# WEST VIRGINIA CODE: §15-2A-2

**§15-2A-2. Definitions as used in this article, unless the context clearly requires a different meaning:**

(1) "Accumulated contributions" means the sum of all amounts deducted from base salary, together with four percent interest compounded annually.

(2) "Active military duty" means full-time active duty with the armed forces of the United States, namely, the United States Air Force, Army, Coast Guard, Marines, Space Force, or Navy; and service with the National Guard or reserve military forces of any of the armed forces when the employee has been called to active full-time duty.

(3) "Actuarially equivalent" or "of equal actuarial value" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarially equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

(4) "Agency" means the West Virginia State Police.

(5) "Base salary" means compensation paid to an employee without regard to any overtime pay.

(6) "Beneficiary" means a surviving spouse or other surviving beneficiary who is entitled to, or will be entitled to, an annuity or other benefit payable by the fund.

(7) "Board" means the Consolidated Public Retirement Board created pursuant to §5-10D- 1 *et seq.* of this code.

(8) "Bona fide separation from service upon retirement" means that a retirant has completely terminated any employment relationship with the agency for a period of at least 60 consecutive days from the effective date of retirement and without a prearranged agreement to return to employment with the agency. For purposes of this definition, an employment relationship includes employment in any capacity, whether on a permanent, full-time, part-time, substitute, per diem, temporary or leased employee basis.

(9) "Dependent child" means any unmarried child or children born to or adopted by a member or retirant of the fund who:

(A) Is under the age of 18;

(B) After reaching 18 years of age, continues as a full-time student in an accredited high school, college, university or business or trade school until the child or children reaches the

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age of 23 years; or

(C) Is financially dependent on the member or retirant by virtue of a permanent mental or physical disability upon evidence satisfactory to the board.

(10) "Dependent parent" means the member's or retirant's parent or step-parent claimed as a dependent by the member or retirant for federal income tax purposes at the time of the member's or retirant's death.

(11) "Disability service" means service credit received by a member, expressed in months, fractions thereof or both, equal to one half of the whole months, fractions thereof, or both, during which time a member receives disability benefits under §15-2A-9 or §15-2A-10 of this code.

(12) "Employee" means any person regularly employed in the service of the agency as a law-enforcement officer after March 12, 1994, and who is eligible to participate in the fund.

(13) "Employer error" means an omission, misrepresentation, or deliberate act in violation of relevant provisions of the West Virginia Code, the West Virginia Code of State Regulations, or the relevant provisions of both the West Virginia Code and the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

(14) "Final average salary" means the average of the highest annual compensation received for employment with the agency, including compensation paid for overtime service, received by the employee during any five calendar years within the employee's last 10 years of service: *Provided*, That annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and § 401(a)(17) of the Internal Revenue Code.

(15) "Fund", "plan", "system" or "retirement system" means the West Virginia State Police Retirement Fund created and established by this article.

(16) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

(17) "Law-enforcement officer" means an individual employed or otherwise engaged in either a public or private position which involves the rendition of services relating to enforcement of federal, state or local laws for the protection of public or private safety, including, but not limited to, positions as deputy sheriffs, police officers, marshals, bailiffs, court security officers or any other law-enforcement position which requires certification, but excluding positions held by elected sheriffs or appointed chiefs of police whose duties are purely administrative in nature.

(18) "Medical examination" means an in-person or virtual examination of a member's physical or mental health, or both, by a physician or physicians selected or approved by the



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board; or, at the discretion of the board, a medical record review of the member's physical or mental health, or both, by a physician selected or approved by the board.

(19) "Member" means any person who has contributions standing to his or her credit in the fund and who has not yet entered into retirement status.

(20) "Month of service" means each month for which an employee is paid or entitled to payment for at least one hour of service for which contributions were remitted to the fund. These months shall be credited to the member for the calendar year in which the duties are performed.

(21) "Partially disabled" means an employee's inability, on a probable permanent basis, to perform the essential duties of a law-enforcement officer by reason of any medically determinable physical or mental impairment which has lasted or can be expected to last for a continuous period of not less than 12 months, but which impairment does not preclude the employee from engaging in other types of nonlaw-enforcement employment.

(22) "Physical or mental impairment" means an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques.

(23) "Plan year" means the 12-month period commencing on July 1 of any designated year and ending the following June 30.

(24) "Qualified public safety employee" means any employee of a participating state or political subdivision who provides police protection, fire-fighting services or emergency medical services for any area within the jurisdiction of the state or political subdivision, or such other meaning given to the term by § 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

(25) "Required beginning date" means April 1 of the calendar year following the later of:

(1) The calendar year in which the member attains the applicable age as set forth in this paragraph; or

(2) The calendar year in which he or she retires or otherwise separates from covered employment.

The applicable age is:

(A) Seventy-two, if the individual attains age 72 prior to January 1, 2023;

(B) Seventy-three, if the individual attains age 72 after December 31, 2022, and attains age 73 before January 1, 2033; or

(C) Seventy-five, if the individual attains age 74 after December 31, 2032; provided that the

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applicable age shall be determined in accordance with the provisions of §401(a)(9) of the Internal Revenue Code and the Treasury Regulations thereunder, as the same may be amended from time to time.

(26) "Retirant" or "retiree" means any member who commences an annuity payable by the retirement system.

(27) "Salary" means the compensation of an employee, excluding any overtime payments.

(28) "Surviving spouse" means the person to whom the member or retirant was legally married at the time of the member's or retirant's death and who survived the member or retirant.

(29) "Totally disabled" means an employee's probable permanent inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. For purposes of this subdivision, an employee is totally disabled only if his or her physical or mental impairments are so severe that he or she is not only unable to perform his or her previous work as an employee of the agency, but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the employee lives; (B) a specific job vacancy exists; or (C) the employee would be hired if he or she applied for work.

(30) "Years of service" means the months of service acquired by a member while in active employment with the agency and any disability service, if applicable, divided by 12. Years of service shall be calculated in years and fraction of a year from the date of active employment of the member with the agency through the date of termination of employment or retirement from the agency. If a member returns to active employment with the agency following a previous termination of employment with the agency and the member has not received a refund of contributions plus interest for the previous employment under §15-2A-8 of this code, service shall be calculated separately for each period of continuous employment and years of service shall be the total service for all periods of employment. Years of service shall exclude any periods of employment with the agency for which a refund of contributions plus interest has been paid to the member unless the employee repays the previous withdrawal, as provided in §15-2A-8 of this code, to reinstate the years of service.

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