

WEST VIRGINIA CODE: §5-16-2

§5-16-2. Definitions.

The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, have the following meanings:

- (1) "Agency" means the Public Employees Insurance Agency created by this article.
- (2) "Director" means the Director of the Public Employees Insurance Agency created by this article.
- (3) "Employee" means any person, including an elected officer, who works regularly full-time in the service of the State of West Virginia and, for the purpose of this article only, the term "employee" also means any person, including an elected officer, who works regularly full-time in the service of a county board of education; a public charter school established pursuant to §18-5G-1 et seq. of this code if the charter school includes in its charter contract entered into pursuant to §18-5G-7 of this code a determination to participate in the Public Employees Insurance program; a county, city, or town in the State; any separate corporation or instrumentality established by one or more counties, cities, or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities, or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities, or towns; any comprehensive community mental health center or intellectually and developmentally disabled facility established, operated, or licensed by the Secretary of Health and Human Resources pursuant to §27-2A-1 of this code and which is supported in part by state, county, or municipal funds; any person who works regularly full-time in the service of the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education or a governing board, as defined in §18B-1-2 of this code; any person who works regularly full-time in the service of a combined city-county health department created pursuant to §16-2-1 et seq. of this code; any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code; and any person who works as a long-term substitute as defined in §18A-1-1 of this code in the service of a county board of education: Provided, That a long-term substitute who is continuously employed for at least 133 instructional days during an instructional term, and, until the end of that instructional term, is eligible for the benefits provided in this article until September 1 following that instructional term: Provided, however, That a long-term substitute employed fewer than 133 instructional days during an instructional term is eligible for the benefits provided in this article only during such time as he or she is actually employed as a long-term substitute. On and after January 1, 1994, and upon election by a county board of education to allow elected board members to participate in the Public Employees Insurance Program pursuant to this article, any person elected to a county board of education shall be considered to be an "employee" during the term of office of the elected member. Upon election by the state Board of Education to allow appointed board members to participate in the Public

Employees Insurance Program pursuant to this article, any person appointed to the state Board of Education is considered an "employee" during the term of office of the appointed member: Provided further, That the elected member of a county board of education and the appointed member of the state Board of Education shall pay the entire cost of the premium if he or she elects to be covered under this article. Any matters of doubt as to who is an employee within the meaning of this article shall be decided by the director.

On or after July 1, 1997, a person shall be considered an "employee" if that person meets the following criteria:

(A) Participates in a job-sharing arrangement as defined in §18A-1-1 of this code;

(B) Has been designated, in writing, by all other participants in that job-sharing arrangement as the "employee" for purposes of this section; and

(C) Works at least one-third of the time required for a full-time employee.

(4) "Employer" means the State of West Virginia, its boards, agencies, commissions, departments, institutions, or spending units; a county board of education; a public charter school established pursuant to §18-5G-1 et seq. of this code if the charter school includes in its charter contract entered into pursuant to §18-5G-7 of this code a determination to participate in the Public Employees Insurance Program; a county, city, or town in the state; any separate corporation or instrumentality established by one or more counties, cities, or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities, or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns; any comprehensive community mental health center or intellectually and developmentally disabled facility established, operated or licensed by the Secretary of Health and Human Resources pursuant to §27-2A-1 of this code and which is supported in part by state, county or municipal funds; a combined city-county health department created pursuant to §16-2-1 et seq. of this code; and a corporation meeting the description set forth in §18B-12-3 of this code that is employing a 21st Century Learner Fellow pursuant to §18A-3-11 of this code but the corporation is not considered an employer with respect to any employee other than a 21st Century Learner Fellow. Any matters of doubt as to who is an "employer" within the meaning of this article shall be decided by the director. The term "employer" does not include within its meaning the National Guard.

(5) "Finance board" means the Public Employees Insurance Agency finance board created by this article.

(6) "Person" means any individual, company, association, organization, corporation or other legal entity, including, but not limited to, hospital, medical or dental service corporations; health maintenance organizations or similar organization providing prepaid health benefits; or individuals entitled to benefits under the provisions of this article.

(7) "Plan", unless the context indicates otherwise, means the medical indemnity plan, the managed care plan option, or the group life insurance plan offered by the agency.

(8) "Retired employee" means an employee of the state who retired after April 29, 1971, and an employee of the Higher Education Policy Commission, the Council for Community and Technical College Education, a state institution of higher education or a county board of education who retires on or after April 21, 1972, and all additional eligible employees who retire on or after the effective date of this article, meet the minimum eligibility requirements for their respective state retirement system and whose last employer immediately prior to retirement under the state retirement system is a participating employer in the state retirement system and in the Public Employees Insurance Agency: Provided, That for the purposes of this article, the employees who are not covered by a state retirement system, but who are covered by a state-approved or state-contracted retirement program or a system approved by the director, shall, in the case of education employees, meet the minimum eligibility requirements of the State Teachers Retirement System and in all other cases, meet the minimum eligibility requirements of the Public Employees Retirement System and may participate in the Public Employees Insurance Agency as retired employees upon terms as the director sets by rule as authorized in this article. Employers with employees who are, or who are eligible to become, retired employees under this article shall be mandatory participants in the Retiree Health Benefit Trust Fund created pursuant to §5-16D-1 et seq. of this code. Nonstate employers may opt out of the West Virginia other post-employment benefits plan of the Retiree Health Benefit Trust Fund and elect to not provide benefits under the Public Employees Insurance Agency to retirees of the nonstate employer, but may do so only upon the written certification, under oath, of an authorized officer of the employer that the employer has no employees who are, or who are eligible to become, retired employees and that the employer will defend and hold harmless the Public Employees Insurance Agency from any claim by one of the employer's past, present, or future employees for eligibility to participate in the Public Employees Insurance Agency as a retired employee. As a matter of law, the Public Employees Insurance Agency shall not be liable in any respect to provide plan benefits to a retired employee of a nonstate employer which has opted out of the West Virginia other post-employment benefits plan of the Retiree Health Benefit Trust Fund pursuant to this section.