

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

Senate Bill 253

SENATORS JEFFRIES, BALDWIN, STOLLINGS, ROMANO,

LINDSAY, AND RUCKER, *original sponsors*

[Originating in the Committee on the Judiciary;

reported on February 18, 2020]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §18-10P-1, §18-10P-2, §18-10P-3, and §18-10P-4, all relating to wages of
3 persons with disabilities; initiating a State Employment First Policy to facilitate integrated
4 employment of disabled persons; providing legislative findings; defining terms;
5 establishing a taskforce to develop a State Employment First Policy; and providing for
6 implementation of the State Employment First Policy.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10P. EMPLOYMENT FIRST POLICY.

§18-10P-1. Legislative findings.

1 The Legislature finds a need to create a state initiative to promote competitive, integrated,
2 and customized employment opportunities for disabled citizens using publicly funded services
3 regardless of the individuals' level of disability. This State Employment First Policy initiative is
4 intended to promote the expectation that individuals with intellectual, developmental, and other
5 disabilities are valued members of the workforce, and can often meet the same employment
6 standards, responsibilities, and expectations as other working-age adults when provided the
7 proper education, reasonable accommodations, and supports.

§18-10P-2. Definitions.

1 "Competitive Employment" means work that is performed on a full-time or part-time basis
2 (including self-employment) for which an individual is compensated at a rate that is not less than
3 the rates specified in §21-5C-2 of this code, and for which the employee is eligible for the level of
4 benefits provided to other employees and which presents opportunities for advancement that are
5 similar to those for other employees who are not individuals with disabilities who have similar
6 positions.

7 "Customized Employment" means those employment supports and services for an
8 individual that are designed in a way to personalize the employment relationship between the
9 person with a disability and employer in a way that meets the needs of both.

10 “Integrated employment” means employment at a location where the percentage of
11 employees with disabilities relative to the employees without disabilities is consistent with the
12 norms of the general workforce, and where the employees with disabilities interact with other
13 persons, to the same extent as employees in comparable positions without disabilities.

§18-10P-3. Creation of Employment First Taskforce.

1 The Commissioner of the West Virginia Bureau for Behavioral Health and Health Facilities
2 shall establish a taskforce for the purpose of developing and implementing a State Employment
3 First Policy. The taskforce shall hold meetings at the call of the chairperson or upon written
4 request of a majority of the members. The taskforce shall meet at least four times a year. The
5 commissioner shall appoint the membership of the taskforce, which shall include, at a minimum,
6 the following members:

7 (1) The Commissioner of the West Virginia Bureau for Behavioral Health and Health
8 Facilities, or his or her representative, who shall chair the taskforce;

9 (2) An individual with a developmental disability;

10 (3) An individual with an intellectual disability;

11 (4) A family member of a person with a disability;

12 (5) A representative of the Department of Education;

13 (6) A representative of Workforce West Virginia;

14 (7) A representative of the Division of Rehabilitation Services;

15 (8) A representative of the Bureau for Medical Services (State Medicaid Agency);

16 (9) A representative of the West Virginia Developmental Disabilities Council;

17 (10) A representative of a provider of integrated and competitive employment services
18 who does not also provide sheltered or otherwise segregated services for individuals with
19 disabilities;

20 (11) A representative of West Virginia Center of Excellence in Disabilities;

21 (12) A representative of Disability Rights of West Virginia (the Governor-designated state
22 protection and advocacy agency);

23 (13) A representative of the West Virginia Statewide Independent Living Council;

24 (14) A representative of the West Virginia Community and Technical College Systems;

25 and

26 (15) The State of West Virginia Americans with Disabilities Act Coordinator.

§18-10P-4. State Employment First Policy.

1 The Bureau for Behavioral Health and Health Facilities, Division of Rehabilitation Services,
2 the Department of Education, Workforce West Virginia, and the Bureau for Medical Services shall
3 adopt and implement a joint State Employment First Policy as recommended by the Employment
4 First Taskforce pursuant to §18-10P-2 of this code, which recognizes that earning a living wage
5 through competitive employment in the general workforce is the first and preferred outcome of all
6 publicly funded services provided to working-age individuals with disabilities. The State
7 Employment First Taskforce shall develop and implement a plan that:

8 (1) Describes time frames and proposals for aligning state policies, including eligibility and
9 funding priorities, allocations for responsibility, and authority for ensuring implementation;

10 (2) Detailed cost projections for additional state funding needed over a five-year period to:
11 (A) Provide rate increases and incentives to providers that implement Employment First services;
12 and (B) train or retrain the workforce;

13 (3) Describes strategies, timelines, and plans to increase investment in integrated
14 employment services and may carefully consider plans to reduce sheltered work settings;

15 (4) Incorporates Employment First practices and methods in policy improvement plans
16 providing customized, person-centered, and individually tailored employment supports to people
17 with intellectual, developmental, and other disabilities, including people with complex support
18 needs;

19 (5) Complies with federal policy and practice mandates regarding employment services
20 design, settings, and coordination among stakeholders, including:

21 (A) The Centers for Medicare and Medicaid Services Home and Community-Based
22 Services;

23 (B) Workforce Innovation and Opportunity Act; and

24 (C) The United States Department of Justice rulings that found that segregated work
25 settings violate the “most integrated setting” rule of the Americans with Disabilities Act relative to
26 the findings of the Supreme Court of the United States in the Olmstead court case;

27 (6) Describes minimal workforce competency-based training standards applicable for job
28 coaches, case managers, and other relevant personnel;

29 (7) Establishes interagency agreements, as appropriate, to improve coordination of
30 services, and collect and share data to inform long-term systems planning;

31 (8) Proposes initiatives to address the culture of low expectations, to which parents of
32 young children with intellectual, developmental, and other disabilities are exposed;

33 (9) Provides the Governor and Legislature the State Employment First Policy within 12
34 months of the enactment of this bill;

35 (10) Reports to the Governor and the Legislature annually on the findings and results of
36 the efforts of the taskforce to accomplish the goals of the plan. These reports shall present data
37 which reflects the number of people with disabilities who attained employment as a result of the
38 implementation of the plan, as well as any barriers to implementation and strategies developed
39 to address them;

40 (11) Provides updates to the plan biennially or more often as needed;

41 (12) Ensures:

42 (A) That individuals, particularly secondary and post-secondary students with disabilities,
43 understand the importance of, and are given the opportunity to explore, options for further training
44 as a pathway to integrated employment;

45 (B) The availability and accessibility of individualized training and support in an individual's
46 preferred employment options;

47 (C) The availability and accessibility of resources necessary to enable an individual to
48 understand possible effects of earned income and accumulation of assets on the individual's
49 eligibility for public benefits and opportunities to properly manage and save income and assets
50 without jeopardizing such benefits;

51 (D) That competitive integrated employment, while being the first and preferred outcome,
52 is not required of an individual with a disability to secure and maintain necessary public benefits,
53 health care, training, and support for individuals with disabilities and this statute may not be
54 construed to limit or disallow any disability benefits to which a person with a disability who is
55 unable to be employed as contemplated by this statute would otherwise be entitled; and

56 (E) That the staff of public schools, vocational service programs, and community providers
57 are trained and supported to assist in achieving the goal of competitive integrated employment
58 for all individuals with disabilities; and

59 (13) Promotes partnerships with employers to overcome barriers to meet workforce needs,
60 including the creative use of technology and innovation.

NOTE: The purpose of this bill is to provide for fair pay and maximized employment of disabled persons; create a state "Employment First" policy that encourages agencies to facilitate employment of disabled persons; establish a task force to initiate these policies; and provide for the Bureau for Behavioral Health and Health Facilities, Division of Rehabilitation Services, the Department of Education, Workforce West Virginia, and the Bureau for Medical Services to implement the policy.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.