



127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 1240

S.P. 445

In Senate, April 7, 2015

**An Act To Phase Out the Payment of Subminimum Wages to
Workers with Disabilities**

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator KATZ of Kennebec.
Cosponsored by Representative HERBIG of Belfast and
Representatives: CAMPBELL of Newfield, GILBERT of Jay.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 26 MRSA §666**, as amended by PL 2011, c. 483, §1, is repealed.

3 **Sec. 2. 26 MRSA §673** is enacted to read:

4 **§673. Special wage certificates for individuals with disabilities**

5 **1. Special certificates prohibited.** Beginning November 1, 2015, the director may
6 not issue special certificates authorizing an employer to pay an individual with a physical
7 or mental disability a wage less than the minimum wage based on the individual's ability
8 to perform the duties required for that employment in comparison to the ability of a
9 person who does not have a physical or mental disability to perform the same duties.

10 **2. Minimum wage.** Except as provided by subsection 3, an employer may not
11 employ any employee at a rate less than the rates required by section 664.

12 **3. Former special certificates.** A special certificate described in subsection 1,
13 issued pursuant to former section 666 or pursuant to federal law, remains in effect until
14 the earlier of its expiration date and November 1, 2018 and may not be renewed.

15 **4. Vocational rehabilitation services.** The Department of Labor and the
16 Department of Health and Human Services shall offer all individuals with disabilities
17 being paid less than Maine's minimum wage vocational rehabilitation services at least
18 annually, including career planning assistance and information and referrals regarding
19 resources offering competitive employment services and supports.

20 **5. Exemption.** After the expiration of a special certificate described in subsection 1,
21 the individual who was employed at less than minimum wage may apply to the director
22 for an individual work permit authorizing the payment of wages at less than the minimum
23 wage by a certain employer. The permit must state the lowest wage to be paid and must
24 remain in effect with regard to that employer in 2-year increments. This permit will be
25 granted only after a formal review by the Department of Labor that verifies the following:

26 **A.** Individually designed and customized employment strategies have failed to yield
27 integrated, community-based, customized employment or self-employment at or
28 above minimum wage;

29 **B.** The employer has made all possible efforts to provide reasonable
30 accommodations to assist the individual to perform the essential functions of the job,
31 including, but not limited to, providing training, providing supervision and support,
32 making physical changes to the workplace, tailoring the job to the individual's
33 abilities or reassigning the individual to another position;

34 **C.** The individual agrees to the proposed wage rate; and

35 **D.** For an individual with an intellectual disability or autism, the individual is
36 engaging in a personal planning process pursuant to Title 34-B, section 5470-B.

37 An individual who has received an adverse application decision by the director may
38 appeal to the commissioner from that determination by filing a written notice with the

1 commissioner stating the specific grounds of that individual's objection within 10 days'
2 notice of that determination. The commissioner shall hold a hearing on the appeal,
3 pursuant to Title 5, chapter 375, subchapter 4, within 20 days from the receipt of the
4 notice of appeal. The commissioner has the authority to affirm, reverse or amend the
5 determination of the director. The commissioner shall render a decision within 10 days
6 after the conclusion of the hearing.

7 During the time that the formal review is being conducted, during the time an adverse
8 application decision has been made and appeal has not been exhausted or during the time
9 that a grievance filed pursuant to Title 34-B, section 5604 is pending at any stage, the
10 special certificate or individual work permit remains in effect, as long as the employer
11 has current federal approval for the wage pursuant to 29 United States Code, Section 214.

12 **SUMMARY**

13 Currently the State Government and Federal Government may issue special
14 certificates permitting an employer to pay an individual with a physical or mental
15 disability a wage less than the State's minimum wage based on the individual's ability to
16 perform the duties required for that employment in comparison to the ability of a person
17 who does not have a physical or mental disability to perform the same duties. This bill
18 prohibits the issuance of such certificates. Existing special certificates authorizing
19 payment of less than the minimum wage remain in effect until the earlier of their
20 expiration date and November 1, 2018. After the expiration of a previously issued
21 certificate, an individual who was covered by such certificate may apply to the Director
22 of the Bureau of Labor Standards within the Department of Labor for a special work
23 permit authorizing the payment of wages at less than the minimum wage rate by a certain
24 employer.