

# WEST VIRGINIA CODE: §23-2-1

## **§23-2-1. Employers subject to chapter; elections not to provide certain coverages; notices; filing of business registration certificates.**

(a) The State of West Virginia and all governmental agencies or departments created by it, including county boards of education, political subdivisions of the state, any volunteer fire department or company, and other emergency service organizations as defined by §15-5-1 *et seq.* of this code, and all persons, firms, associations, and corporations regularly employing another person or persons for the purpose of carrying on any form of industry, service, or business in this state, are employers within the meaning of this chapter and are subject to all requirements of this chapter and all rules prescribed by the Industrial Council pursuant to §23-2C-5 of this code.

(b) The following employers are not required to procure workers' compensation insurance, but may elect to do so:

- (1) Employers of employees in domestic services;
- (2) Employers of five or fewer full-time employees in agricultural service;
- (3) Employers of employees while the employees are employed without the state except in cases of temporary employment without the state;
- (4) Casual employers. An employer is a casual employer when the number of his or her employees does not exceed three and the period of employment is temporary, intermittent, and sporadic in nature and does not exceed 10 calendar days in any calendar quarter;
- (5) Churches;
- (6) Employers engaged in organized professional sports activities, including employers of trainers and jockeys engaged in thoroughbred horse racing;
- (7) Any volunteer rescue squad or volunteer police auxiliary unit organized under the auspices of a county commission, municipality, or other government entity or political subdivision; volunteer organizations created or sponsored by government entities or political subdivisions; or area or regional emergency medical services boards of directors in furtherance of the purposes of the Emergency Medical Services Act of §16-4C-1 *et seq.* of this code: *Provided*, That if any of the employers described in this subdivision have paid employees, to the extent of those paid employees, the employer shall procure workers' compensation insurance based upon the gross wages of the paid employees, but with regard to the volunteers, the coverage remains optional;
- (8) Taxicab drivers of taxicab companies operating under §24A-2-1 *et seq.* of this code, who provide taxicab service pursuant to a written or electronic agreement that identifies the

taxicab driver as an independent contractor consistent with the West Virginia Employment Law Worker Classification Act as set forth in §21-5I-1 *et seq.* of this code: *Provided*, That any such taxicab driver identified as an independent contractor shall not be eligible for workers' compensation benefits under this chapter as an employee of the taxicab company.

(9) Any employer whose employees are eligible to receive benefits under the federal Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §901 *et seq.*, but only for those employees eligible for those benefits.

(c) Notwithstanding any other provision of this chapter to the contrary, whenever there are churches in a circuit which employ one individual clergyman and the payments to the clergyman from the churches constitute his or her full salary, such circuit or group of churches may elect to be considered a single employer.

(d) The following employers may elect not to provide coverage to certain of their employees under the provisions of this chapter:

(1) Any political subdivision of the state including county commissions and municipalities, boards of education, or emergency services organizations organized under the auspices of a county commission may elect not to provide coverage to any elected official. The election not to provide coverage does not apply to individuals in appointed positions or to any other employees of the political subdivision;

(2) If an employer is a partnership, sole proprietorship, association, or corporation, the employer may elect not to include as an "employee" within this chapter any member of the partnership, the owner of the sole proprietorship, or any corporate officer or member of the board of directors of the association or corporation. The officers of a corporation or an association shall consist of a president, a vice president, a secretary, and a treasurer, each of whom is elected by the board of directors at the time and in the manner prescribed by the bylaws. Other officers and assistant officers that are considered necessary may be elected or appointed by the board of directors or chosen in any other manner prescribed by the bylaws and, if elected, appointed, or chosen, the employer may elect not to include the officer or assistant officer as an "employee" within the meaning of this chapter: *Provided*, That except for those persons who are members of the board of directors or who are the corporation's or association's president, vice president, secretary, and treasurer and who may be excluded by reason of their positions from workers' compensation benefits required by this chapter even though their duties, responsibilities, activities, or actions may have a dual capacity of work which is ordinarily performed by an officer and also of work which is ordinarily performed by a worker, an administrator, or an employee who is not an officer, no other officer or assistant officer who is elected or appointed shall be excluded by election from coverage or be denied benefits merely because he or she is an officer or assistant officer if, as a matter of fact:

(A) He or she is engaged in a dual capacity of having the duties and responsibilities for work ordinarily performed by an officer and also having duties and work ordinarily performed by a

worker, administrator, or employee who is not an officer;

(B) He or she is engaged ordinarily in performing the duties of a worker, an administrator, or an employee who is not an officer and receives pay for performing the duties in the capacity of an employee; or

(C) He or she is engaged in an employment palpably separate and distinct from his or her official duties as an officer of the association or corporation;

(3) If an employer is a limited liability company, the employer may elect not to include as an "employee" within this chapter a total of no more than four persons, each of whom are acting in the capacity of manager, officer, or member of the company.

(e) "Regularly employing" or "regular employment" means employment by an employer which is not a casual employer under this section.