

## **Independent Direct Support Providers Labor Relations Act**

Vermont's sixth collective bargaining statute, an act relating to independent direct support providers, was enacted in 2013.<sup>1</sup> An independent direct support provider means: 1) any individual who provides home and community-based services to a service recipient who receives such services under the Choices for Care Medicaid waiver, the Attendant Services Program, the Children's Personal Care Service Program, the Developmental Disabilities Services Program, or any successor program or similar program subsequently established; and 2) the individual is employed by the service recipient, shared living provider (provides support for one or two people who live in his or her home), or surrogate.<sup>2</sup> As of 2013, there were approximately 7,500 independent direct support providers covered by the legislation.

The Act grants independent direct support providers the right to bargain collectively with the State of Vermont through their chosen representative, pursue grievances through their exclusive bargaining representative, and to refrain from such activities.<sup>3</sup> Petitions are filed with the Vermont Labor Relations Board for election of a collective bargaining representative. The statute provides that there shall only be one statewide bargaining unit for independent direct support providers, and that a representation election conducted by the Board shall be by mail ballot.<sup>4</sup>

Mandatory bargaining subjects are limited to: 1) compensation rates, 2) workforce benefits, 3) payment methods and procedures, 4) professional development and training, 5) collection and disbursement of dues and fees to the exclusive representative, 6) procedures for resolving grievances against the State,

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<sup>1</sup> 21 V.S.A. §1631 *et seq.*

<sup>2</sup> 21 V.S.A. §1631(6), (8), (9) and (10).

<sup>3</sup> 21 V.S.A. §1632.

<sup>4</sup> 21 V.S.A. §1635.

provided that the final step of any negotiated grievance procedure, if required, shall be determination by the Labor Relations Board, and 7) access to job referral opportunities within covered programs.<sup>5</sup> The Act states that “a collective bargaining agreement shall not infringe upon any rights of service recipients or their surrogates to hire, direct, supervise, or discontinue the employment of any particular independent direct support provider.”<sup>6</sup>

The Act provides that independent direct support providers shall not be considered state employees for purposes other than collective bargaining. It further states they “shall not be eligible for participation in the State Employee Retirement System or health care plan solely by virtue of bargaining under this chapter.”<sup>7</sup>

If the parties reach an impasse in negotiations, the Act provides successively if necessary for mediation, fact-finding, and selection by the Labor Relations Board between the parties’ last best offers. The Board decision is subject to appropriations by the legislature.<sup>8</sup>

The act specifies unfair labor practices of labor organizations and the State of Vermont, and provides for the Labor Relations Board adjudicating charges alleging such practices.<sup>9</sup>

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<sup>5</sup> 21 V.S.A. §1634.

<sup>6</sup> 21 V.S.A. §1640(a).

<sup>7</sup> 21 V.S.A. §1640(c).

<sup>8</sup> 21 V.S.A. §1636.

<sup>9</sup> 21 V.S.A. §1637 – 1638.