WEST VIRGINIA CODE: §21A-6A-1

§21A-6A-1. Definitions.

As used in this article, unless the context clearly requires otherwise:

(1) "Extended benefit period" means a period which:

(A) Begins with the third week after a week for which there is a state "on" indicator; and

(B) Ends with either of the following weeks, whichever occurs later:

(i) The third week after the first week for which there is a state "off" indicator; or

(ii) The thirteenth consecutive week of such period. However, for periods beginning in a "high unemployment period," as determined in accordance with subdivision (3), section five of this article, paragraph (B)(ii) of this subdivision shall be applied by substituting "twentieth" for "thirteenth."

Notwithstanding the foregoing provisions of this subdivision, no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state.

(2) After September 25, 1982, there is a "state >on' indicator" for this state for a week if the commissioner determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment, not seasonally adjusted, under this article:

(A) Equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years; and

(B) Equaled or exceeded five percent.

(C) An extended benefit period shall be made hereunder as if subdivision (2) did not contain paragraph (A) thereof, but only if the commissioner determines that the rate of insured unemployment, not seasonally adjusted, equals or exceeds six percent.

(3) For weeks of unemployment beginning on or after February 1, 2009, and ending on or before December 5, 2009, or, if the application of section 2005(a) of Title II of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009)("ARRA") is extended by Act of Congress, ending on or before a date to be determined by the commissioner not to exceed the extended application of section 2005(a) of the ARRA, there is a "state >on' indicator" for this state for a week if the commissioner determines, in accordance with regulations of the United States Secretary of Labor, that:

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(A) The average rate of total unemployment, seasonally adjusted, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds six and one-half percent; and

(B) The average rate of total unemployment in the state for the three-month period specified in paragraph (A) of this subdivision equals or exceeds one hundred ten percent of such average for either or both of the corresponding three-month periods ending in the two preceding calendar years.

(C) For weeks of unemployment beginning after December 17, 2010, through weeks of unemployment ending on or before December 31, 2011, or the date established by section 502 of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010, P.L. 111-312, as amended, there is a "state >on' indicator" for a week if the commissioner determines, in accordance with regulations of the United States Secretary of Labor, that:

(i) The average rate of total unemployment, seasonally adjusted, as determined by the United States Secretary of Labor, for the period consisting of the most recent three-months for which data for all states are published before the close of such week equals or exceeds six and one-half percent; and

(ii) The average rate of total unemployment in the state, seasonally adjusted, as determined by the United States Secretary of Labor, for the three-month period referred to in subparagraph (i) of this paragraph equals or exceeds one hundred ten percent of such average for any or all of the corresponding three-month periods ending in the three preceding calendar years.

(D) There is a "high unemployment period" as provided in subsection three, section five, article six-a, chapter twenty-one-a of this code if paragraph (A) or subparagraph (i), paragraph(C), or both, were applied by substituting "eight percent" for "six and one-half percent".

(4) There is a "state >off' indicator" for a week if, for the period consisting of such week and the immediately preceding twelve weeks, none of the options specified in either subdivision (2) or subdivision (3) result in a "state >on' indicator".

(5) "Rate of insured unemployment" means the percentage derived by dividing:

(A) The average weekly number of individuals filing claims for regular compensation in this state for weeks of unemployment with respect to the most recent thirteen-consecutive-week period as determined by the commissioner on the basis of his or her reports to the United States Secretary of Labor; by

(B) The average monthly employment covered under this chapter for the first four of the most recent six completed calendar quarters ending before the end of such thirteen-week

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period.

(6) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C., chapter 85) other than extended benefits.

(7) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C., chapter 85) payable to an individual under the provisions of this article for weeks of unemployment in his or her eligibility period.

(8) "Eligibility period" of an individual means the period consisting of the weeks in his or her benefit year which begin in an extended benefit period and, if his or her benefit year ends within such extended benefit period, any weeks thereafter which begin in such period. Notwithstanding any provision of this code to the contrary, an individual's eligibility period shall include any eligibility period provided in section 2005(b) of the ARRA.

(9) "Exhaustee" means an individual who, with respect to any week of unemployment in his or her eligibility period:

(A) Has received, prior to such week, all of the regular benefits which were available to him or her under this chapter or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C., chapter 85) in his or her current benefit year that includes such week: Provided, That for the purposes of this subdivision, an individual is deemed to have received all of the regular benefits which were available to him or her although: (i) As a result of a pending appeal with respect to wages or employment which were not considered in the original monetary determination in his or her benefit year, he or she may subsequently be determined to be entitled to added regular benefits; or (ii) he or she may be entitled to regular benefits with respect to future weeks of unemployment but such benefits are not payable with respect to such week of unemployment by reason of the provisions of section one-a, article six of this chapter; or

(B) His or her benefit year having expired prior to such week has no, or insufficient, wages or employment on the basis of which he or she could establish a new benefit year which would include such week; and

(C) Has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, 45 U.S.C., §361, et seq., the Trade Expansion Act of 1962, 19 U.S.C., §1801, et seq., the Automotive Products Trade Act of 1965, 19 U.S.C., §2001, et seq., and such other federal laws as are specified in regulations issued by the United States Secretary of Labor and has not received and is not seeking unemployment benefits under the unemployment compensation law of the Virgin Islands or of Canada. If he or she is seeking such benefits and the appropriate agency finally determines that he or she is not entitled to benefits under law, then he or she is considered an exhaustee.

(10) "State law" means the unemployment insurance law of any state, approved by the

United States Secretary of Labor under 26 U.S.C., §3304.

(11) No individual is entitled to extended benefits during a period of unemployment if he or she was disqualified under the provisions of subdivision (1), (2) or (3) of section three, article six of this chapter, which disqualification is not terminated until the individual has returned to covered employment and has been employed in covered employment for at least thirty working days.

(12)(A) Notwithstanding any other provisions of this section, an individual is ineligible for payment of extended benefits for any week of unemployment in his or her eligibility period if the commissioner finds that during such period:

(i) He or she failed to accept an offer of suitable work or failed to apply for suitable work, as defined under subdivision (12)(C) of this section, to which he or she was referred by the commissioner; or

(ii) He or she failed to actively engage in seeking work as prescribed under subdivision (12)(E) of this section.

(B) An individual who has been found ineligible for extended benefits by reason of the provisions in subdivision (12)(A) of this section is also denied benefits beginning with the first day of the week following the week in which such failure occurred and until he or she has been employed in each of four subsequent weeks, whether or not consecutive, and has earned remuneration equal to not less than four times the extended weekly benefit amount;

(C) For purposes of this subdivision, the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities so long as the gross average weekly remuneration payable for the work must exceed the sum of:

(i) The individual's average weekly benefit amount as determined under subdivision (12)(D) of this section, plus;

(ii) The amount, if any, of supplemental unemployment benefits as defined in 26 U.S.C., §501(c)(17)(D)) payable to such individual for such week; and further,

(iii) Pays wages equal to the higher of:

(I) The minimum wages provided by 29 U.S.C., §206(a)(1), without regard to any exemption; or

(II) The state or local minimum wage;

(iv) Provided, That no individual is denied extended benefits for failure to accept an offer or referral to a job which meets the definition of suitability as described above if:

(I) The position was not offered to the individual in writing and was not listed with the

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employment service; or

(II) Such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in section five, article six of this chapter, to the extent that the criteria of suitability in that section are not inconsistent with the provisions of this subdivision; or

(III) The individual furnishes satisfactory evidence to the commissioner that his or her prospects for obtaining work in his or her customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual is made in accordance with the definition of suitable work in section five, article six of this chapter, without regard to the definition specified in this subdivision.

(D) Notwithstanding the provisions of this section to the contrary, no work is suitable work for an individual which does not accord with the labor standard provisions required by 26 U.S.C., §3304(a)(5) and set forth herein under subdivision (12)(C)(iii)(I) of this section.

(E) For the purposes of subdivision (12)(A)(ii) of this section, an individual is treated as actively engaged in seeking work during any week if:

(i) The individual has engaged in a systematic and sustained effort to obtain work during such week; and

(ii) The individual furnishes tangible evidence that he or she has engaged in such effort during such week.

(F) The employment service shall refer any claimant entitled to extended benefits under this article to any suitable work which meets the criteria prescribed in subdivision (12)(C) of this section.

(G) An individual is not eligible to receive extended benefits with respect to any week of unemployment in his or her eligibility period if the individual has been disqualified for regular benefits under this chapter because he or she voluntarily left work, was discharged for misconduct or refused an offer of suitable work unless the disqualification imposed for such reasons has been terminated in accordance with specific conditions established under this subdivision requiring the individual to perform service for remuneration subsequent to the date of such disqualification.

(13) Notwithstanding any other provisions of this chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for this section, be entitled to receive in that extended benefit period with respect to weeks of unemployment beginning after the end of the benefit year, are reduced, but not below zero, by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that

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benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

(14) An unemployed individual is eligible to receive benefits with respect to any week only if it has been found that he or she has been paid wages by an employer who was subject to the provisions of this chapter during the base period of his or her current benefit year in an amount at least equal to forty times his or her benefit rate for total unemployment.

(15) The provisions of subdivisions (11) and (12) of this section shall not apply at any time if temporarily or permanently suspended by federal law. If these provisions are suspended by federal law, the provisions of state law which apply to claims for and the payment of regular benefits apply to claims for and the payment of extended benefits.

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