WEST virginia legislature

2021 regular session

Introduced

House Bill 3098

By Delegates Thompson, Walker, Barach, and Griffith

[Introduced March 12, 2021; Referred to the Committee on Workforce Development then the Judiciary]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §21-1F-1, §21-1F-2, and §21-1F-3, all relating to mandating that employees may only be discharged for just cause; defining terms; providing for probationary period; rescinding common law presumption of employment at will; and limiting the basis for discharge of protected employees.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1F. DISCHARGE FROM EMPLOYMENT.

§21-1F-1. Definitions.

For the purposes of this article:

“Constructive discharge” means the voluntary termination of employment by an employee because of a situation created by an act or omission of the employer which an objective, reasonable person would find so intolerable that voluntary termination is the only reasonable alternative;

“Discharge” includes a constructive discharge as defined in this section and dismissal or removal from employment other than termination of employment for lack of work, failure to recall or rehire, and any other cutback in the number of employees for a legitimate business reason;

“Just cause” means reasonable job-related grounds for dismissal based on a failure to satisfactorily perform job duties, disruption of the employer’s operation, or other legitimate business reason; and

“Protected position” means an employment position in which the employee does not manage more than three other employees or the emplyoee is not an independent contractor.

§21-1F-2. Probationary period.

(a) An employee and employer may establish a probationary period at the beginning of an employment period in which the employment may be terminated at the will of either the employer or the employee on notice to the other for any reason or for no reason.

(b) If no specific probationary period is established or provided at the time of hire, then the probationary period shall be for 6 months from the date of hire.

§21-1F-3. Discharge lawful only for good cause.

(a)The common law doctrine or presumption that an employment relationship is terminable at will is hereby rescinded.

(b) Upon completion of a probationary period, an employee in a protected position may only be discharged for just cause.

NOTE: The purpose of this bill is to mandate that employees may only be dismissed from employment for just cause.

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