WEST VIRGINIA CODE: §21-5-1

§21-5-1. Definitions.

NOTE: West Virginia Code §21-5-1 was amended by two bills passed during the 2021 Regular Session of the Legislature. When two acts of the Legislature amend the same section of the Code without express recognition in the bill of the action of the other bill, the Legislative Manager makes no determination as to the appropriate, legal effect of the two acts. Therefore, BOTH versions of this section are set out below.

The later of the two acts, House Bill 2009 (passed on March 19, 2021) amended West Virginia Code §21-5-1 to read as follows:

As used in this article:

(a) The term "firm" includes any partnership, association, joint-stock company, trust, division of a corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, or officer thereof, employing any person.

(b) The term "employee" or "employees" includes any person suffered or permitted to work by a person, firm, or corporation, except those classified as an independent contractor pursuant to §21-5I-4 of this code.

(c) The term "wages" means compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis of calculation. As used in §21-5-4, §21-5-5, §21-5-8a, §21-5-10, and §21-5-12 of this code, the term "wages" shall also include then accrued fringe benefits capable of calculation and payable directly to an employee: *Provided*, That nothing herein contained shall require fringe benefits to be calculated contrary to any agreement between an employer and his or her employees which does not contradict the provisions of this article.

(d) The term "commissioner" means Commissioner of Labor or his or her designated representative.

(e) The term "railroad company" includes any firm or corporation engaged primarily in the business of transportation by rail.

(f) The term "special agreement" means an arrangement filed with and approved by the commissioner whereby a person, firm, or corporation is permitted upon a compelling showing of good cause to establish regular paydays less frequently than once in every two weeks: *Provided*, That in no event shall the employee be paid in full less frequently than once each calendar month on a regularly established schedule.

(g) The term "deductions" includes amounts required by law to be withheld, and amounts authorized for union, labor organization, or club dues or fees, pension plans, payroll savings plans, credit unions, charities, and any form of insurance offered by an employer: *Provided*, That for a public employee, other than a municipal employee covered by a collective

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bargaining agreement with a municipality which is in effect on July 1, 2021, the term "deductions" shall not include any amount for union, labor organization, or club dues or fees.

(h) The term "officer" shall include officers or agents in the management of a corporation or firm who knowingly permit the corporation or firm to violate the provisions of this article.

(i) The term "wages due" shall include at least all wages earned up to and including the twelfth day immediately preceding the regular payday.

(j) The term "construction" means the furnishing of work in the fulfillment of a contract for the construction, alteration, decoration, painting, or improvement of a new or existing building, structure, roadway, or pipeline, or any part thereof, or for the alteration, improvement, or development of real property: *Provided*, That construction performed for the owner or lessee of a single family dwelling or a family farming enterprise is excluded.

(k) The term "minerals" means clay, coal, flagstone, gravel, limestone, manganese, sand, sandstone, shale, iron ore, and any other metallurgical ore.

(l) The term "fringe benefits" means any benefit provided an employee or group of employees by an employer, or which is required by law, and includes regular vacation, graduated vacation, floating vacation, holidays, sick leave, personal leave, production incentive bonuses, sickness and accident benefits, and benefits relating to medical and pension coverage.

(m) The term "employer" means any person, firm, or corporation employing any employee.

(n) The term "doing business in this state" means having employees actively engaged in the intended principal activity of the person, firm, or corporation in West Virginia.

(o) The term "assignment", as used in §21-5-3 of this code, shall have the same meaning as the term "assignment of earnings" set forth in §46A-2-116(2)(b) of this code.

The earlier of the two acts, Senate Bill 272 (passed on March 11, 2021), amended West Virginia Code §21-5-1 to read as follows:

As used in this article:

(a) The term "firm" includes any partnership, association, joint-stock company, trust, division of a corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, or officer thereof, employing any person.

(b) The term "employee" or "employees" includes any person suffered or permitted to work by a person, firm, or corporation, except those classified as an independent contractor pursuant to §21-5I-4 of this code.

(c) The term "wages" means compensation for labor or services rendered by an employee,

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whether the amount is determined on a time, task, piece, commission, or other basis of calculation. As used in §21-5-4, §21-5-5, §21-5-8a, §21-5-10, and §21-5-12 of this code, the term "wages" shall also include then accrued fringe benefits capable of calculation and payable directly to an employee: *Provided*, That nothing herein contained shall require fringe benefits to be calculated contrary to any agreement between an employer and his or her employees which does not contradict the provisions of this article.

(d) The term "commissioner" means the Commissioner of Labor or his or her designated representative.

(e) The term "railroad company" includes any firm or corporation engaged primarily in the business of transportation by rail.

(f) The term "special agreement" means an arrangement filed with and approved by the commissioner whereby a person, firm, or corporation is permitted upon a compelling showing of good cause to establish regular paydays less frequently than once every two weeks: *Provided*, That in no event shall the employee be paid in full less frequently than once each calendar month on a regularly established schedule.

(g) The term "deductions" includes amounts required by law to be withheld, and amounts authorized for union or club dues, pension plans, payroll savings plans, credit unions, charities, and hospitalization and medical insurance.

(h) The term "officer" shall include officers or agents in the management of a corporation or firm who knowingly permit the corporation or firm to violate the provisions of this article.

(i) The term "wages due" shall include at least all wages earned up to and including the 12th day immediately preceding the regular payday.

(j) The term "construction" means the furnishing of work in the fulfillment of a contract for the construction, alteration, decoration, painting, or improvement of a new or existing building, structure, roadway, or pipeline, or any part thereof, or for the alteration, improvement, or development of real property: *Provided*, That construction performed for the owner or lessee of a single-family dwelling or a family farming enterprise is excluded.

(k) The term "minerals" means clay, coal, flagstone, gravel, limestone, manganese, sand, sandstone, shale, iron ore, and any other metallurgical ore.

(l) The term "fringe benefits" means any benefit provided an employee or group of employees by an employer, or which is required by law, and includes regular vacation, graduated vacation, floating vacation, holidays, sick leave, personal leave, production incentive bonuses, sickness and accident benefits, and benefits relating to medical and pension coverage.

(m) The term "employer" means any person, firm, or corporation employing any employee.

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(n) The term “doing business in this state” means having employees actively engaged in the intended principal activity of the person, firm, or corporation in West Virginia.

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