

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2365

BY DELEGATE FOSTER, HIGGINBOTHAM, FAST, LINVILLE,
PACK, STEELE, PHILLIPS, SHOTT, SUMMERS, KESSINGER
AND CADLE

[Introduced January 14, 2019; Referred
to the Committee on Industry and Labor then the
Judiciary.]

1 A BILL to amend and reenact §21A-1A-16 of the Code of West Virginia, 1931, as amended; and
 2 to amend and reenact §23-2-1a of said code, all relating to the definition of employee for
 3 the purposes of the unemployment compensation and workers compensation laws.

Be it enacted by the Legislature of West Virginia:

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 1A. DEFINITIONS.

§21A-1A-16. Employment.

1 "Employment", subject to the other provisions of this article, means:

2 (1) Service, including service in interstate commerce, performed for wages or under any
 3 contract of hire, written or oral, express or implied;

4 (2) Any service performed by an employee, as defined in Section 3306(i) of the federal
 5 Unemployment Tax Act, including service in interstate commerce;

6 (3) Any service performed, including service in interstate commerce, by any officer of a
 7 corporation;

8 (4) An individual's entire service, performed within or both within and without this state if:

9 (A) The service is localized in this state; or (B) the service is not localized in any state but some
 10 of the service is performed in this state and: (i) The base of operations, or, if there is no base of
 11 operations, then the place from which the service is directed or controlled, is in this state; (ii) the
 12 base of operations or place from which the service is directed or controlled is not in any state in
 13 which some part of the service is performed but the individual's residence is in this state; and (iii)
 14 the service is performed in an employer-employee relationship with the employer using the 20-
 15 factor test used by the Internal Revenue Service of the United States Department of Treasury in
 16 Revenue Ruling 87-41, 1987-1 C.B. 296.

CHAPTER 23. WORKERS' COMPENSATION.

ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER;

EXTRATERRITORIAL COVERAGE.

§23-2-1a. Employees subject to chapter.

1 (a) Employees subject to this chapter are all persons in the service of employers for wages
2 in an employer-employee relationship with the employer using the 20-factor test used by the
3 Internal Revenue Service of the United States Department of Treasury in Revenue Ruling 87-41,
4 1987-1 C.B. 296, ~~and employed by them for the purpose of carrying on the industry, business,~~
5 ~~service or work in which they are engaged~~ including, but not limited to:

6 (1) Persons regularly employed in the state whose duties necessitate employment of a
7 temporary or transitory nature by the same employer without the state;

8 (2) Every person in the service of the state or of any political subdivision or agency thereof,
9 under any contract of hire, express or implied, and every appointed official or officer thereof while
10 performing his or her official duties;

11 (3) Checkweighmen employed according to law;

12 (4) All members of rescue teams assisting in mine accidents with the consent of the owner
13 who, in such case, shall be deemed the employer, or at the direction of the director of the
14 department of mines;

15 (5) All forest firefighters who, under the supervision of the director of the Department of
16 Natural Resources or his or her designated representative, assist in the prevention, confinement
17 and suppression of any forest fire; and

18 (6) Students while participating in a work-based learning experience with an employer
19 approved as a part of the curriculum by the county board. The county board shall be the employer
20 of record of students while participating in unpaid work-based experiences off school premises
21 with employers other than the county board. Students in unpaid work-based learning experiences
22 shall be considered to be paid the amount of wages so as to provide the minimum workers'
23 compensation weekly benefits required by section six, article four of this chapter.

24 (b) The right to receive compensation under this chapter shall not be affected by the fact

25 that a minor is employed or is permitted to be employed in violation of the laws of this state relating
26 to the employment of minors, or that he or she obtained his or her employment by misrepresenting
27 his or her age.

NOTE: The purpose of this bill is to clarify the definition of an employee for the purposes of unemployment compensation and workers' compensation to match conform with Internal Revenue Code provisions.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.