# WEST VIRGINIA CODE: §23-4-23

**§23-4-23. Permanent total disability benefits; reduction of disability benefits; reduction of benefits; application of section; severability.**

(a) This section is applicable whenever benefits are being paid for permanent total disability benefits arising under §23-4-6(d), (m), or (n) of this code or under §23-4-8c of this code. This section is not applicable to the receipt of temporary total disability benefits, the receipt of permanent partial disability benefits, the receipt of benefits by partially or wholly dependent persons, or to the receipt of benefits pursuant to the provisions of §23-4-10(e) of this code. This section is not applicable to the receipt of medical benefits or the payment for medical benefits.

(b) Whenever applicable benefits are paid to a beneficiary with respect to the same time period for which payments under a self-insurance plan, a wage continuation plan, or a disability insurance policy provided by an employer are also received or being received by the beneficiary, the applicable benefits shall be reduced by these amounts:

(1) The after-tax amount of the payments received or being received under a self-insurance plan, a wage continuation plan, or under a disability insurance policy provided by an employer if the employee did not contribute directly to the plan or to the payment of premiums regarding the disability insurance policy; or

(2) The proportional amount, based on the ratio of the employer's contributions to the total insurance premiums for the policy period involved, of the after-tax amount of the payments received or being received by the employee pursuant to a disability insurance policy provided by an employer if the employee did contribute directly to the payment of premiums regarding the disability insurance policy: *Provided*, That in no event shall applicable benefits be reduced below the minimum weekly benefits as provided for in §23-4-6(b) and (d) of this code.

(c) This section applies to awards of permanent total disability made after the effective date of this section.

(d) The Insurance Commissioner shall promulgate the appropriate rules for the interpretation, processing, and enforcement of this section.

(e) If any portion of this section or any application of this section is subsequently found to be unconstitutional or in violation of applicable law, it shall not affect the validity of the remainder of this section or the applications of the section that are not unconstitutional or in violation.

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