

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3419

FISCAL
NOTE

By Delegate Pushkin

[Introduced February 13, 2023; Referred to the
Committee on Health and Human Resources then the
Judiciary]

1 A BILL to amend and reenact §18-10Q-2 and §18-10Q-3, of the Code of West Virginia, 1931, as
 2 amended; and to repeal §18-10Q-4, and §18-10Q-5 of said code; and to amend and
 3 reenact §21-5C-1 of said code, all relating to wages of persons with disabilities; initiating a
 4 State "Employment First Policy" to facilitate integrated employment of disabled persons;
 5 providing legislative findings; establishing a taskforce to develop a State Employment First
 6 Policy; providing for implementation of the State Employment First Policy; and removing
 7 the exemption from paying minimum wages to disabled persons working in nonprofit
 8 workshops.

Be it enacted by the Legislature of West Virginia:

CHAPTER 18. EDUCATION.

ARTICLE 10P. EMPLOYMENT FIRST POLICY.

§18-10Q-2. Definitions Creation of Employment First Taskforce.

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.~~

14 The Director of the Division of Rehabilitation Services shall establish a taskforce for the
 15 purpose of developing recommendations on implementation of an Employment First Policy. The
 16 Director shall appoint the membership of the taskforce, which shall include, at a minimum the
 17 following members:

18 (1) The Director of the Division of Rehabilitation Services, who shall chair the taskforce;

19 (2) An individual with a developmental disability;

20 (3) A family member of a person with a disability;

21 (4) A representative of the Department of Education;

22 (5) A representative of Workforce West Virginia;

23 (6) A representative of the Bureau for Behavioral Health and Health Facilities;

24 (7) A representative of the Bureau for Medical Services (State Medicaid Agency);

25 (8) A representative of the WV Developmental Disabilities Council;

26 (9) A representative of a provider of integrated and competitive employment services who
 27 does not also provide sheltered or otherwise segregated services for individuals with disabilities;

28 (10) A representative of WV Center of Excellence in Disabilities; and

29 (11) A representative of Disability Rights of WV (the Governor designated state protection
 30 and advocacy agency).

§18-10Q-3. ~~Creation of Employment First Taskforce; membership; meeting requirements~~

State Employment First Policy.

1 ~~(a) The Commissioner of the West Virginia Bureau for Behavioral Health shall establish a~~
 2 ~~taskforce for the purpose of developing and implementing a state Employment First Policy.~~

3 ~~(b) The commissioner shall appoint the membership of the taskforce, which shall include,~~
 4 ~~at a minimum, the following members:~~

5 ~~(1) The Commissioner of the West Virginia Bureau for Behavioral Health, or his or her~~
 6 ~~representative, who shall chair the taskforce;~~

7 ~~(2) An individual with a developmental disability;~~

- 8 ~~(3) An individual with an intellectual disability;~~
- 9 ~~(4) A family member of a person with a disability;~~
- 10 ~~(5) A representative of the Department of Education;~~
- 11 ~~(6) A representative of Workforce West Virginia;~~
- 12 ~~(7) A representative of the Division of Rehabilitation Services;~~
- 13 ~~(8) A representative of the Bureau for Medical Services (State Medicaid Agency);~~
- 14 ~~(9) A representative of the West Virginia Developmental Disabilities Council;~~
- 15 ~~(10) A representative of a provider of integrated and competitive employment services who~~
16 ~~does not also provide sheltered or otherwise segregated services for individuals with disabilities;~~
- 17 ~~(11) A representative of West Virginia Center of Excellence in Disabilities;~~
- 18 ~~(12) A representative of Disability Rights of West Virginia (the Governor-designated state~~
19 ~~protection and advocacy agency);~~
- 20 ~~(13) A representative of the West Virginia Statewide Independent Living Council;~~
- 21 ~~(14) A representative of the West Virginia Community and Technical College Systems;~~
- 22 ~~(15) A representative of the West Virginia Behavioral Healthcare Providers Association;~~
- 23 ~~(16) A representative of the West Virginia Association of Rehabilitation Facilities; and~~
- 24 ~~(17) The State of West Virginia Americans with Disabilities Act Coordinator.~~
- 25 ~~(c) The taskforce shall hold meetings at the call of the chairperson or upon written request~~
26 ~~of a majority of the members. The taskforce shall meet at least four times a year.~~
- 27 ~~(d) The chairman of the taskforce shall appointment a member to act as secretary for the~~
28 ~~purposes of the taking of minutes. The minutes shall be approved by the taskforce at each~~
29 ~~meeting. The minutes and all other documentation shall be maintained by the chair~~
- 30 The Division of Rehabilitation Services, the Department of Education, Workforce West
31 Virginia, the State Bureau for Behavioral Health and Health Facilities and the Bureau for Medical
32 Services shall adopt and implement a joint Employment First plan as recommended by the
33 Employment First Taskforce pursuant to §18-10P-2 of this code, which recognizes that earning a

34 living wage through competitive employment in the general workforce is the first and preferred
35 outcome of all publicly funded services provided to working-age individuals with disabilities. The
36 Employment First Taskforce shall develop and implement a plan that:

37 (1) Describes timeframes and proposals for aligning state policies, including eligibility and
38 funding priorities, allocations for responsibility and authority for ensuring implementation;

39 (2) Detailed cost projections for additional state funding (if any) needed over a five-year
40 period to: (A) Provide rate increases and incentives to providers that implement Employment First
41 services; and (B) train and/or retrain the workforce.

42 (3) Describes strategies, timelines and plans to reduce sheltered work settings while
43 increasing investment in integrated employment services.

44 (4) Incorporates Employment First practices and methods in policy improvement plans so
45 that customized, person-centered and individually tailored employment supports are available to
46 people with intellectual, developmental, and other disabilities, including people with complex
47 support needs.

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

50 (A) Centers for Medicare and Medicaid Services Home and Community Based Services
51 setting final rule;

52 (B) Workforce Innovation and Opportunity Act; and

53 (C) U.S. Department of Justice rulings that found that segregated work settings violate the
54 "most integrated setting" rule relative to the Supreme Court's ruling in the Olmstead court case of
55 the Americans with Disabilities Act.

56 (6) Describes minimal workforce competency-based training standards applicable for job
57 coaches, case managers, and other relevant personnel.

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

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

62 (9) Provides the Governor and Legislature the Employment First Plan within 12 months of
63 the enactment of this bill; report to the Governor and the Legislature annually on the findings and
64 results of the efforts of the taskforce to accomplish the goals of the plan; present data which
65 reflects the numbers of people with disabilities who attained employment as a result of the
66 implementation of the plan as well as any barriers to implementation and strategies developed to
67 address them; and

68 (10) Provides updates to the plan biennially or more often as needed.

69 (11) Ensures:

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

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

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

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

84 (E) That the staff of public schools, vocational service programs and community providers
85 are trained and supported to assist in achieving the goal of competitive integrated employment for

86 all individuals with disabilities; and

87 (12) Promotes partnerships with employers to overcome barriers to meet workforce needs

88 including the creative use of technology and innovation.

§18-10Q-4. Powers and duties of the taskforce; state Employment First Policy; required plan; reporting requirements.

1 [Repealed.]

§18-10Q-5. Sunset date.

1 [Repealed.]

CHAPTER 21. LABOR.

ARTICLE 5C. MINIMUM WAGE AND MAXIMUM HOURS STANDARDS FOR EMPLOYEES.

§21-5C-1. Definitions.

1 As used in this article:

2 (a) "Commissioner" means the Commissioner of Labor or his or her duly authorized
3 representatives.

4 (b) "Wage and hour director" means the wage and hour director appointed by the
5 Commissioner of Labor as chief of the Wage and Hour Division.

6 (c) "Wage" means compensation due an employee by reason of his or her employment.

7 (d) "Employ" means to hire or permit to work.

8 (e) "Employer" includes the State of West Virginia, its agencies, departments and all its
9 political subdivisions, any individual, partnership, association, public or private corporation, or any
10 person or group of persons acting directly or indirectly in the interest of any employer in relation to
11 an employee; and who employs during any calendar week six or more employees as herein
12 defined in any one separate, distinct and permanent location or business establishment: *Provided*,
13 That prior to January 1, 2015, the term "employer" does not include any individual, partnership,

14 association, corporation, person or group of persons or similar unit if 80 percent of the persons
15 employed by him or her are subject to any federal act relating to minimum wage, maximum hours
16 and overtime compensation: *Provided, however*, That after December 31, 2014, for the purposes
17 of §21-5C-3 of this code, the term "employer" does not include any individual, partnership,
18 association, corporation, person or group of persons or similar unit if 80 percent of the persons
19 employed by him or her are subject to any federal act relating to maximum hours and overtime
20 compensation.

21 (f) "Employee" includes any individual employed by an employer but shall not include: (1)
22 Any individual employed by the United States; (2) any individual engaged in the activities of an
23 educational, charitable, religious, fraternal or nonprofit organization where the employer-
24 employee relationship does not in fact exist, or where the services rendered to such organizations
25 are on a voluntary basis; (3) newsboys, shoeshine boys, golf caddies, pinboys, and pin chasers in
26 bowling lanes; (4) traveling salesmen and outside salesmen; (5) services performed by an
27 individual in the employ of his or her parent, son, daughter or spouse; (6) any individual employed
28 in a bona fide professional, executive or administrative capacity; (7) any person whose
29 employment is for the purpose of on-the-job training; (8) any person having a physical or mental
30 handicap so severe as to prevent his or her employment or employment training in any training or
31 employment facility other than a nonprofit sheltered workshop; (9) any individual employed in a
32 boys or girls summer camp; (10) any person 62 years of age or over who receives old-age or
33 survivors benefits from the Social Security Administration; (11) any individual employed in
34 agriculture as the word agriculture is defined in the Fair Labor Standards Act of 1938, as amended;
35 (12) any individual employed as a firefighter by the state or agency thereof; (13) ushers in theaters;
36 (14) any individual employed on a part-time basis who is a student in any recognized school or
37 college; (15) any individual employed by a local or interurban motorbus carrier; (16) so far as the
38 maximum hours and overtime compensation provisions of this article are concerned, any
39 salesman, parts man or mechanic primarily engaged in selling or servicing automobiles, trailers,

40 trucks, farm implements, aircraft if employed by a nonmanufacturing establishment primarily
41 engaged in the business of selling such vehicles to ultimate purchasers; (17) any employee with
42 respect to whom the United States Department of Transportation has statutory authority to
43 establish qualifications and maximum hours of service; (18) any person employed on a per diem
44 basis by the Senate, the House of Delegates, or the Joint Committee on Government and Finance
45 of the Legislature of West Virginia, other employees of the Senate or House of Delegates
46 designated by the presiding officer thereof, and additional employees of the Joint Committee on
47 Government and Finance designated by such joint committee; or (19) any person employed as a
48 seasonal employee of a commercial whitewater outfitter where the seasonal employee works less
49 than seven months in any one calendar year and, in such case, only for the limited purpose of
50 exempting the seasonal employee from the maximum wage provisions of §21-5C-3 of this code.
51 ~~or (20) any person employed as a seasonal employee of an amusement park where the seasonal~~
52 ~~employee works less than seven months in any one calendar year and, in such case, only for the~~
53 ~~limited purpose of exempting the seasonal employee from the maximum hours provisions of §21-~~
54 ~~5C-3 of this code~~

55 (g) "Workweek" means a regularly recurring period of 168 hours in the form of seven
56 consecutive 24-hour periods, need not coincide with the calendar week, and may begin any day of
57 the calendar week and any hour of the day.

58 (h) "Hours worked" means the hours for which an employee is employed: *Provided*, That in
59 determining hours worked for the purposes of §21-5C-2 and §21-5C-3 of this code, there shall be
60 excluded any time spent in changing clothes or washing at the beginning or end of each workday,
61 time spent in walking, riding or traveling to and from the actual place of performance of the
62 principal activity or activities which such employee is employed to perform and activities which are
63 preliminary to or postliminy to said principal activity or activities, subject to such exceptions as the
64 commissioner may by rules define.

65 (i) ~~"Amusement park" means any person or organization which holds a permit for the~~

66 ~~operation of an amusement ride or amusement attraction under §21-10-1 et seq. of this code~~

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

73 (j) "Customized Employment" means those employment supports and services for an
74 individual that are designed in a way to personalize the employment relationship between the
75 person with a disability and employer in a way that meets the needs of both.

76 (k) "Integrated employment" means employment at a location where the percentage of
77 employees with disabilities relative to the employees who do not have disabilities is consistent with
78 the norms of the general workforce and where the employee interacts with other persons who do
79 not have disabilities to the same extent that employees who do have disabilities, and who are in
80 comparable positions, interact with other persons.

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; provide for the DHHR Bureau for Behavioral Health, Division of Rehabilitation Services, Department of Education, DHHR Bureau for Medical Services (State Medicaid Agency) and Workforce WV to implement the policy; and remove current exemption for paying minimum wages to persons in nonprofit workshops.

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