SPONSOR: Rep. Heffernan & Sen. McDowell
Reps. Brady, Hocker, Hudson, Q. Johnson, Osienski, M. Smith, Walker; Sens. Bunting, Ennis, Sokola

HOUSE OF REPRESENTATIVES
146th GENERAL ASSEMBLY

HOUSE BILL NO. 319

AN ACT TO AMEND TITLES 19 AND 29 OF THE DELAWARE CODE RELATING TO AN EMPLOYMENT FIRST PRIORITY POLICY FOR 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 insertions as shown by underlining as follows:

Subchapter V. Employment First Act

§ 740. Short title.

This subchapter may be known and cited as the "Employment First Act."

§ 741. Statement of purpose.

The General Assembly finds that the benefits of meaningful work have significance and importance to all working age individuals, including persons with disabilities, which shall include, but not be limited to, veterans with service-connected disabilities. Persons with disabilities have a right to the opportunity for competitive employment. In order to achieve meaningful and competitive employment for persons with disabilities, employment opportunities in fully integrated work settings shall be the first and priority option explored in the service planning for working age persons with disabilities.

§ 742. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) “Competitive employment” means work in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting and for which a person with a disability is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by persons without disabilities.

(2) “Disability” means, with respect to an individual:

a. a physical or mental impairment that substantially limits one or more major life activities of such individual;

b. a record of such an impairment; or

HD : AWS : CMG
4141460264
Released: 05/01/2012 12:50 PM

c. being regarded as having such an impairment,

as defined in the Americans with Disabilities Act of 1990, as amended.

(3) "Integrated setting" means with respect to an employment outcome, a setting typically found in the community in which persons with disabilities interact with persons without disabilities, other than persons without disabilities who are providing services to those persons with disabilities, to the same extent that persons without disabilities in comparable positions interact with other persons.

(4) "Working age" means 14 years of age or older in accordance with § 505, Title 19 of this Code.

§ 743. Employment first policy.

It is hereby declared to be the policy of this State that competitive employment in an integrated setting shall be considered its first and priority option when offering or providing services to persons with disabilities who are of working age. All state agencies that provide services and support to persons with disabilities shall follow this policy and ensure that it is effectively implemented in their programs and services. Nothing in this Act shall be construed to limit or disallow any disability benefits to which a person with a disability who is unable to be employed as contemplated by this Act would otherwise be entitled. Nothing in this Act shall be construed to require any employer to give preference to hiring persons with disabilities.

§ 744. Implementation of policy by state agencies.

(a) All state agencies shall coordinate efforts and shall collaborate within and among such agencies to ensure that state programs, policies, procedures and funding support competitive employment in integrated settings for persons with disabilities who are of working age. All state agencies shall, whenever feasible, share data and information across systems in order to track progress toward full implementation of this Act. All state agencies are encouraged to adopt measurable goals and objectives to promote assessment of progress in implementing this Act.

(b) State agencies are authorized to adopt rules and regulations to implement this Act.

§ 745. Establishment of Employment First Oversight Commission.

(a) There is hereby established an Employment First Oversight Commission under the purview of the State Council for Persons with Disabilities, which shall facilitate the full, effective and timely implementation of this Act.

(b) The Commission shall consist of 11 members, who are residents of this State. The Commission shall consist of the following members:

(1) Four members who are persons with a disability and who are knowledgeable of disability issues and who are not state employees, one of which shall be a veteran and one of which shall be a member of the State Council for Persons with Disabilities, and of whom:

(A) one shall be appointed by the Speaker of the House of Representatives;

(B) one shall be appointed by the Minority Leader of the House of Representatives;

(C) one shall be appointed by the President Pro Tempore of the Senate; and

(D) one shall be appointed by the Minority Leader of the Senate;

(2) one member who is experienced with employment service programs and who is not a state employee and who shall be appointed by the Speaker of the House of Representatives;

(3) a representative of the Division of Industrial Affairs, appointed by the Secretary of Labor;

(4) a representative of the Division of Vocational Rehabilitation, appointed by the Secretary of Labor;

(5) the Secretary of Education or a designee appointed by the Secretary;

(6) the Secretary of Health and Social Services or a designee appointed by the Secretary;

(7) the Director of the Division of Developmental Disabilities Services or a designee appointed by the Director; and

(8) the Chair of the Developmental Disabilities Council or a designee appointed by the Chair.

(c) Except as provided in subsections (d) and (e) of this section, each member shall serve a term of 3 years, and may succeed himself or herself for 1 additional term; provided, however, that where a member was initially appointed to fill a vacancy, such member may succeed himself or herself for only 1 additional full term. Any person appointed to fill a vacancy on the Commission shall hold office for the remainder of the unexpired term of the former member. Each term of office shall expire on the date specified in the appointment; however, the member shall remain eligible to participate in Commission proceedings unless and until such member's successor is duly appointed.

(d) The terms of the members of the Commission shall be staggered. Four members shall serve an initial term of 3 years, 4 members shall serve an initial term of 2 years, and the remaining members shall serve an initial term of 1 year. Thereafter, all terms shall be for 3 years.

(e) A person, who has never served on the Commission, may be appointed to the Commission for 2 consecutive terms; but no such person shall thereafter be eligible for 2 consecutive appointments. No person, who has been twice appointed to the Commission or who has served on the Commission for 6 years within any 9-year period, shall again be appointed to the Commission until an interim period of at least 1 term has expired since such person last served.

(f) Members of the Commission shall serve without compensation.

(g) Any member, who is absent without adequate reason for 3 consecutive meetings, or who fails to attend at least half of all regular business meetings during any calendar year, shall be subject to suspension or removal from the Commission.

§ 746. Commission organization; meetings; officers; quorum.

(a) The Commission shall hold regularly scheduled business meetings at least once in each quarter, and at such times as the chairperson deems necessary, or at the request of a majority of the members of the Commission.

(b) The Commission annually shall elect a chairperson and vice-chairperson. Each officer shall serve for 1 year and shall not succeed himself or herself for more than 2 consecutive terms.

(c) A majority of the members shall constitute a quorum for the purpose of transacting business.

§ 747. Powers and duties of Commission.

(a) The Commission shall review measurable goals and objectives as submitted to it by each relevant state agency to ensure implementation of this Act. The Commission shall track the measurable progress of state agencies in implementing this Act. All state agencies shall fully cooperate with and provide data and information to assist the Commission in carrying out its duties.

(b) The Commission shall prepare an annual report as part of, and included in, the annual report submitted by the State Council for Persons with Disabilities to the Governor and members of the General Assembly. The report shall detail progress toward the goals and objectives and full implementation of this Act. All state agencies shall cooperate with the Commission on the creation and dissemination of the report. The report also shall identify barriers to achieving the outcomes along with the effective strategies and policies that can help realize the employment first initiative.

Section 2. Amend § 8210(b), Title 29 of the Delaware Code by making insertions as shown by underlining as follows:

(b) This Council shall have the following duties and responsibilities:

(1) Promote coordination among all state programs, services and plans established for or related to persons with disabilities.

(2) Review, on a continuing basis, all state policies, plans, programs and activities concerning persons with disabilities which are conducted or assisted, in whole or part, by state departments, agencies or funds in order to determine whether such policies, programs, plans and activities effectively meet the needs of persons with disabilities.

(3) Make recommendations to the Governor, the General Assembly and all state departments and agencies respecting ways to improve the administration of services for persons with disabilities and for facilitating the implementation of new or expanded programs.

(4) Provide the Governor, the General Assembly, all interested agencies and the general public with review and comment on all state legislative proposals affecting people with disabilities.

(5) Provide policymakers and the general public with analyses and recommendations on federal and local governmental legislation, regulations and policies affecting state programs and persons with disabilities.

(6) Propose and promote legislation, regulations and policies to improve the well-being of persons with disabilities.

(7) Serve as a central state clearinghouse for information and data regarding:

a. The current numbers of persons with disabilities and their needs;

b. The location, provision and availability of services and programs for persons with disabilities;

c. Any other relevant information and data about persons with disabilities which the council deems appropriate.

(8) Prepare and submit to the Governor and the General Assembly an annual report of the activities of the Council and the status of services and programs for persons with disabilities.

(9) Serve as advisory council for the Community-Based Attendant Services program established by Chapter 94 of Title 16.

(10) Serve as the primary brain injury council for the State. In furtherance of this role, the Council shall:

a. Fulfill the duties and responsibilities set forth in paragraphs (b)(1) through (8) of this section with respect to persons with brain injuries;

b. Maintain a standing brain injury committee to facilitate prevention and centralized interdisciplinary planning, assessment and an improved service delivery system for individuals with brain injury comprised of the following members, or designees of such members:

1. Director of the Division of Public Health;

2. Director of the Division of Developmental Disabilities Services;

3. Director of the Division of Substance Abuse and Mental Health;

4. Director of the Division of Aging and Adults with Physical Disabilities;

5. Director of the Division of Prevention and Behavioral Health Services;

6. Director of Division of Vocational Rehabilitation;

7. Exceptional Children Director of Department of Education;

8. Chair of Governor's Advisory Council for Exceptional Citizens;

9. Chair of Developmental Disabilities Council;

10. Minimum of 3 survivors of brain injury or family members of such individuals; and

11. Representatives of prevention, planning, veterans and service delivery organizations appointed by the Council, including a representative of the state chapter of the Brain Injury Association of America and a representative of the "protection and advocacy agency" defined in § 1102 of Title 16.

(11) Serve as administrative agency for the Employment First Oversight Commission as established in § 745 of Title 19.

SYNOPSIS

All persons with disabilities, including veterans with service-connected disabilities, have a right to the opportunity for competitive employment. To promote the realization of this right, this bill creates the Employment First Act. The Act requires that state agencies that provide services and support to persons with disabilities shall consider, as their first option, competitive employment in an integrated setting for persons with disabilities. The Act does not require an employer to give preference to hiring persons with disabilities.

The Act requires all state agencies to follow this policy for employment by coordinating and collaborating efforts among agencies. In addition, agencies may share data and information whenever possible across systems in order to track progress. State agencies may adopt rules and regulations to implement the Act.

This Act further establishes an Employment First Oversight Commission as part of the State Council for Persons with Disabilities. The Commission reviews measurable goals and objectives as submitted to it by each relevant state agency to ensure implementation of the Act. The Commission tracks the measurable progress of state agencies in implementing the Act. The Commission prepares an annual report as part of the annual report submitted by the State Council for Persons with Disabilities to the Governor and the General Assembly. The report details progress made toward the goals and objectives as well as strategies and policies to help realize the employment first initiative.