repealed and any remaining special wage certificates
5 issued under such section shall be revoked.

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