WEST VIRGINIA CODE CHAPTER 21a ARTICLE 2C

WV Legislature

§21A-2C-1. Short title.

This article shall be known and may be cited as the "Military Incentive Program Act of 1991."

WV Legislature

§21A-2C-2. Declaration of legislative intent and purpose.

The Legislature of West Virginia hereby recognizes that disabled veterans and economically disadvantaged veterans of the Vietnam era and of the Korean conflict, members of the West Virginia National Guard and the reserve forces of the United States have made sacrifices which merit preferential employment treatment in both the public and private sectors. Economically disadvantaged and disabled veterans traditionally suffer a disproportionately higher unemployment rate than that of nonveterans of similar age and skills. Members of the West Virginia National Guard and reserve forces of the United States who are called upon to leave their jobs to perform military obligations are frequently placed in conflict with their employers and as such are frequently discriminated against by prospective employers. It is the intent and purpose of the Legislature to encourage the employment of these veterans and members of the guard and reserve forces in the private sector by providing tax credits for private sector employers who employ economically disadvantaged Vietnam era and Korean conflict veterans, disabled veterans, unemployed members of the West Virginia National Guard and unemployed members of the reserve forces of the United States generally.

WV Legislature

§21A-2C-3. Definitions.

For the purposes of this article:

(a) "Active duty" means full-time duty in the Armed Forces, other than duty for training in the reserves or National Guard. Any period of duty for training in the reserves or National Guard, including authorized travel, during which an individual was disabled from a disease or injury incurred or aggravated in line of duty, is considered "active duty."

(b) "Economically disadvantaged" means a person who:

(1) Receives, or is a member of a family which receives, cash welfare payments under a federal, state or local welfare program;

(2) Has, or is a member of a family which has, received a total family income for the six months prior to application which, in relation to family size, was not in excess of the higher of:

(i) The poverty level determined in accordance with criteria established by the federal office of management and budget; or

(ii) Seventy percent of the lower living standard income level;

(3) Is receiving food stamps pursuant to the food stamp act of 1977;

(4) Is a foster child on behalf of whom state or local government payments are made; or

(5) Is an adult handicapped individual whose own income meets the requirements of subdivisions (1) and (2) of this subsection, but who is a member of a family whose income does not meet such requirements.

(c) "Korean conflict veteran" means a person who served in the armed services of the United States at least one day during the period of time beginning June 27, 1950, and extending through January 31, 1955.

(d) "National guard member" means a member of any component of the West Virginia National Guard.

(e) "Reserve member" means a member of any component of the reserve forces of the United States.

(f) "Veteran" means a member of the United States Armed Forces who:

(1) Served on active duty for a period of more than one hundred eighty days and was discharged or released therefrom with other than a dishonorable discharge; or

(2) Was discharged or released from active duty because of a service-connected disability.

WV Legislature

(g) "Vietnam era veteran" means a person who served in the armed services of the United States at least one day during the period of time beginning August 5, 1964, and extending through May 7, 1975.

WV Legislature

§21A-2C-4. Tax credit; eligibility; amount.

(a) Each person, partnership or corporation which employs an economically disadvantaged Vietnam era or Korean conflict veteran or any disabled veteran, or an unemployed member of the West Virginia National Guard or a member of the reserve forces of the United States for a continuous period of one year, except as otherwise provided in this article, shall be entitled to an appropriate tax credit for each such individual so employed. In the case of a person or partnership so employing such individuals, the tax credit provided for in this section shall be applied against the employer's personal income tax liability. In the case of a corporation so employing such individuals, the tax credit provided for in this section shall be applied against the corporation's corporate net income tax liability. This tax credit shall be nonassignable and may not exceed an employer's total tax liability with respect to the specific tax against which the tax credit is required to be applied.

(b) The amount of the tax credit allowed under subsection (a) of this section shall be an amount equal to the following:

(1) For each economically disadvantaged Vietnam era or Korean conflict veteran employed as described in subsection (a), the amount of the tax credit allowed shall be thirty percent of the employee's wage base. For the purposes of this section, the employee's wage base is the first $5,000 in wages or compensation actually paid to the employee by the employer;

(2) For each disabled veteran employed as described in subsection (a), the amount of the tax credit allowed shall be a percentage equal to the percentage of disability suffered by the veteran multiplied by the employee's wage base. The employee's wage base is the same as provided in subdivision (1) of this subsection. The percentage of disability referred to in this subdivision means the percentage of compensation for service connected disability as determined by the United States department of Veterans Affairs; and

(3) For each member of the West Virginia National Guard or member of the reserve forces of the United States employed as described in subsection (a), the amount of the tax credit allowed shall be twenty-five percent of the employee's wage base. For the purpose of this section, the employee's wage base is the first $5,000 in wages or compensation actually paid to the employee by the employer.

WV Legislature

§21A-2C-5. Restrictions and limitations regarding tax credit.

(a) An employer may not claim a tax credit provided for in this article for any individual employed for less than a continuous period of one year, unless:

(1) The individual voluntarily leaves employment with the employer;

(2) The individual becomes totally disabled and unable to continue his employment; or

(3) The individual is terminated for good cause shown.

In the event that the individual is employed for less than a one continuous year period due to circumstances enumerated in subdivision (1), (2) or (3) above, the employer shall be entitled to a partial tax credit in a proportional amount corresponding to the ratio of the time period during which the veteran was actually employed to the one-year period required for a full tax credit multiplied by the amount of the full tax which would have accrued to the employer had the individual's employment continued for a full year.

(b) An employer may not claim tax credit provided for in this article for any individual who is employed and displaces a person already employed. In addition, no tax credit may be claimed for the employment of any individual for whom the employer is receiving job training payments from either the federal or state government. Nothing in this section prohibits an employer from receiving tax credits from both the federal and state governments under similar targeted jobs programs if the employer is otherwise qualified to receive both.

WV Legislature

§21A-2C-6. Program administration.

The program established by this article shall be conducted primarily under the direction of the employment services section of the Bureau of Employment Programs or its successor agency and the West Virginia National Guard. Reserve forces units may also verify through approved vouchers, eligibility of reserve members to participate in this program. Each individual who qualifies under this article for participation in this program shall be given, upon request, a voucher certifying that the individual is eligible for participation in the program described in this article. The voucher shall be in a form prescribed by the commissioner of employment programs and the Adjutant General, and they may conduct such investigations and collect such data as they deem necessary to ensure that each individual applying for the voucher is actually qualified for participation in the program.

When an employer employs an eligible individual who presents the voucher herein provided for, the employer shall submit the voucher along with basic information to the issuing agency as may be required for participation in this program. Each year, the issuing agency shall certify to the State Tax Commissioner a list of employers who may be qualified to receive a tax credit under this program. In order to receive the appropriate tax credit, an employer must file for the tax credit provided for under this article as required by section forty-two, article twenty-one, chapter eleven of this code or by section twelve, article twenty-four, chapter eleven of this code.

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