# WEST VIRGINIA CODE CHAPTER 21A ARTICLE 1A

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## §21A-1A-1. Construction of terms.

The terms and phrases defined by this article have the stated meanings when used in this chapter unless the context clearly requires otherwise.

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## §21A-1A-2. Administration fund.

"Administration fund" means the employment security administration fund, from which the administrative expenses under this chapter shall be paid.

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## §21A-1A-3. Annual payroll.

"Annual payroll" means the total amount of wages for employment paid by an employer during a twelve-month period ending with June 30 of any calendar year.

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## §21A-1A-4. Average annual payroll.

"Average annual payroll" means the average of the last three annual payrolls of an employer.

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## §21A-1A-5. Base period; alternative base period.

(a) "Base period" means the first four out of the last five completed calendar quarters immediately preceding the first day of the individual's benefit year.

(b) "Alternative base period" means the last four completed calendar quarters immediately preceding the first day of the individual's benefit year.

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## §21A-1A-6. Base period employer; alternative base period employer.

"Base period employer" and "alternative base period employer" mean any employer who in the base period or alternative base period for any benefit year paid wages to an individual who filed claim for unemployment compensation within such benefit year.

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## §21A-1A-7. Base period wages; alternative base period wages.

"Base period wages" and "alternative base period wages" mean wages paid to an individual during the base period or alternative base period by all the individual's base period or alternative base period employers.

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## §21A-1A-8. Benefit year.

"Benefit year" with respect to an individual means the fifty-two-week period beginning with the first day of the calendar week in which a valid claim is effective, and thereafter the fifty-two-week period beginning with the first day of the calendar week in which such individual next files a valid claim for benefits after the termination of his or her last preceding benefit year: Provided, That if a claim is effective on the first day of a quarter, the benefit year will be fifty-three weeks in order to prevent an overlapping of the base period wages: Provided, however, That for any benefit year beginning on or after January 1, 1995, if a claim is effective on the second day of a quarter and the benefit year includes February 29, the benefit year will be fifty-three weeks in order to prevent an overlapping of the base period wages. An initial claim for benefits filed in accordance with the provisions of this chapter is a valid claim within the purposes of this definition if the individual has been paid wages in his or her base period sufficient to make him or her eligible for benefits under the provisions of this chapter.

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## §21A-1A-9. Benefits.

"Benefits" means the money payable to an individual with respect to his or her unemployment.

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## §21A-1A-10. Board.

"Board" means board of review.

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## §21A-1A-11. Calendar quarter.

"Calendar quarter" means the period of three consecutive calendar months ending on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September, December 31, or the equivalent thereof as the commissioner may by rule prescribe.

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## §21A-1A-12. Commissioner.

"Commissioner" means the Bureau of Employment Programs' commissioner.

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## §21A-1A-13. Computation date.

"Computation date" means June 30 the year immediately preceding January 1, on which an employer's contribution rate becomes effective.

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## §21A-1A-14. Employing unit.

"Employing unit" means an individual, or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company, corporation (domestic or foreign), state or political subdivision thereof, or their instrumentalities, as provided in paragraph (B), subdivision (9) of the definition of "employment" in this article, institution of higher education, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has in its employ one or more individuals performing service within this state.

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## §21A-1A-15. Employer.

"Employer" means:

(1) Any employing unit which is or becomes a liable employer under any federal unemployment tax act;

(2) Any employing unit which has acquired or acquires the organization, trade or business, or substantially all the assets thereof, of an employing unit which at the time of such acquisition was an employer subject to this chapter;

(3) For the effective period of its election pursuant to section three, article five of this chapter, any employing unit which has elected to become subject to this chapter;

(4) Any employing unit which: (A) In any calendar quarter in either the current or preceding calendar year paid for service in employment wages of $1,500 or more; or (B) for some portion of a day in each of twenty different calendar weeks, whether or not the weeks were consecutive, in either the current or the preceding calendar year had in employment at least one individual (irrespective of whether the same individual was in employment in each day) except as provided in subdivisions (7) and (8) of this section;

(5) Any employing unit for which service in employment, as defined in subdivision (9), section sixteen of this article, the definition of "employment" in this article is performed;

(6) Any employing unit for which service in employment, as defined in subdivision (10), section sixteen of this article, the definition of "employment" in this article is performed;

(7) Any employing unit for which agricultural labor, as defined in subdivision (12), section sixteen of this article, the definition of "employment" is performed; or

(8) Any employing unit for which domestic service in employment, as defined in subdivision (13), section sixteen of this article, the definition of "employment" is performed.

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**§21A-1A-16. Employment.**

"Employment", subject to the other provisions of this article, means:

(1) Service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied;

(2) Any service performed by an employee, as defined in Section 3306(i) of the federal Unemployment Tax Act, including service in interstate commerce;

(3) Any service performed, including service in interstate commerce, by any officer of a corporation;

(4) An individual's entire service, performed within or both within and without this state if: (A) The service is localized in this state; or (B) the service is not localized in any state but some of the service is performed in this state and: (i) The base of operations, or, if there is no base of operations, then the place from which the service is directed or controlled, is in this state; or (ii) the base of operations or place from which the service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state;

(5) Service not covered under subdivision (4) of this section and performed entirely without this state with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, is employment subject to this chapter if the individual performing the services is a resident of this state and the commissioner approves the election of the employing unit for whom the services are performed that the entire service of the individual is employment subject to this chapter;

(6) Service is localized within a state, if: (A) The service is performed entirely within the state; or (B) the service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within this state, as, for example, is temporary or transitory in nature or consists of isolated transactions;

(7) Services performed by an individual for wages are employment subject to this chapter unless and until it is shown to the satisfaction of the commissioner that the individual is classified as an independent contractor pursuant to §21-5I-4 of this code;

(8) All service performed by an officer or member of the crew of an American vessel (as defined in Section 305 of an act of Congress entitled Social Security Act Amendment of 1946, approved August 10, 1946), on or in connection with the vessel, provided that the operating office, from which the operations of the vessel operating on navigable waters within and without the United States is ordinarily and regularly supervised, managed, directed, and controlled, is within this state;

(9)(A) Service performed by an individual in the employ of this state or any of its



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instrumentalities (or in the employ of this state and one or more other states or their instrumentalities) for a hospital or institution of higher education located in this state: *Provided*, That the service is excluded from "employment" as defined in the federal Unemployment Tax Act solely by reason of Section 3306(c)(7) of that act and is not excluded from "employment" under §21A-1A-17(9) of this code;

(B) Service performed in the employ of this state or any of its instrumentalities or political subdivisions thereof or any of its instrumentalities or any instrumentality of more than one of the foregoing or any instrumentality of any foregoing and one or more other states or political subdivisions: *Provided*, That the service is excluded from "employment" as defined in the federal Unemployment Tax Act by Section 3306(c)(7) of that act and is not excluded from "employment" under §21A-1A-17(13) of this code; and

(C) Service performed in the employ of a nonprofit educational institution which is not an institution of higher education;

(10) Service performed by an individual in the employ of a religious, charitable, educational, or other organization but only if the following conditions are met:

(A) The service is excluded from "employment" as defined in the federal Unemployment Tax Act solely by reason of Section 3306(c)(8) of that act; and

(B) The organization had four or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not the weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time;

(11) Service of an individual who is a citizen of the United States, performed outside the United States after December 31, 1971 (except in Canada and in the case of the Virgin Islands after December 31, 1971, and before January 1 the year following the year in which the Secretary of Labor approves for the first time an unemployment insurance law submitted to him or her by the Virgin Islands for approval), in the employ of an American employer (other than service which is considered "employment" under the provisions of subdivision (4), (5), or (6) of this section or the parallel provisions of another state's law) if:

(A) The employer's principal place of business in the United States is located in this state; or

(B) The employer has no place of business in the United States, but: (i) The employer is an individual who is a resident of this state; or (ii) the employer is a corporation which is organized under the laws of this state; or (iii) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(C) None of the criteria of paragraphs (A) and (B) of this subdivision is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any

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state, the individual has filed a claim for benefits, based on the service, under the law of this state.

(D) An "American employer", for purposes of this subdivision, means a person who is: (i) An individual who is a resident of the United States; or (ii) a partnership if two thirds or more of the partners are residents of the United States; or (iii) a trust, if all of the trustees are residents of the United States; or (iv) a corporation organized under the laws of the United States or of any state;

(12) Service performed by an individual in agricultural labor as defined in §21A-1A-17(3) of this code when:

(A) The service is performed for a person who: (i) During any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of $20,000 or more to individuals employed in agricultural labor including labor performed by an alien referred to in paragraph (B) of this subdivision; or (ii) for some portion of a day in each of 20 different calendar weeks, whether or not the weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor, including labor performed by an alien referred to in paragraph (B) of this subdivision, 10 or more individuals, regardless of whether they were employed at the same moment of time;

(B) The service is not performed in agricultural labor if performed by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to Sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act;

(C) For the purposes of the definition of employment, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of the crew leader: (i) If the crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act; or substantially all the members of the crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment, which is provided by the crew leader; and (ii) if the other person is not otherwise an employer of the individual;

(D) For the purposes of this subdivision, in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of the crew leader under paragraph (C) of this subdivision: (i) The other person and not the crew leader shall be treated as the employer of the individual; and (ii) the other person shall be treated as having paid cash remuneration to the individual in an amount equal to the amount of cash remuneration paid to the individual by the crew leader (either on his or her own behalf or on behalf of the other person) for the service in agricultural labor performed for the other person; and

(E) For the purposes of this subdivision, the term "crew leader" means an individual who: (i) Furnishes individuals to perform service in agricultural labor for any other person; (ii) pays

(either on his or her own behalf or on behalf of the other person) the individuals so furnished by him or her for the service in agricultural labor performed by them; and (iii) has not entered into a written agreement with the other person under which the individual is designated as an employee of the other person;

(13) (A) The term "employment" includes domestic service in a private home, local college club, or local chapter of a college fraternity or sorority performed for a person who paid cash remuneration of $1,000 or more in any calendar quarter in the current calendar year or the preceding calendar year to individuals employed in domestic service; and

(B) Notwithstanding the foregoing definition of "employment", if the services performed during one half or more of any pay period by an employee for the person employing him or her constitute employment, all the services of the employee for the period are employment; but if the services performed during more than one half of any such pay period by an employee for the person employing him or her do not constitute employment, then none of the services of the employee for the period are employment.

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**§21A-1A-17. Exclusions from employment.**

The term “employment” does not include:

(1) Service performed in the employ of the United States or any instrumentality of the United States exempt under the Constitution of the United States from the payments imposed by this law, except that to the extent that the Congress of the United States permits states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this law are applicable to the instrumentalities and to service performed for the instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services: *Provided*, That if this state is not certified for any year by the Secretary of Labor under 26 U.S.C. § 3404, subsection (c), the payments required of the instrumentalities with respect to the year shall be refunded by the commissioner from the fund in the same manner and within the same period as is provided in §21A-5-19 of this code with respect to payments erroneously collected;

(2) Service performed with respect to which unemployment compensation is payable under the Railroad Unemployment Insurance Act and service with respect to which unemployment benefits are payable under an unemployment compensation system for maritime employees established by an Act of Congress. The commissioner may enter into agreements with the proper agency established under an Act of Congress to provide reciprocal treatment to individuals who, after acquiring potential rights to unemployment compensation under an Act of Congress or who have, after acquiring potential rights to unemployment compensation under an Act of Congress, acquired rights to benefit under this chapter. Such agreement shall become effective 10 days after the publications which shall comply with the general rules of the department;

(3) Service performed by an individual in agricultural labor, except as provided in §21A-1A-16(12) of this code, the definition of “employment”. For purposes of this subdivision, the term “agricultural labor” includes all services performed:

(A) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(B) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of the farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of the service is performed on a farm;

(C) In connection with the production or harvesting of any commodity defined as an agricultural commodity in § 15(g) of the Agricultural Marketing Act, as amended, as codified in 12 U.S.C. § 1141j, subsection (g), or in connection with the ginning of cotton, or in

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connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(D) (i) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if the operator produced more than one half of the commodity with respect to which the service is performed; or (ii) in the employ of a group of operators of farms (or a cooperative organization of which the operators are members) in the performance of service described in subparagraph (i) of this paragraph, but only if the operators produced more than one half of the commodity with respect to which the service is performed; but the provisions of subparagraphs (i) and (ii) of this paragraph are not applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(E) On a farm operated for profit if the service is not in the course of the employer's trade or business or is domestic service in a private home of the employer. As used in this subdivision, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, truck farms, plantations, ranches, greenhouses, ranges, and nurseries, or other similar land areas or structures used primarily for the raising of any agricultural or horticultural commodities;

(4) Domestic service in a private home except as provided in §21A-1A-16(13) of this code, the definition of "employment";

(5) Service performed by an individual in the employ of his or her son, daughter, or spouse;

(6) Service performed by a child under the age of 18 years in the employ of his or her father or mother;

(7) Service as an officer or member of a crew of an American vessel, performed on or in connection with the vessel, if the operating office, from which the operations of the vessel operating on navigable waters within or without the United States are ordinarily and regularly supervised, managed, directed, and controlled, is without this state;

(8) Service performed by agents of mutual fund broker-dealers or insurance companies, exclusive of industrial insurance agents, or by agents of investment companies, who are compensated wholly on a commission basis;

(9) Service performed: (A) In the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; or (B) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the

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exercise of duties required by the order; or (C) by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of either: (i) Rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury; or (ii) providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market: *Provided*, That this exemption does not apply to services performed by individuals if they are not receiving rehabilitation or remunerative work on account of their impaired capacity; or (D) as part of an unemployment work-relief or work-training program assisted or financed, in whole or in part, by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving the work relief or work training; or (E) by an inmate of a custodial or penal institution;

(10) Service performed in the employ of a school, college, or university, if the service is performed: (A) By a student who is enrolled and is regularly attending classes at the school, college, or university; or (B) by the spouse of a student, if the spouse is advised, at the time the spouse commences to perform the service, that: (i) The employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school, college, or university; and (ii) the employment will not be covered by any program of unemployment insurance;

(11) Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at the institution, which combines academic instruction with work experience, if the service is an integral part of the program and the institution has so certified to the employer, except that this subdivision does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(12) Service performed in the employ of a hospital, if the service is performed by a patient of the hospital, as defined in this article;

(13) Service in the employ of a governmental entity referred to in §21A-1A-16(9) of this code, the definition of "employment", if the service is performed by an individual in the exercise of duties: (A) As an elected official; (B) as a member of a legislative body, or a member of the judiciary, of a state or political subdivision; (C) as a member of the state National Guard or air National Guard, except as provided in §21A-1A-28 of this code; (D) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; (E) in a position which, under or pursuant to the laws of this state, is designated as: (i) A major nontenured policymaking or advisory position; or (ii) a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week; or (F) as any election official appointed to serve during any municipal, county, or state election, if the amount of remuneration received by the individual during the calendar year for services as an election official is less than $1,000;

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(14) Service performed by a bona fide partner of a partnership for the partnership; and

(15) Service performed by a person for his or her own sole proprietorship.

Notwithstanding the foregoing exclusions from the definition of “employment”, services, except agricultural labor and domestic service in a private home, are in employment if with respect to the services a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a State Unemployment Compensation Fund, or which as a condition for full tax credit against the tax imposed by the federal Unemployment Tax Act are required to be covered under this chapter.

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## §21A-1A-18. Employment office.

"Employment office" means a free employment office or branch thereof, operated by this state, or any free public employment office maintained as a part of a state controlled system of public employment offices in any other state.

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## §21A-1A-19. Fund.

"Fund" means the unemployment compensation fund established by this chapter.

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## §21A-1A-20. Hospital.

"Hospital" means an institution which has been licensed, certified or approved by the state department of health as a hospital.

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## §21A-1A-21. Institution of higher education.

"Institution of higher education" means an educational institution which:

(1) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) Is legally authorized in this state to provide a program of education beyond high school;

(3) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, or provides a program of postgraduate or postdoctoral studies, or provides a program of training to prepare students for gainful employment in a recognized occupation; and

(4) Is a public or other nonprofit institution.

Notwithstanding any of the foregoing provisions of this definition all colleges and universities in this state are institutions of higher education.

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## §21A-1A-22. Payments.

"Payments" means the money required to be paid or that may be voluntarily paid into the state unemployment compensation fund as provided in article five of this chapter.

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## §21A-1A-23. Reorganized employer.

"Reorganized employer" means: (1) An employer that alters its legal status, including changing from a sole proprietorship or a partnership to a corporation; or (2) an employer that otherwise changes its trade name or business identity while remaining under substantially the same ownership.

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## §21A-1A-24. Separated from employment.

"Separated from employment" means, for the purposes of this chapter, the total severance, whether by quitting, discharge or otherwise, of the employer-employee relationship.

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## §21A-1A-25. State.

"State" includes, in addition to the states of the United States, Puerto Rico, District of Columbia and the Virgin Islands.

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## §21A-1A-26. Successor employer.

"Successor employer" means an employer that acquires, by sale or otherwise, the entire organization, trade or business, or substantially all the assets thereof of another employer.

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## §21A-1A-27. Total and partial unemployment.

"Total and partial unemployment" means:

(1) An individual is totally unemployed in any week in which such individual is separated from employment for an employing unit and during which he or she performs no services and with respect to which no wages are payable to him or her.

(2) An individual who has not been separated from employment is partially unemployed in any week in which due to lack of full-time work wages payable to him or her are less than his or her weekly benefit amount plus $60: Provided, That said individual must have earnings of at least $61.

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## §21A-1A-28. Wages.

(a) "Wages" means all remuneration for personal service, including commissions, gratuities customarily received by an individual in the course of employment from persons other than the employing unit, as long as such gratuities equal or exceed an amount of not less than $20 each month and which are required to be reported to the employer by the employee, bonuses and the cash value of all remuneration in any medium other than cash except for agricultural labor and domestic service. The term “wages” includes remuneration for service rendered to the state as a member of the state National Guard or Air National Guard only when serving on a temporary basis pursuant to a call made by the Governor under §15-1D-1 and §15-1D-2 of this code.

(b) The term "wages" does not include:

(1) That part of the remuneration which, after remuneration equal to $9,500 is paid during a calendar year to an individual by an employer or his or her predecessor with respect to employment during any calendar year, is paid to such individual by such employer during such calendar year unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. For the purposes of this section, the term "employment" includes service constituting employment under any unemployment compensation law of another state; or which as a condition for full tax credit against the tax imposed by the federal Unemployment Tax Act is required to be covered under this chapter; and, except that for the purposes of §21A-6-1, §21A-6-10, §21A-6-11, and §21A-6-13 of this code, all remuneration earned by an individual in employment shall be credited to the individual and included in his or her computation of base period wages: *Provided*, That the remuneration paid to an individual by an employer with respect to employment in another state or other states upon which contributions were required of and paid by such employer under an unemployment compensation law of such other state or states shall be included as a part of the remuneration equal to the amounts of $9,500. In applying such limitation on the amount of remuneration that is taxable, an employer shall be accorded the benefit of all or any portion of such amount which may have been paid by its predecessor or predecessors: *Provided, however*, That if the definition of the term "wages" as contained in Section 3306(b) of the Internal Revenue Code of 1954, as amended, is amended to include remuneration in excess of $9,500 paid to an individual by an employer under the federal Unemployment Tax Act during any calendar year, wages for the purposes of this definition shall include remuneration paid in a calendar year to an individual by an employer subject to this chapter or his or her predecessor with respect to employment during any calendar year up to an amount equal to the amount of remuneration taxable under the federal Unemployment Tax Act;

(2) The amount of any payment made (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) to, or on behalf of, an individual in its employ or any of his or her dependents, under a plan or system established by an employer which makes provision for individuals in its employ generally (or

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for such individuals and their dependents), or for a class or classes of such individuals (or for a class or classes of such individuals and their dependents) on account of: (A) Retirement; or (B) sickness or accident disability payments made to an employee under an approved state workers' compensation law; or (C) medical or hospitalization expenses in connection with sickness or accident disability; or (D) death;

(3) Any payment made by an employer to an individual in its employ (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

(4) Any payment made by an employer on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability to, or on behalf of, an individual in its employ after the expiration of six calendar months following the last calendar month in which such individual worked for such employer;

(5) Any payment made by an employer to, or on behalf of, an individual in its employ or his or her beneficiary: (A) From or to a trust described in Section 401(a) which is exempt from tax under Section 501(a) of the federal Internal Revenue Code at the time of such payments unless such payment is made to such individual as an employee of the trust as remuneration for services rendered by such individual and not as a beneficiary of the trust; or (B) under or to an annuity plan which, at the time of such payment, is a plan described in Section 403(a) of the federal Internal Revenue Code;

(6) The payment by an employer of the tax imposed upon an employer under Section 3101 of the federal Internal Revenue Code with respect to remuneration paid to an employee for domestic service in a private home or the employer of agricultural labor;

(7) Remuneration paid by an employer in any medium other than cash to an individual in its employ for service not in the course of the employer's trade or business;

(8) Any payment (other than vacation or sick pay) made by an employer to an individual in its employ after the month in which he or she attains the age of 65 years if he or she did not work for the employer in the period for which such payment is made;

(9) Payments, not required under any contract of hire, made to an individual with respect to his or her period of training or service in the armed forces of the United States by an employer by which such individual was formerly employed; and

(10) Vacation pay, severance pay or savings plans received by an individual before or after becoming totally or partially unemployed but earned prior to becoming totally or partially unemployed: *Provided*, That the term totally or partially unemployed does not include: (A) Employees who are on vacation by reason of the request of the employees or their duly authorized agent, for a vacation at a specific time, and which request by the employees or their agent is acceded to by their employer; (B) employees who are on vacation by reason of the employer's request provided they are so informed at least 90 days prior to such vacation;

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or (C) employees who are on vacation by reason of the employer's request where such vacation is in addition to the regular vacation and the employer compensates such employee at a rate equal to or exceeding their regular daily rate of pay during the vacation period.

(c) The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the commissioner, except for remuneration other than cash for services performed in agricultural labor and domestic service.

(d) The amendments made to this section during the 2024 Regular Session shall become effective July 1, 2024.

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## §21A-1A-29. Week.

"Week" means a calendar week, ending at midnight Saturday, or the equivalent thereof, as determined in accordance with the rules prescribed by the commissioner.

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## §21A-1A-30. Weekly benefit rate.

"Weekly benefit rate" means the maximum amount of benefit an eligible individual will receive for one week of total unemployment.

WV Legislature

## §21A-1A-31. Year.

"Year" means a calendar year or the equivalent thereof, as determined by the commissioner.

WV Legislature