

ACT 55

S.B. NO. 793

A Bill for an Act Relating to the Minimum Wage.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the real problems of disability arise not from the medical conditions themselves, but rather from the low expectations, misinformation, and socially-constructed systemic barriers associated with the conditions. Individuals with disabilities are subject to low expectations particularly in employment and the system preparing them for employment, such as education and rehabilitation programs.

Section 14(c) of the Fair Labor Standards Act (Section 14(c)) denies people the guarantee of a minimum wage for potentially any job and at any point in their career, based on their disability status. As reported by the Arizona Advisory Committee on the U.S. Commission on Civil Rights in its 2020 submittal, “Subminimum Wages for Persons with Disabilities Under Section 14(c) of the Fair Labor Standards Act,” in a world after the enactment of the Americans with Disabilities Act, Section 14(c) can be considered a federal law that discriminates against individuals with disabilities. Section 14(c) is different from its counterpart sections 14(a) and 14(b) in that the bases for allowing payment of below minimum wage in those sections are the job being performed or the particular stage in the individual’s career, which can be temporary, whereas an individual’s disability status can be lifelong.

The original intent of Section 14(c) was to serve as a platform to train and prepare individuals with disabilities to gain open-market competitive jobs. However, the Arizona Advisory Committee reported that Section 14(c) cannot be justified as a policy to increase open-market employment opportunities for individuals with disabilities. It has been shown that Section 14(c) simply provided a subsidy for sheltered workshops that do not support movement of their workers to competitive employment. Section 14(c) no longer fulfills its original intent and runs contrary to the American with Disabilities Act, which was enacted subsequently. Section 14(c) is an outdated law that only serves to perpetuate misinformation, stigma, and stereotypes of individuals with disabilities.

The purpose of this Act is to repeal existing law that exempts individuals with disabilities from minimum wage requirements as a cost neutral initiative with great positive impact on the lives of individuals with disabilities.

SECTION 2. Section 103D-1001, Hawaii Revised Statutes, is amended by amending the definition of “qualified community rehabilitation program” to read as follows:

““Qualified community rehabilitation program” means a nonprofit community rehabilitation program for ~~[persons]~~ individuals with disabilities that:

- (1) Is organized and incorporated under the laws of the United States or this State, and located in this State;
- (2) Is operated in the interest of and ~~[[employs]~~~~[persons]~~ individuals with disabilities;
- (3) Does not inure any part of its net income to any shareholder or other individual;
- (4) Complies with all applicable occupational health and safety standards required by the federal, state, and county governments; and
- (5) ~~[Holds a current certificate from the United States Department of Labor pursuant to the Fair Labor Standards Act, Title 29 United States Code section 214(c), and is certified by the state department~~

~~of labor and industrial relations under section 387-9 and applicable administrative rules relating to the employment of persons with disabilities.] Maintains a disabled to non-disabled employee ratio equal to or greater than one to three at all times. To ensure integrated employment of individuals with disabilities, this one-to-three ratio is to include all levels of employment, management, and sub-contracting.~~”

SECTION 3. Section 387-9, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

“§387-9 Special minimum wages for learners; apprentices; full-time students; paroled wards of Hawaii youth correctional facility[; ~~handicapped workers~~].

(a) Notwithstanding the provisions of section 387-2, the director ~~may~~^{is} by rule, may provide for the employment[;

- (1) ~~Of~~ ^{of} learners~~[-of]~~; apprentices~~[-of]~~; part-time employees who are full-time students attending public or private schools other than colleges, universities, business schools, or technical schools~~[-];~~ and ~~of~~ wards paroled from the Hawaii youth correctional facility, under special certificates issued by the director, at ~~such~~ wages lower than the applicable minimum wage and subject to ~~such~~ limitations as to time, number, proportion, and length of service as the director shall prescribe~~[-; and~~
- (2) ~~Of individuals whose earning capacity is impaired by old age or physical or mental deficiency or injury, under special certificates issued by the director, at such wages lower than the applicable minimum wage and for such period as shall be fixed in the certificates].~~”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 16, 2021.)