# WEST VIRGINIA CODE: §21-1A-2

**§21-1A-2. Definitions; determination of agency.**

(a) When used in this article:

(1) "Person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers.

(2) "Employer" includes any person acting as an agent of an employer, directly or indirectly, who employs fifteen or more persons, but shall not include the United States or any wholly owned United States government corporation, or any federal reserve bank, or any person subject to the provisions of the "National Labor Relations Act," as amended, unless the national labor relations board has declined to assert jurisdiction over such person, or any person subject to the "Railway Labor Act," as amended from time to time, or any labor organization, other than when acting as an employer, or the State of West Virginia or any political subdivision or agency thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual.

(3) "Employee" includes any employee, and shall not be limited to the employees of a particular employer, unless otherwise explicitly provided in this article, and among others shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed in the production of agricultural products or the processing or marketing of agricultural products by the producer thereof, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by any person who is not an employer as herein defined.

(4) "Representative" includes any individual or labor organization.

(5) "Labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) "Unfair labor practice" means any unfair labor practice specified in section four of this article.

(7) "Labor dispute" or "dispute" includes any controversy concerning terms, tenure or

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conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(8) "Supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(9) "Professional employee" means (a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or (b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in (iv) of (a) of this subdivision (9), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in (a) of this subdivision (9).

(b) In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, for any purpose under this article including suits by or against labor organizations, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

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