

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4752

BY DELEGATES GRAVES AND PUSHKIN

[Introduced February 07, 2020; Referred to the
Committee on Industry and Labor then Government
Organization]

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, and §18-10P-3; and to amend and reenact §21-5C-1
 3 of said code, all relating to initiating a State Employment First Policy to facilitate integrated
 4 employment of disabled persons; providing legislative findings; establishing a taskforce to
 5 develop a State Employment First Policy; providing for implementation of the State
 6 Employment First Policy; and providing definitions for “competitive integrated
 7 employment” and “customized employment”.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10P. EMPLOYMENT FIRST POLICY.

§18-10P-1. Legislative findings.

1 The Legislature finds that due to West Virginia having: The highest population per capita
 2 of people with disabilities and that West Virginia has the highest number of unemployed citizens
 3 with disabilities that there is a need to create a state initiative to promote competitive, integrated,
 4 and customized employment in the general workforce for disabled citizens using publicly funded
 5 services for all working-age individuals regardless of the levels. of disability. This Employment
 6 First initiative is intended to promote the expectation that individuals with intellectual,
 7 developmental and other disabilities are valued members of the workforce and can often meet
 8 the same employment merit standards responsibilities, and expectations as other working-age
 9 adults when provided the proper education, reasonable accommodations, and supports.

§18-10P-2. Creation of Employment First Taskforce.

1 (a) The Director of the Division of Rehabilitation Services who shall serve as chairperson
 2 and shall establish a taskforce for the purpose of developing recommendations on implementation
 3 of an Employment First Policy. The director shall appoint the membership of the taskforce, which
 4 shall include the following members:

- 5 (1) The Director of the Division of Rehabilitation Services;
- 6 (2) An individual with a developmental disability;

- 7 (3) A family member of a person with a disability;
- 8 (4) A representative of Workforce West Virginia;
- 9 (5) A representative of the Bureau for Behavioral Health;
- 10 (6) A representative of the Bureau for Medical Services;
- 11 (7) A representative of Disability Rights of West Virginia;
- 12 (8) A representative of the West Virginia Statewide Independent Living Council;
- 13 (9) A representative of the West Virginia Higher Education Commission; and
- 14 (10) A representative of a provider of integrated and competitive employment services
15 who does not also provide sheltered or segregated services for individuals with disabilities.

16 (b) The Taskforce shall elect from its membership a vice chairperson and such other
17 officers as it considers appropriate. A majority of the members shall constitute a quorum at any
18 meeting held by the taskforce. The chairperson may vote only to break a tie.

19 (c) The taskforce shall hold meetings at the call of the chairperson, or upon written request
20 of a majority of members. The taskforce shall meet no less than four times each year.

§18-10P-3. State Employment First Policy.

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

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

11 (2) Detailed cost projections for additional state funding needed over a five-year period to:

12 (A) Provide rate increases and incentives to providers that implement Employment First services;
13 and (B) train and/or retrain the workforce.

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

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

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

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

24 (B) Workforce Innovation and Opportunity Act; and

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

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

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

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

34 (9) Provides the Governor and Legislature the Employment First Plan within 12 months of
35 the enactment of this statute which shall include:

36 (A) The number of working age persons with disabilities who received publicly funded
37 services through each department during the most recent period for which data are available and

38 the number of those persons identified who are employed in competitive integrated employment
39 during that period.

40 (B) The percentage change that the numbers under paragraph A, subdivision nine of this
41 section, represent as compared to the numbers from the previous period,

42 (C) The data on the average number of hours worked and wages earned by persons with
43 a disability who are employed in competitive integrated employment.

44 (D) The data on the average number of hours spent in pre-employment services by
45 persons through the Intellectual and Developmental Disabilities Waiver combined with the time
46 previously spent in sheltered workshops,

47 (E) Information appropriate to each department related to progress in achieving
48 competitive integrated employment;

49 (F) Identified barriers to achieving goals and objectives established under this section and
50 strategies and policy changes in accordance with this section for each department, acting
51 individually and collectively, to overcome or mitigate those barriers.

52 (G) A statement or-analysis specifically detailing the impact that the collaboration has had
53 on each department's progress, outcomes, and achievements in increasing: participation in
54 competitive integrated employment;

55 (H) In addition to reporting data on a statewide basis the departments shall also report the
56 data by region, county, or other geographic subdivision if data are already available on any such
57 basis through the departments data systems; report to the Governor and the Legislature annually
58 on the findings and results of the efforts of the taskforce to accomplish the goals of the plan;

59 (10) Provides updates to the plan biennially or more often as needed; and

60 (11) Ensures:

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

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

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

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

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

78 (12) Promotes partnerships with employers to overcome barriers to meet workforce needs
79 including the creative use of technology and innovation.

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

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

8 "Competitive Integrated Employment" means jobs held by people with disabilities in typical
9 workplace settings where the majority of persons are not persons with disabilities, in these jobs,
10 the individuals with disabilities earn wages consistent with wages paid workers without disabilities
11 in the community performing the same or similar work. the individuals earn at least minimum
12 wage, and they are paid directly by the employer.

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

16 (ⓔ) "Employer" includes the State of West Virginia, its agencies, departments, and all its
17 political subdivisions, any individual, partnership, association, public or private corporation, or any
18 person or group of persons acting directly or indirectly in the interest of any employer in relation
19 to an employee; and who employs during any calendar week six or more employees as herein
20 defined in any one separate, distinct, and permanent location or business establishment:
21 *Provided*, That prior to January 1, 2015, the term "employer" does not include any individual,
22 partnership, association, corporation, person or group of persons, or similar unit if 80 percent of
23 the persons employed by him or her are subject to any federal act relating to minimum wage,
24 maximum hours, and overtime compensation: *Provided, however*, That after December 31, 2014,
25 for the purposes of §21-5C-3 of this code, the term "employer" does not include any individual,
26 partnership, association, corporation, person or group of persons, or similar unit if 80 percent of
27 the persons employed by him or her are subject to any federal act relating to maximum hours and
28 overtime compensation.

29 (ⓕ) "Employee" includes any individual employed by an employer but ~~shall~~ may not include:
30 (1) Any individual employed by the United States; (2) any individual engaged in the activities of
31 an educational, charitable, religious, fraternal, or nonprofit organization where the employer-

32 employee relationship does not in fact exist, or where the services rendered to such organizations
33 are on a voluntary basis; (3) newsboys, shoeshine boys, golf caddies, pinboys, and pin chasers
34 in bowling lanes; (4) traveling salesmen and outside salesmen; (5) services performed by an
35 individual in the employ of his or her parent, son, daughter, or spouse; (6) any individual employed
36 in a bona fide professional, executive, or administrative capacity; (7) any person whose
37 employment is for the purpose of on-the-job training; (8) any person having a physical or mental
38 handicap so severe as to prevent his or her employment or employment training in any training
39 or employment facility other than a nonprofit sheltered workshop; (9) any individual employed in
40 a boys or girls summer camp; (10) any person 62 years of age or over who receives old-age or
41 survivors benefits from the Social Security Administration; (11) any individual employed in
42 agriculture as the word "agriculture" is defined in the Fair Labor Standards Act of 1938, as
43 amended; (12) any individual employed as a firefighter by the state or agency thereof; (13) ushers
44 in theaters; (14) any individual employed on a part-time basis who is a student in any recognized
45 school or college; (15) any individual employed by a local or interurban motorbus carrier; (16) so
46 far as the maximum hours and overtime compensation provisions of this article are concerned,
47 any salesman, parts man, or mechanic primarily engaged in selling or servicing automobiles,
48 trailers, trucks, farm implements, or aircraft if employed by a nonmanufacturing establishment
49 primarily engaged in the business of selling such vehicles to ultimate purchasers; (17) any
50 employee with respect to whom the United States Department of Transportation has statutory
51 authority to establish qualifications and maximum hours of service; (18) any person employed on
52 a per diem basis by the Senate, the House of Delegates, or the Joint Committee on Government
53 and Finance of the Legislature of West Virginia, other employees of the Senate or House of
54 Delegates designated by the presiding officer thereof, and additional employees of the Joint
55 Committee on Government and Finance designated by such joint committee; (19) any person
56 employed as a seasonal employee of a commercial whitewater outfitter where the seasonal
57 employee works less than seven months in any one calendar year and, in such case, only for the

58 limited purpose of exempting the seasonal employee from the maximum hours provisions of §21-
59 5C-3 of this code; or (20) any person employed as a seasonal employee of an amusement park
60 where the seasonal employee works less than seven months in any one calendar year and, in
61 such case, only for the limited purpose of exempting the seasonal employee from the maximum
62 hours provisions of §21-5C-3 of this code.

63 ~~(g)~~ "Work week" means a regularly recurring period of 168 hours in the form of seven
64 consecutive 24-hour periods, need not coincide with the calendar week, and may begin any day
65 of the calendar week and any hour of the day.

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

73 ~~(i)~~ "Amusement park" means any person or organization which holds a permit for the
74 operation of an amusement ride or amusement attraction under §21-10-1 *et seq.* of this code.

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 implementation of the policy. The bill also provides definitions for "competitive integrated employment" and "customized employment".

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