

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**Introduced**

## **House Bill 3083**

BY DELEGATES HANSHAW (MR. SPEAKER) AND MILEY

[Introduced February 12, 2019; Referred  
to the Committee on the Judiciary.]



1 A BILL to amend and reenact §21A-1A-17 of the Code of West Virginia, 1931, as amended,  
2 relating to unemployment compensation and adding temporary work by employees during  
3 the legislative session is excluded from the term employment.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 1. UNEMPLOYMENT COMPENSATION.**

**§21A-1A-17. Exclusions from employment.**

1 The term “employment” does not include:

2 (1) Service performed in the employ of the United States or any instrumentality of the  
3 United States exempt under the Constitution of the United States from the payments imposed by  
4 this law, except that to the extent that the Congress of the United States permits states to require  
5 any instrumentalities of the United States to make payments into an unemployment fund under a  
6 state unemployment compensation law, all of the provisions of this law are applicable to the  
7 instrumentalities and to service performed for the instrumentalities in the same manner, to the  
8 same extent and on the same terms as to all other employers, employing units, individuals and  
9 services: *Provided*, That if this state is not certified for any year by the Secretary of Labor under  
10 26 U.S.C. §3404, subsection (c), the payments required of the instrumentalities with respect to  
11 the year shall be refunded by the commissioner from the fund in the same manner and within the  
12 same period as is provided in section nineteen, article five of this chapter with respect to payments  
13 erroneously collected;

14 (2) Service performed with respect to which unemployment compensation is payable  
15 under the Railroad Unemployment Insurance Act and service with respect to which  
16 unemployment benefits are payable under an unemployment compensation system for maritime  
17 employees established by an Act of Congress. The commissioner may enter into agreements with  
18 the proper agency established under an Act of Congress to provide reciprocal treatment to  
19 individuals who, after acquiring potential rights to unemployment compensation under an Act of  
20 Congress or who have, after acquiring potential rights to unemployment compensation under an

21 Act of Congress, acquired rights to benefit under this chapter. Such agreement shall become  
22 effective 10 days after the publications which shall comply with the general rules of the  
23 department;

24 (3) Service performed by an individual in agricultural labor, except as provided in  
25 subdivision (12), section sixteen of this article, the definition of "employment." For purposes of this  
26 subdivision, the term "agricultural labor" includes all services performed:

27 (A) On a farm, in the employ of any person, in connection with cultivating the soil, or in  
28 connection with raising or harvesting any agricultural or horticultural commodity, including the  
29 raising, shearing, feeding, caring for, training and management of livestock, bees, poultry and fur-  
30 bearing animals and wildlife;

31 (B) In the employ of the owner or tenant or other operator of a farm, in connection with the  
32 operation, management, conservation, improvement or maintenance of the farm and its tools and  
33 equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if  
34 the major part of the service is performed on a farm;

35 (C) In connection with the production or harvesting of any commodity defined as an  
36 agricultural commodity in section fifteen (g) of the Agricultural Marketing Act, as amended, as  
37 codified in 12 U.S.C. §1141j, subsection (g), or in connection with the ginning of cotton, or in  
38 connection with the operation or maintenance of ditches, canals, reservoirs or waterways, not  
39 owned or operated for profit, used exclusively for supplying and storing water for farming  
40 purposes;

41 (D) (i) In the employ of the operator of a farm in handling, planting, drying, packing,  
42 packaging, processing, freezing, grading, storing or delivering to storage or to market or to a  
43 carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural  
44 commodity; but only if the operator produced more than one half of the commodity with respect  
45 to which the service is performed; or (ii) in the employ of a group of operators of farms (or a  
46 cooperative organization of which the operators are members) in the performance of service

47 described in subparagraph (i) of this paragraph, but only if the operators produced more than one  
48 half of the commodity with respect to which the service is performed; but the provisions of  
49 subparagraphs (i) and (ii) of this paragraph are not applicable with respect to service performed  
50 in connection with commercial canning or commercial freezing or in connection with any  
51 agricultural or horticultural commodity after its delivery to a terminal market for distribution for  
52 consumption;

53 (E) On a farm operated for profit if the service is not in the course of the employer's trade  
54 or business or is domestic service in a private home of the employer. As used in this subdivision,  
55 the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, truck farms, plantations,  
56 ranches, greenhouses, ranges and nurseries, or other similar land areas or structures used  
57 primarily for the raising of any agricultural or horticultural commodities;

58 (4) Domestic service in a private home except as provided in subdivision (13), section  
59 sixteen of this article, the definition of "employment";

60 (5) Service performed by an individual in the employ of his or her son, daughter or spouse;

61 (6) Service performed by a child under the age of eighteen years in the employ of his or  
62 her father or mother;

63 (7) Service as an officer or member of a crew of an American vessel, performed on or in  
64 connection with the vessel, if the operating office, from which the operations of the vessel  
65 operating on navigable waters within or without the United States are ordinarily and regularly  
66 supervised, managed, directed and controlled, is without this state;

67 (8) Service performed by agents of mutual fund broker-dealers or insurance companies,  
68 exclusive of industrial insurance agents, or by agents of investment companies, who are  
69 compensated wholly on a commission basis;

70 (9) Service performed: (A) In the employ of a church or convention or association of  
71 churches, or an organization which is operated primarily for religious purposes and which is  
72 operated, supervised, controlled or principally supported by a church or convention or association

73 of churches; or (B) by a duly ordained, commissioned or licensed minister of a church in the  
74 exercise of his or her ministry or by a member of a religious order in the exercise of duties required  
75 by the order; or (C) by an individual receiving rehabilitation or remunerative work in a facility  
76 conducted for the purpose of carrying out a program of either: (i) Rehabilitation for individuals  
77 whose earning capacity is impaired by age or physical or mental deficiency or injury; or (ii)  
78 providing remunerative work for individuals who because of their impaired physical or mental  
79 capacity cannot be readily absorbed in the competitive labor market: *Provided*, That this  
80 exemption does not apply to services performed by individuals if they are not receiving  
81 rehabilitation or remunerative work on account of their impaired capacity; or (D) as part of an  
82 unemployment work-relief or work-training program assisted or financed, in whole or in part, by  
83 any federal agency or an agency of a state or political subdivision thereof, by an individual  
84 receiving the work relief or work training; or (E) by an inmate of a custodial or penal institution;

85 (10) Service performed in the employ of a school, college or university, if the service is  
86 performed: (A) By a student who is enrolled and is regularly attending classes at the school,  
87 college or university; or (B) by the spouse of a student, if the spouse is advised, at the time the  
88 spouse commences to perform the service, that: (i) The employment of the spouse to perform the  
89 service is provided under a program to provide financial assistance to the student by the school,  
90 college or university; and (ii) the employment will not be covered by any program of unemployment  
91 insurance;

92 (11) Service performed by an individual who is enrolled at a nonprofit or public educational  
93 institution which normally maintains a regular faculty and curriculum and normally has a regularly  
94 organized body of students in attendance at the place where its educational activities are carried  
95 on as a student in a full-time program, taken for credit at the institution, which combines academic  
96 instruction with work experience, if the service is an integral part of the program and the institution  
97 has so certified to the employer, except that this subdivision does not apply to service performed  
98 in a program established for or on behalf of an employer or group of employers;

99           (12) Service performed in the employ of a hospital, if the service is performed by a patient  
100 of the hospital, as defined in this article;

101           (13) Service in the employ of a governmental entity referred to in subdivision (9), section  
102 sixteen of this article, the definition of “employment,” if the service is performed by an individual  
103 in the exercise of duties: (A) As an elected official; (B) as a member of a legislative body, or a  
104 member of the judiciary, of a state or political subdivision; (C) as an employee serving on a  
105 temporary basis for the legislature during, or in support of, the legislative session; (D) as a  
106 member of the state National Guard or Air National Guard, except as provided in section twenty-  
107 eight of this article; ~~(D)~~ (E) as an employee serving on a temporary basis in case of fire, storm,  
108 snow, earthquake, flood or similar emergency; ~~(E)~~ (F) in a position which, under or pursuant to  
109 the laws of this state, is designated as: (i) A major nontenured policymaking or advisory position;  
110 or (ii) a policymaking or advisory position the performance of the duties of which ordinarily does  
111 not require more than eight hours per week; or ~~(F)~~(G) as any election official appointed to serve  
112 during any municipal, county or state election, if the amount of remuneration received by the  
113 individual during the calendar year for services as an election official is less than \$1,000;

114           (14) Service performed by a bona fide partner of a partnership for the partnership; and

115           (15) Service performed by a person for his or her own sole proprietorship.

116           Notwithstanding the foregoing exclusions from the definition of “employment,” services,  
117 except agricultural labor and domestic service in a private home, are in employment if with respect  
118 to the services a tax is required to be paid under any federal law imposing a tax against which  
119 credit may be taken for contributions required to be paid into a State Unemployment  
120 Compensation Fund, or which as a condition for full tax credit against the tax imposed by the  
121 federal Unemployment Tax Act are required to be covered under this chapter.

NOTE: The purpose of this bill is to add temporary work during the legislative session as exclusion to the term employment for purposes of unemployment compensation.

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