

# HOUSE BILL REPORT

## ESSB 5284

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**As Passed House:**

April 5, 2021

**Title:** An act relating to eliminating subminimum wage certificates for persons with disabilities.

**Brief Description:** Eliminating subminimum wage certificates for persons with disabilities.

**Sponsors:** Senate Committee on Labor, Commerce & Tribal Affairs (originally sponsored by Senators Randall, Billig, Carlyle, Das, Hasegawa, Hunt, Keiser, Kuderer, Liias, Lovelett, Nguyen, Nobles, Robinson, Saldaña, Salomon, Stanford, Wellman and Wilson, C.).

**Brief History:**

**Committee Activity:**

Labor & Workplace Standards: 3/12/21, 3/19/21 [DP].

**Floor Activity:**

Passed House: 4/5/21, 75-23.

**Brief Summary of Engrossed Substitute Bill**

- Prohibits the Department of Labor and Industries (Department) from issuing special certificates for subminimum wages for individuals with disabilities after July 31, 2023.
- Allows for limited one-time extensions of unexpired certificates under certain circumstances.
- Requires the Department to notify parties of the expiration of certificates and information related to services offered by the Department of Social and Health Services (DSHS).
- Requires the DSHS to provide certain services and assistance to eligible individuals whose certificates are expiring.
- Requires the Department and DSHS to submit annual reports to the Legislature.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

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## HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

**Majority Report:** Do pass. Signed by 7 members: Representatives Sells, Chair; Berry, Vice Chair; Hoff, Ranking Minority Member; Mosbrucker, Assistant Ranking Minority Member; Bronoske, Harris and Ortiz-Self.

**Staff:** Trudes Tango (786-7384).

### **Background:**

#### Special Certificates for Subminimum Wages.

Employers covered under the state Minimum Wage Act are required to pay employees aged 18 or older at least the minimum hourly wage. The Department of Labor and Industries (Department) may issue special certificates to employers to pay wages below the minimum wage, in order to prevent curtailment of opportunities for employment. The Department may issue special certificates applicable to workers with disabilities. A "worker with a disability" is defined as an individual whose earning capacity is impaired by age or physical or mental deficiency or injury for the work the person is to perform.

In the application for a special certificate, the employer must set forth, among other things, the proposed wage to be paid, the nature of the disability, and how the worker's disability affects the work performed.

Generally, the pay rate may not be less than 75 percent of the applicable minimum wage unless, after investigation, a lower rate is justified. Special certificates are effective for only the period of time designated by the Department, which is typically two years.

As of July 1, 2020, state agencies are prohibited from employing individuals under special subminimum wage certificates issued for persons with disabilities.

#### Developmental Disabilities Administration.

The Department of Social and Health Services' (DSHS) Developmental Disability Administration (DDA) assists individuals with developmental disabilities and their families to obtain services and support based on individual preferences, capabilities, and needs. Eligibility for DDA services depends on whether the client has a qualified developmental disability, has a functional need, and meets certain income and asset standards. The services provided to clients include employment services and community access services, which are contracted with counties. Employment services provide ongoing support services and training for eligible persons in a variety of settings and work sites.

### **Summary of Bill:**

After July 31, 2023, the Director of the Department (Director) may not issue any new special certificates for subminimum wages for individuals with disabilities. Special

certificates that have not expired as of July 31, 2023, remain valid until the certificate expires.

Before a certificate expires, the Director may grant a one-time extension of the certificate, for not more than one year, if: (1) the person employed under the certificate is eligible to receive services from the DDA; and (2) the employer requests an extension.

Ninety days before a certificate expires, the Director must provide written notice to the employer, the employee, and the employee's legal guardian, legal representative, or other individual authorized to receive information on the employee's behalf. The notice must contain:

- the expiration date of the certificate;
- the employer's option to extend the certificate; and
- upon request, the contact information for the DSHS and information about supportive services available to the employee.

To allow the DSHS to prioritize services, the Department may share information with the DSHS, such as certificate expiration dates and employee contact information.

#### Department of Social and Health Services and Developmental Disabilities Administration Services.

The DSHS must prioritize individuals, using certificate expiration dates, for providing individual technical assistance to transition individuals into employment that pays at least minimum wage or into other services.

Subject to the availability of amounts appropriated, the DSHS must work with contracted providers to expand employment and day services to individuals leaving special certificate employment.

Before an individual's special certificate expires, the DSHS must provide written and verbal notice to the individual and their legal representatives informing the individual of all available waiver services and the process to access those services.

#### Annual Reports.

By October 1, 2021, and annually until all special certificates have expired, the Department must collaborate with the DDA and the DSHS Division of Vocational Rehabilitation, to submit the following information to the appropriate committees of the Legislature:

- the number of special certificates remaining;
- the number of individuals who were employed under special certificates and who contacted the DSHS to receive individual technical assistance and other services, and the services and assistance that were provided; and
- the number of individuals who continued employment after expiration of their certificates, a description of the employment, and a description of assistance and services that were provided.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This bill recognizes the humanity of all workers. It is a civil rights issue. People with disabilities should not be treated as cheap labor and second-class citizens. They deserve equal pay. All work is dignified and work from these individuals should be valued the same as other work. Ending subminimum wages is just a matter of time and it will happen either on the federal level or the state level. With good individualized planning, services, and support, individuals who were working at subminimum wage jobs could transition into other employment. It will improve their quality of life. There are about 242 active certificates with 12 different employers. Most will expire in 2021.

(Opposed) For some individuals, subminimum wage employment is the only work they can get and it gives them opportunities they would not have otherwise. Their choice is between a subminimum wage job or no job. This bill has good intentions but would preclude employment for many individuals with disabilities. This bill is based on wishful thinking and will harm the developmental disability community. Certificates are individualized to each person's situation. When the bill banning these certificates at state agencies passed, many workers with disabilities lost their jobs. Being able to work is a valuable option for these individuals.

**Persons Testifying:** (In support) Senator Randall, prime sponsor; Kyle Matheson, Kenneth Minkler, Anthony Nash, Robert Wardell, and Ivanova Smith, Self Advocates In Leadership; Lauren Allen; Cathy Murahashi; Debbie Meyers, SKCAC Industries and Employment Services; John Lemus, AtWork!; Richard May; Michael Rogers; and Joe Kendo, Washington State Labor Council, American Federation of Labor and Congress of Industrial Organizations.

(Opposed) Cheryl Felak; Kelley Nesbitt; and Tim O'Connell, Stoel Rives LLP.

**Persons Signed In To Testify But Not Testifying:** None.