WEST VIRGINIA CODE CHAPTER 5B ARTICLE 2R

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§5B-2R-1. Short title.

This article shall be known and may be cited as the "Recharge West Virginia Act."

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§5B-2R-2. Definitions.

The words defined in this section have the meanings given to them for purposes of this article unless the context clearly requires otherwise.

"Base wage" means an employee's average gross weekly wage (or, if paid on a salary basis, the equivalent weekly wage) earned during the six calendar months immediately preceding the commencement of any eligible training pursuant to the Recharge West Virginia Program.

"Department" means the Department of Commerce.

"Division" means the Division of Economic Development.

"Eligible employee" means any person currently employed by a qualifying employer, except for an independent contractor, who:

1. Has resided in West Virginia for the previous six months; and
2. Has had full-time employment for the previous six months.

"Eligible training" means upskilling training that the division determines is eligible for reimbursement under the program.

"New wage" means the employee's average gross weekly wage (or, if paid on a salary basis, the equivalent weekly wage) earned during the first two full calendar months immediately following completion of the upskilling training.

"Program" means the Recharge West Virginia Program established pursuant to this article.

"Public body" means the State of West Virginia and every officer, agency, department, including the executive, legislative and judicial departments, division, bureau, political subdivision, board and commission thereof; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council, or agency thereof; and any other body which is created by state or local authority or which is primarily funded by the state or local authority.

"Qualifying employer" means any employer in this state, except for an employer who is a public body, which is:

(1) Registered with the Secretary of State, except that an employer registered as a foreign nonprofit corporation is not eligible;

(2) Compliant with the West Virginia Unemployment Compensation Law, as evidenced by a letter of good standing from WorkForce West Virginia; and

3. Physically located in West Virginia.

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"Qualifying wage increase" means a new wage that is:

(1) At least 25% greater than the base wage; and

(2) Above the average weekly wage in West Virginia, as determined and published by the

United States Bureau of Labor Statistics.

"Upskill credential" means an industry-recognized credential, or any other credential indicated by a qualifying employer as necessary for improving the skill level of an eligible employee, that:

(1) Verifies an individual’s qualification or competence;

(2) Is issued by an entity with the authority to issue such credential; and

(3) Is obtained as a result of upskilling training received pursuant to the program.

"Upskilling" or "Upskilling training" means specialized technical training to increase the skill levels of an eligible employee to enable the employee to retain employment or advance to a higher level of employment within a company. The term includes, but is not limited to, cross-training, reskilling, leadership development, train-the-trainer programs, and registered apprenticeships.

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§5B-2R-3. Recharge West Virginia Program established.

(a) There is hereby created the Recharge West Virginia Program, to be administered by the Division of Economic Development, to facilitate the upskilling of West Virginia workers; support companies that invest in upskilling their workforces; and recognize and reward companies that train, retain, and advance talent from within.

(b) In any fiscal year in which the Legislature appropriates money for the program, the division may, in accordance with the provisions of this article, reimburse a qualifying employer for the costs of providing upskilling training to an eligible employee who obtains an upskill credential and receives a qualifying wage increase: *Provided*, That a qualifying employer may not be reimbursed more than $10,000 for training provided to any individual employee: *Provided, however,* That no qualifying employer may receive more than $100,000 in any fiscal year pursuant to the provisions of this article.

(c) The division shall design an application form for qualifying employers to apply for an award for reimbursement. The application form shall contain all information that the division deems necessary to fulfill the provisions of this article.

(d) A qualified employer shall complete and submit the application form to be eligible for reimbursement. Each applicant shall include with its application the following:

(1) A proposed upskilling training plan;

(2) A detailed job description and salary range for the position targeted for training;

(3) Proof of the employee's eligibility;

(4) Proof of the eligible employee's current base wage;

(5) The anticipated average gross weekly wage the employee would receive upon completing the proposed upskilling training and obtaining an upskill credential; and

(6) Any other information or documents required by the division.

(e) An employer may participate in and receive reimbursements under both this program and the West Virginia Guaranteed Work Force Program established by §5B-2D-1 *et seq.* of this code, subject to the following limitations:

(1) No employer shall receive reimbursement under both programs for the same training expenditure;

(2) No training program or course for which reimbursement has been made, or for which reimbursement is sought, under one program shall be eligible for reimbursement under the other program for the same cost or portion thereof;

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(3) As a condition of receiving reimbursement under this program, the employer shall certify, in a form provided by the division, that no claim for reimbursement has been or will be made under another state-funded reimbursement program for the same training expenditure; and

(4) If the division determines that an employer has received duplicate reimbursement in violation of this subsection, the employer shall repay the amount of the duplicate reimbursement, and may be subject to any additional penalties or remedies provided by law.

(f) Applications shall be evaluated by the division at the close of the application period, as determined by the division, and may not be awarded on a first-come, first-served basis. The division may make preliminary awards for reimbursement only after the application period has closed. The division shall evaluate all applications submitted by qualifying employers on a competitive basis using the following criteria:

(1) The pledged wage increase the employee will realize after obtaining the upskill credential in relation to the cost of obtaining the upskill credential;

(2) The level of economic distress in the qualifying employer's region and the balance of awards made to the various regions of the state;

(3) The contribution made by the qualifying employer toward the cost of obtaining the upskill credential; and

(4) Employer actions relating to prior awards granted pursuant to this article and described in subsection (k) of this section.

(g) Upon the division determining to grant an employer a preliminary award for reimbursement, the division shall provide the employer with a training agreement, designed by the division, which shall serve as the formal grant agreement. An employer must sign and return this agreement to remain eligible to receive reimbursement.

(h) Upon being given a preliminary award for reimbursement under this section, each qualifying employer shall sponsor a current employee to obtain an upskill credential within six months of the preliminary award. A current employee shall not commence the process of obtaining the upskill credential until after a preliminary award has been made.

(i) To receive the reimbursement, the qualifying employer shall provide to the division proof of the following:

(1) The date on which the approved upskilling training began;

(2) The date on which the approved upskilling training ended;

(3) The upskill credential received by the employee;

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(4) The total cost of providing the upskilling training to the eligible employee;

(5) The amount paid by the qualifying employer toward the cost of obtaining the upskill credential; and

(6) Payroll records verifying that the employee received a qualifying wage increase after obtaining the upskill credential.

(j) If the division is satisfied that the eligible employee has obtained the upskill credential and that all requirements of this section have been met, then the division shall grant the qualifying employer the reimbursement indicated in the preliminary award.

(k) For two years after the date on which a reimbursement award is received, the employer that has received reimbursement shall notify the division if the employer subsequently reduces the wages of the employee who had received the qualifying wage increase. The employer must explain, to the extent permitted by law, the reason for the wage reduction to the division. If the division determines that an employer has reduced wages without a legitimate justification, then the division may take that determination into consideration if that employer subsequently submits another application for reimbursement.

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§5B-2R-4. Rulemaking.

(a) In order to effectuate the purposes of this article, the division shall promulgate procedural rules, interpretive rules, and legislative rules, including emergency rules, or any combination thereof in accordance with §29A-3-1 *et seq.* of this code.

(b) Within 90 days of the effective date of this article, the division shall promulgate emergency rules pursuant to the provisions of §29-3-15 of this code providing the following:

(1) Procedures and guidelines related to applying for awards of reimbursement;

(2) Explanations of the criteria to be considered when determining which applicants are selected to receive preliminary awards of reimbursement;

(3) Provisions governing the obligations of any party to a training agreement entered into pursuant to this article; and

(4) Any other provisions the division determines are necessary to implement the program.

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§5B-2R-5. Record-keeping requirements and protections.

(a) Employers that receive an award pursuant to this article must retain the following records for a period of no less than five years and provide copies of the same to the department or the division upon request:

(1) A copy of the training curriculum;

(2) A copy of the certification or documentation for any specialized company training provided to the trainee;

(3) Documentation of training completion;

(4) Payroll records verifying that the employee has received a qualifying wage increase; and

(5) With regard to each eligible employee who receives upskilling training pursuant to the program:

(A) Employee's name;

(B) Last four digits of employee's social security number;

(C) Employee's date of birth;

(D) Proof of employee's eligibility;

(E) Employee's hire date;

(F) Employee's occupation and position;

(G) Name of training provided;

(H) Date on which training period started;

(I) Wage information for the six months immediately preceding commencement of the eligible training and the two months immediately succeeding completion of the eligible training; and

(J) Cost of training the employee.

(b) Records and information provided by an employer to the division or the department pursuant to the program are exempt from disclosure under §29B-1-1 *et seq*. of this code.

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