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HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 122

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO EMPLOYMENT OF AND WAGES
PAYABLE TO PERSONS WITH DISABILITIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 7, Title 19 of the Delaware Code by making additions shown by underline as follows:

Subchapter VI Jamie Wolfe Employment Act

§ 750. Short title.

This subchapter may be known as the “Jamie Wolfe Employment Act.”

§ 751. Statement of Purpose.

The General Assembly finds as follows:

In 1938, Section 14(c) of the federal Fair Labor Standards Act (29 U.S.C. 214(c)) authorized the United States Secretary of Labor to grant special wage certificates to certain entities, allowing those entities to pay individuals with disabilities subminimum wages. Section 905 of Title 19 of the Delaware Code authorizes the Department of Labor to promulgate regulations permitting the employment of persons with disabilities at wages lower than the minimum wage. While the special wage certificate program was considered progressive when initiated, advances in vocational rehabilitation, technology, and training as well as changes in attitudes and laws regarding the ability of, and opportunities for, both students and adults with disabilities to work and live in the community now provide persons with disabilities greater employment opportunities. Persons with disabilities, regardless of their work environment, should be compensated like their peers without disabilities. Competitive employment opportunities as well as meaningful alternatives should be offered to individuals who are currently participating in programs that pay less than the minimum wage. In order to effectuate the purpose of the Employment First Act contained in this chapter, authorization to pay subminimum wages will be phased out and ultimately eliminated.

§ 752. Commencing July 1, 2023, an employer who is authorized to employ an individual with a disability at a subminimum wage pursuant to a special certificate issued under 29 U.S.C. 214(c) or under regulations promulgated under

21 §905 of this title may not employ or agree to employ or otherwise remunerate or compensate an individual with a disability
22 at an hourly rate lower than the effective rate payable under § 902 of this title.

23 § 753. The Employment First Oversight Commission established under § 745 of this title shall develop and
24 implement a plan to phase out on or before July 1, 2023 authorizations under § 905 of this title to pay an individual with a
25 disability less than the minimum wage otherwise required under §902 of this title. The Employment First Oversight
26 Commission plan shall be completed by July 1, 2022 and include all of the following:

27 (a) Benchmarks and expected outcomes for each year of the phase-out.

28 (b) A list of the resources to assist each individual with a disability in receiving supports according to the needs
29 and preferences of the individual in order to be employed in an integrated setting, or participate in a meaningful alternative
30 program, regardless of the nature or severity of the individual's disability.

31 (c) Federal and state funding programs available to assist an individual with a disability to obtain competitive
32 employment in an integrated setting.

33 (d) A means for tracking the effect of transitioning to integrated and meaningful employment on individuals with
34 disabilities on the basis of the following factors:

35 (1) Wages.

36 (2) Unemployment rates.

37 (3) The number of individuals who move from positions paying subminimum wages to competitive
38 employment in an integrated setting.

39 (4) The number of individuals who move from subminimum wage positions to non-compensated
40 activities.

41 (e) A means for tracking the effect of transitioning to meaningful alternative programing for those who do not
42 engage in competitive integrated employment. Meaningful alternative employment shall include the following services:

43 (1) Regular opportunities for community-based recreational, social, educational, cultural, and athletic
44 activities, including community volunteer and training activities.

45 (2) Regularly occurring non-facility based activities of a person's choosing provided in settings which allow
46 individuals with disabilities to interact with individuals without disabilities in a community setting to the fullest extent
47 possible for the individual.

48 (f) Throughout development and implementation of the plan referred to in § 753(a)-(e), the Employment First
49 Oversight Commission shall consult with the State Council for Persons with Disabilities established in § 8210 of Title 29,
50 the Department of Labor and Department of Health and Social Services, and confer with employers paying subminimum

wages to individuals with disabilities under the authority of either state or federal law, sheltered workshop facilities, and family statewide advocacy organizations representing those individuals affected by the phase-out of authority to pay subminimum wages regarding anticipated obstacles to full implementation of phasing out payment of subminimum wages to individuals with disabilities and recommended means to overcome those obstacles.

(g) The plan referred to in § 753(a)-(e) shall be provided to the State Council for Persons with Disabilities for inclusion in the annual report required by § 8210(b)(8) of Title 29.

§ 754. The Department may promulgate regulations necessary for implementation of the Jamie Wolfe Employment Act.

Section 2. Amend § 905, Title 19 of the Delaware Code by making deletions as shown by strike through as follows:

~~§ 905. Wage rate for handicapped workers.~~

~~For any occupation, the Department may provide by regulations, after public hearing, upon reasonable notice, at which any person may be heard, for the employment of individuals whose earning capacity is impaired by age or physical or mental deficiency or injury at such wages lower than the minimum wage rate under this chapter as the Department may deem necessary or appropriate to avoid hardship or prevent curtailment of opportunities for employment. No employee shall be employed at wages fixed pursuant to this section except under special license issued under the applicable regulations of the Department. Such regulations shall, except as may be otherwise provided by the Department, take effect upon publication.~~

Section 3. Amend Chapter 10, Title 19 of the Delaware Code by making deletions as shown by strike through as follows:

~~§ 1001. Definitions.~~

~~The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~(1) "Accredited" means a program which has been surveyed and approved by the Commission on Accreditation of Rehabilitation Facilities for not less than a 1-year period.~~

~~(2) "Department" means the Department of Labor or its authorized representatives.~~

~~(3) "Extended employee" means a severely disabled person who:~~

~~a. Shall have completed an accredited program of evaluation and work adjustment training, including a prescribed work services program.~~

b. Shall have been found, due to the nature and severity of a disability, to be incapable of competing in the open or customary labor market.

(4) ~~“Sheltered workshop” means an accredited occupationally-oriented facility, including a work activities center, operated by a private nonprofit agency, which, except for its administrative and support staff, employs disabled persons certified under special provisions of federal minimum wage laws by the Wage and Hour Division, United States Department of Labor.~~

~~§ 1002. Eligibility of individuals for participation; client progress standards.~~

~~(a) The sheltered workshop shall certify the eligibility of individuals for participation in an extended employment program under this chapter immediately upon cessation of third-party sponsorship.~~

~~(b) Client progress will be monitored by the Department through the Division of Vocational Rehabilitation on an annual basis under guidelines established by the Department that can simultaneously meet the standards of CARF, United States Department of Labor’s Wage and Hour Certificates for Sheltered and Work Activity Employees, United States Department of Education, Rehabilitation Act of 1973 [29 U.S.C. § 701 et seq.] and subsequent amendments, as well as the intent of this bill.~~

~~§ 1003. Financial assistance in extended employment.~~

~~(a) The Department shall have the authority to enter into a contract with sheltered workshops for the purpose of providing an extended employment program.~~

~~(b) The Department shall approve a method for determining the maximum allotment for each eligible sheltered workshop.~~

~~§ 1004. Federal grants.~~

~~The Department is authorized to apply for whatever federal grants may become available from time to time in order to carry out the purposes of this chapter.~~

~~§ 1005. Regulations.~~

~~The Department shall have the power to make and revise and rescind such regulations as it may deem necessary or appropriate to administer and implement this chapter. Such regulations shall, except as may be otherwise provided by the Department, take effect upon publication.~~

Section 4. Sections 2 and 3 of this Act take effect three years following its enactment into law.

SYNOPSIS

This Act is called the Jamie Wolfe Employment Act in recognition of Jamie Wolfe, a powerful disability rights advocate who worked tirelessly on behalf of people with disabilities for equal rights and equal access to education, housing, competitive and integrated employment, transportation and community-based services.

The Act requires that authorization to pay individuals with disabilities less than the minimum wage required to be paid to other employees will be phased out by July 1, 2023. It is consistent with the goals of the Employment First Act enacted by the 146th General Assembly and with national trends. In September 2020, the United States Commission on Civil Rights recommended that 14(c) certificates be phased out. The Employment First Oversight Commission created in the Employment First Act is charged with the responsibility of developing and implementing a plan for the phase-out and insuring that the needs of affected providers and employees with disabilities working at less than minimum wage are considered as the phase-out is implemented.