WEST VIRGINIA CODE: §23-4-6D

§23-4-6d. Benefits payable to part-time employees.

(a) For purposes of this section, a part-time employee means an employee who, at the date of injury, is customarily employed 25 hours per week or less on a regular basis and is classified by the employer as a part-time employee: *Provided*, That the term "part-time employee" shall not include an employee who regularly works more than 25 hours per week for the employer, nor shall it include an employee who regularly works for more than one employer and whose regular combined working hours total more than 25 hours per week when that employee is rendered unable to perform the duties of his or her employment as a result of the injury, nor shall it include any employee in the construction industry who works less than 25 hours per week.

(b) For purposes of establishing temporary total disability weekly benefits pursuant to §23-4-6(b) of this code for part-time employees, the "average weekly wage earnings, wherever earned, of the injured person at the date of injury" shall be computed based upon the best average weekly gross pay, wherever earned, which is received by the employee during the best quarter of wages out of the preceding four quarters of wages as reported to the Insurance Commissioner pursuant to §23-2-2(b) of this code: *Provided*, That for part-time employees who have been employed less than two months but more than one week prior to the date of injury or any employee whose wages have not yet been reported to the Insurance Commissioner, the average weekly wage earnings shall be calculated based upon the average gross earnings in the weeks actually worked: *Provided, however*, That for part-time employees who have been employed one week or less, the average weekly wage earnings shall be calculated based upon the average weekly wage prevailing for the same or similar part-time employment at the time of injury except that when an employer has agreed to pay a certain hourly wage to a part-time employee, the average weekly wage shall be computed by multiplying the hourly wage by the regular numbers of hours contracted to be worked each week: *Provided further*, That notwithstanding any provision of this article to the contrary, no part-time employee shall receive temporary total disability benefits greater than his or her average weekly wage earnings as so calculated.

(c) Notwithstanding any other provisions of this article to the contrary, benefits payable to a part-time injured employee for any permanent disability shall be computed and paid on the same basis as if the injured employee is not a part-time employee within the meaning of this section.

WV Legislature