WEST VIRGINIA CODE: §5-10D-10

§5-10D-10. Death benefits for participants or members who die while performing qualified military service; treatment of differential wage payments.

(a) Death benefits. In the case of a death occurring on or after January 1, 2007, if a participant or member of any plan administered by the board dies while performing qualified military service (as defined in Section 414(u) of the Internal Revenue Code), the survivors of the participant or member are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the plan as if the participant or member had resumed and then terminated employment on account of death, to the extent required by Section 401(a)(37) of the Internal Revenue Code: Provided, That the death of the participant or member shall not be considered to be by reason of injury, illness or disease resulting from an occupational risk or hazard inherent in or peculiar to the service required of the participant or member, or as having occurred in the performance of his or her duties as a member, or as a result of any service-related illness or injury.

(b) Differential wage payments. For years beginning on or after December 31, 2008, if a participant or member of any plan administered by the board is receiving a differential wage payment (as defined by Section 3401(h)(2) of the Internal Revenue Code), then for purposes of applying the Internal Revenue Code to the plan, all of the following shall apply: (i) The participant or member shall be treated as an employee of the employer making the payment; and (ii) the differential wage payment shall be treated as compensation of the participant or member for purposes of applying the Internal Revenue Code (but not for purposes of determining contributions and benefits under the plan, unless the plan terms explicitly so provide); (iii) the plan shall not be treated as failing to meet the requirements of any provision described in Section 414(u)(1)(C) of the Internal Revenue Code by reason of any contribution or benefit which is based on the differential wage payment.

(c) Nondiscrimination. Subsection (b)(iii) applies only if all employees of the employer performing service in the uniformed services described in Section 3401(h)(2)(A) of the Internal Revenue Code are entitled to receive differential wage payments (as defined in Section 3401(h)(2) of the Internal Revenue Code) on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the employer, to make contributions based on the payments on reasonably equivalent terms.

WV Legislature