

# WEST VIRGINIA LEGISLATURE

## 2019 REGULAR SESSION

Introduced

### House Bill 2902

FISCAL  
NOTE

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ROBINSON

[Introduced February 7, 2019; Referred  
to the Committee on Health and Human Resources  
then the Judiciary.]

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 wages of persons with disabilities; initiating a State  
 4 “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:*

**ARTICLE 10P. EMPLOYMENT FIRST POLICY.**

**§18-10P-1. Legislative findings.**

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

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

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

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

- 7           (3) A family member of a person with a disability;
- 8           (4) A representative of the Department of Education;
- 9           (5) A representative of Workforce West Virginia;
- 10          (6) A representative of the Bureau for Behavioral Health and Health Facilities;
- 11          (7) A representative of the Bureau for Medical Services (State Medicaid Agency);
- 12          (8) A representative of the WV Developmental Disabilities Council;
- 13          (9) A representative of a provider of integrated and competitive employment services who  
14 does not also provide sheltered or otherwise segregated services for individuals with disabilities;
- 15          (10) A representative of WV Center of Excellence in Disabilities; and
- 16          (11) A representative of Disability Rights of WV (the Governor designated state protection  
17 and advocacy agency).

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

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

- 8           (1) Describes timeframes 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 (if any) needed over a five-year  
11 period to: (A) Provide rate increases and incentives to providers that implement Employment First  
12 services; and (B) train and/or retrain the workforce.
- 13          (3) Describes strategies, timelines and plans to reduce sheltered work settings while  
14 increasing investment in integrated employment services.

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

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

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

23 (B) Workforce Innovation and Opportunity Act; and

24 (C) U.S. Department of Justice rulings that found that segregated work settings violate the  
25 “most integrated setting” rule relative to the Supreme Court’s ruling in the Olmstead court case of  
26 the Americans with Disabilities Act.

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 Employment First Plan within 12 months of  
34 the enactment of this bill; report to the Governor and the Legislature annually on the findings and  
35 results of the efforts of the taskforce to accomplish the goals of the plan; present data which  
36 reflects the numbers of people with disabilities who attained employment as a result of the  
37 implementation of the plan as well as any barriers to implementation and strategies developed to  
38 address them; and

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

40 (11) Ensures:

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

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

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

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

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

58 (12) Promotes partnerships with employers to overcome barriers to meet workforce needs  
 59 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 "Commissioner" means the Commissioner of Labor or his or her duly authorized

3 representatives.

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

10 “Customized Employment” means those employment supports and services for an  
11 individual that are designed in a way to personalize the employment relationship between the  
12 person with a disability and employer in a way that meets the needs of both.

13 “Employ” means to hire or permit to work.

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

27 “Employee” includes any individual employed by an employer but shall not include: (1)  
28 Any individual employed by the United States; (2) any individual engaged in the activities of an

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

55 whitewater outfitter where the seasonal employee works less than seven months in any one  
56 calendar year and, in such case, only for the limited purpose of exempting the seasonal employee  
57 from the maximum wage provisions of section three of this article.

58 “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  
63 are preliminary to or postliminy to said principal activity or activities, subject to such exceptions  
64 as the commissioner may by rules define.

65 “Integrated employment” means employment at a location where the percentage of  
66 employees with disabilities relative to the employees who do not have disabilities if is consistent  
67 with the norms of the general workforce ~~to~~ and where the employee interacts with other persons  
68 who do not have disabilities to the same extent that employees who do have disabilities, and who  
69 are in comparable positions, interact with other persons.

70 “Wage and hour director” means the wage and hour director appointed by the  
71 Commissioner of Labor as chief of the Wage and Hour Division.

72 “Wage” means compensation due an employee by reason of his or her employment.

73 “Workweek” means a regularly recurring period of 168 hours in the form of seven  
74 consecutive 24 hour periods, need not coincide with the calendar week, and may begin any day  
75 of the calendar week and any hour of the day.

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.