

# **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]

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

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 1F. DISCHARGE FROM EMPLOYMENT.**

### **§21-1F-1. Definitions.**

1 For the purposes of this article:

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

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

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

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

### **§21-1F-2. Probationary period.**

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

4 (b) If no specific probationary period is established or provided at the time of hire, then the

5 probationary period shall be for 6 months from the date of hire.

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

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2 at will is hereby rescinded.

3 (b) Upon completion of a probationary period, an employee in a protected position may  
4 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.