WEST VIRGINIA CODE: §11-13II-2

§11-13II-2. Definitions.

As used in this article:

“Benefits” means all remuneration for work performed that is provided to an employee in whole or in part by the employer, other than wages, including the employer’s contributions to insurance programs, health care, medical, dental and vision plans, life insurance, employer contributions to pensions, such as a 401(k), and employer-provided services, such as child care, offered by an employer to the employee. “Benefits” does not include the employer’s share of payroll taxes, Social Security or Medicare contributions, federal or state unemployment insurance contributions or workers’ compensation;

“Consecutive qualifying period” means each of the three qualifying periods successively following the qualifying period in which the new high-wage job was created;

“Division” means the West Virginia State Tax Division;

“Domicile” means the sole place where an individual has a true, fixed, permanent home. It is the place where the individual has a voluntary, fixed habitation of self and family with the intention of making a permanent home;

“Eligible employee” means an individual who is employed in West Virginia by an eligible employer, who is a resident of West Virginia, and 100 percent of the employee’s income from such employment is West Virginia income. “Eligible employee” does not include an individual who:

(1) Bears any of the relationships described in paragraphs (1) through (8) of 26 U.S.C. Section 152(a) to the employer or, if the employer is a corporation, to an individual who owns, directly or indirectly, more than 50 percent in value of the outstanding stock of the corporation or, if the employer is an entity other than a corporation, to an individual who owns, directly or indirectly, more than 50 percent of the capital and profits interest in the entity;

(2) If the employer is an estate or trust, is a grantor, beneficiary, or fiduciary of the estate or trust or is an individual who bears any of the relationships described in paragraphs (1) through (8) of 26 U.S.C. Section 152(a) to a grantor, beneficiary, or fiduciary of the estate or trust;

(3) Is a dependent, as that term is described in 26 U.S.C. Section 152(a)(9), of the employer or, if the taxpayer is a corporation, of an individual who owns, directly or indirectly, more than 50 percent in value of the outstanding stock of the corporation or, if the employer is an entity other than a corporation, of an individual who owns, directly or indirectly, more than

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50 percent of the capital and profits interest in the entity or, if the employer is an estate or trust, of a grantor, beneficiary, or fiduciary of the estate or trust; or

(4) Is working or has worked as an employee or as an independent contractor for an entity that, directly or indirectly, owns stock in a corporation of the eligible employer or other interest of the eligible employer that represents 50 percent or more of the total voting power of that entity or has a value equal to 50 percent or more of the capital and profits interest in the entity;

"Eligible employer" means a person whether organized for profit or not, or headquarters of such entity registered to do business in West Virginia that is the owner or operator of a project facility, that offers health benefits to all full-time eligible employees and certifies that it pays at least 50 percent of such health benefit premiums.

"Health benefits" means coverage for basic hospital care, physician care, prescriptions, and shall be the same coverage as is provided to employees employed in a bona fide executive, administrative, or professional capacity by the employer who are exempt from the minimum wage and maximum hour requirements of the federal Fair Labor Standards Act and the employer pays at least 50 percent of such insurance premiums.

"New high-wage job" means a new job created in West Virginia by an eligible employer on or after July 1, 2020, that is occupied for at least 48 weeks of a qualifying period by an eligible employee who is paid wages calculated for the qualifying period to be at least two and twenty-five hundredths times the state median salary;

"New job" means a job that is occupied by an employee who was not previously on the employer's payroll in West Virginia, nor previously on the payroll of such employer's parent entity, subsidiary, alter ego, or affiliate in West Virginia, or previously on the payroll of any business whose physical plant and employees are substantially the same as those of the employer in West Virginia in the three years prior to the date of hire. "New job" does not mean any job that is a result of job shifts due to the gain or loss of an in-state contract to supply goods and services, nor does it mean an employee who is retained following the acquisition of all or part of an in-state business by an employer;

"Qualifying period" means the period of 12 months beginning on the day an eligible employee begins working in a new high-wage job or the period of 12 months beginning on the anniversary of the day an eligible employee began working in a new high-wage job;

"Resident" means a natural person whose domicile is in West Virginia at the time of hire or within 180 days of the date of hire;

"Threshold job" means a job that is occupied for at least 44 weeks of a calendar year by an eligible employee and that meets the wage requirements for a "new high-wage job"; and

"Wages" means all compensation paid by an eligible employer to an eligible employee

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through the employer's payroll system, including those wages that the employee elects to defer or redirect or the employee's contribution to a 401(k) or cafeteria plan program, but "wages" does not include benefits or the employer's share of payroll taxes, Social Security or Medicare contributions, federal or state unemployment insurance contributions, or workers' compensation.

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