WEST VIRGINIA CODE CHAPTER 21 ARTICLE 19

WV Legislature

§21-19-1. Legislative findings.

The Legislature hereby finds:

(1) As of the effective date of this act, there are more than 90,000 independent contractors in West Virginia. Nationally, a substantial majority of independent contractors prefer their independent work arrangement over traditional employment, citing autonomy, flexibility, and control over their schedules;

(2) Under current law, hiring entities are generally prohibited from providing employment-based benefits to independent contractors without risking the reclassification of those workers as employees;

(3) Many independent contractors lack access to affordable benefits through traditional employment channels, spousal coverage, or public programs. For many, private market alternatives remain prohibitively expensive; and

(4) Establishing a portable benefit plan would provide tax incentives for hiring entities as contributions are deductible business expenses, and enhance financial stability for independent contractors, as contributions would not be included in their gross income.

WV Legislature

§21-19-2. Definitions.

As used in this article:

"Hiring party" means a person or entity that hires or enters into a contract with an independent contractor;

"Independent contractor" means an individual who performs services for a hiring party in exchange for compensation, and the relationship with the hiring party qualifies the individual as an independent contractor based upon §21-5I-1 *et seq.* of this code;

"Portable benefit plan" means a benefit plan administered by a third-party portable benefit plan provider chosen by the independent contractor and assigned to a beneficiary rather than to a hiring party, and includes, but is not limited to:

(A) Health insurance;

(B) Income replacement insurance;

(C) Disability insurance;

(D) Life insurance; and

(E) Retirement benefits;

"Portable benefit plan provider" means the administrator of a portable benefit account, and includes:

(A) A bank;

(B) An investment management firm;

(C) A technology provider or program manager that offers services through a bank or investment management firm; or

(D) Any other person or entity that demonstrates to the satisfaction of the West Virginia Division of Labor that the manner in which the portable benefit account will be administered will be consistent with the portable benefit account requirements under this article.

WV Legislature

§21-19-3. Administration.

(a) Any person or entity, whether public or private, including an internet or application-based company, may voluntarily contribute funds to a portable benefit account, as set forth in this article, for an independent contractor who resides in West Virginia or who performs actual work in West Virginia.

(b) Contributions to a portable benefit account may be made using the funds of the hiring party, or a percentage of funds withheld from the compensation owed to the independent contractor, or both.

(c) A percentage of funds may be withheld only if the following conditions are met:

(1) The withholding of compensation is expressly agreed to in writing;

(2) The written agreement is clear, unambiguous, and prominently displayed either in a work contract or a separate invoice;

(3) The withholdings are voluntary and require the independent contractor to opt-in; and

(4) The independent contractor may choose to opt-out for such withholdings at any time.

WV Legislature

§21-19-4. Employment classification.

(a) Contributions to a portable benefit account may not be used as a criterion for determining a worker's employment classification for purposes of:

(1) Human Rights Act rights, as set forth in §16B-17-1 *et seq*. of this code;

(2) Wage payment and collection, as set forth in §21-5-1 *et seq*. of this code;

(3) Unemployment compensation, as set forth chapter 21A of this code;

(4) Workers' compensation, as set forth in chapter 23 of this code;

(5) Taxes due the state, except for as set forth in §11-21-12o and §11-24-6d of this code;

(6) Any lawsuit implicating employment law, including, but not limited to, discrimination, hostile work environment, wrongful discharge, or retaliation;

(7) Any lawsuit implicating a third party, including, but not limited to, vicarious liability; or

(8) Establishing any other right, privilege, or legal standing which would only apply when there is an employer-employee relationship.

(b) This section does not preclude the establishment of an employer-employee relationship for any of these purposes. However, any act under this article, including the creation, use, or contributions to a portable benefit account, is strictly prohibited from being used to establish an employer-employee relationship between the hiring party and the independent contractor.

WV Legislature

§21-19-5. Rule-making.

The Commissioner of Labor may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code and may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code to effectuate the provisions of this article, including but not limited to specifying requirements for a portable benefit plan provider designed to safeguard contributions for the benefit of an independent contractor.

WV Legislature