

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 12**

5 (Senators Carmichael, Boley, Ferns, Gaunch, D. Hall, M. Hall,

6 Karnes, Mullins, Sypolt, Nohe, Trump, Blair and Cole (Mr. President), *original sponsors*)

7 _____
8 [Passed March 13, 2015; in effect ninety days from passage.]
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12 AN ACT to amend and reenact §21-5-1 and §21-5-4 of the Code of West Virginia, 1931, as
13 amended, relating to payment of wages by employers; defining terms; providing for how
14 payments may be made; requiring certain payments by the next regular payday; providing for
15 payments pursuant to certain agreements; reducing amount of liquidated damages available
16 for violation of this section; providing instance when liquidated damages are not available;
17 clarifying that section does not address whether overtime pay is due; authorizing payment
18 by mail if requested by employee; and establishing date paid if payment mailed pursuant to
19 employee request.

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

21 That §21-5-1 and §21-5-4 of the Code of West Virginia, 1931, as amended, be amended and
22 reenacted, all to read as follows:

1 **ARTICLE 5. WAGE PAYMENT AND COLLECTION.**

2 **§21-5-1. Definitions.**

3 As used in this article:

4 (a) The term "firm" includes any partnership, association, joint-stock company, trust, division
5 of a corporation, the administrator or executor of the estate of a deceased individual, or the receiver,
6 trustee or successor of any of the same, or officer thereof, employing any person.

7 (b) The term "employee" or "employees" includes any person suffered or permitted to work
8 by a person, firm or corporation.

9 (c) The term "wages" means compensation for labor or services rendered by an employee,
10 whether the amount is determined on a time, task, piece, commission or other basis of calculation.
11 As used in sections four, five, eight-a, ten and twelve of this article, the term "wages" shall also
12 include then accrued fringe benefits capable of calculation and payable directly to an employee:
13 *Provided*, That nothing herein contained shall require fringe benefits to be calculated contrary to any
14 agreement between an employer and his or her employees which does not contradict the provisions
15 of this article.

16 (d) The term "commissioner" means Commissioner of Labor or his or her designated
17 representative.

18 (e) The term "railroad company" includes any firm or corporation engaged primarily in the
19 business of transportation by rail.

20 (f) The term "special agreement" means an arrangement filed with and approved by the
21 commissioner whereby a person, firm or corporation is permitted upon a compelling showing of
22 good cause to establish regular paydays less frequently than once in every two weeks: *Provided*,

1 That in no event shall the employee be paid in full less frequently than once each calendar month on
2 a regularly established schedule.

3 (g) The term "deductions" includes amounts required by law to be withheld, and amounts
4 authorized for union or club dues, pension plans, payroll savings plans, credit unions, charities and
5 hospitalization and medical insurance.

6 (h) The term "officer" shall include officers or agents in the management of a corporation or
7 firm who knowingly permit the corporation or firm to violate the provisions of this article.

8 (i) The term "wages due" shall include at least all wages earned up to and including the
9 twelfth day immediately preceding the regular payday.

10 (j) The term "construction" means the furnishing of work in the fulfillment of a contract for
11 the construction, alteration, decoration, painting or improvement of a new or existing building,
12 structure, roadway or pipeline, or any part thereof, or for the alteration, improvement or development
13 of real property: *Provided*, That construction performed for the owner or lessee of a single family
14 dwelling or a family farming enterprise is excluded.

15 (k) The term "minerals" means clay, coal, flagstone, gravel, limestone, manganese, sand,
16 sandstone, shale, iron ore and any other metallurgical ore.

17 (l) The term "fringe benefits" means any benefit provided an employee or group of employees
18 by an employer, or which is required by law, and includes regular vacation, graduated vacation,
19 floating vacation, holidays, sick leave, personal leave, production incentive bonuses, sickness and
20 accident benefits and benefits relating to medical and pension coverage.

21 (m) The term "employer" means any person, firm or corporation employing any employee.

22 (n) The term "doing business in this state" means having employees actively engaged in the

1 intended principal activity of the person, firm or corporation in West Virginia.

2 **§21-5-4. Cash orders; employees separated from payroll before paydays.**

3 (a) In lieu of lawful money of the United States, any person, firm or corporation may
4 compensate employees for services by cash order which may include checks, direct deposits or
5 money orders on banks convenient to the place of employment where suitable arrangements have
6 been made for the cashing of the checks by employees or deposit of funds for employees for the full
7 amount of wages.

8 (b) Whenever a person, firm or corporation discharges an employee, or whenever an
9 employee quits or resigns from employment, the person, firm or corporation shall pay the employee's
10 wages due for work that the employee performed prior to the separation of employment on or before
11 the next regular payday on which the wages would otherwise be due and payable: *Provided*, That
12 fringe benefits, as defined in section one of this article, that are provided an employee pursuant to
13 an agreement between the employee and employer and that are due, but pursuant to the terms of the
14 agreement, are to be paid at a future date or upon additional conditions which are ascertainable are
15 not subject to this subsection and are not payable on or before the next regular payday, but shall be
16 paid according to the terms of the agreement. For purposes of this section, "business day" means any
17 day other than Saturday, Sunday or any legal holiday as set forth in section one, article two, chapter
18 two of this code.

19 (c) Payment under this section may be made in person in any manner permissible under
20 section three of this article, through the regular pay channels or, if requested by the employee, by
21 mail. If the employee requests that payment under this section be made by mail, that payment shall
22 be considered to have been made on the date the mailed payment is postmarked.

1 (d) When work of any employee is suspended as a result of a labor dispute, or when an
2 employee for any reason whatsoever is laid off, the person, firm or corporation shall pay in full to
3 the employee not later than the next regular payday, either through the regular pay channels or by
4 mail if requested by the employee, wages earned at the time of suspension or layoff.

5 (e) If a person, firm or corporation fails to pay an employee wages as required under this
6 section, the person, firm or corporation, in addition to the amount which was unpaid when due, is
7 liable to the employee for two times that unpaid amount as liquidated damages. This section
8 regulates the timing of wage payments upon separation from employment and not whether overtime
9 pay is due. Liquidated damages that can be awarded under this section are not available to
10 employees claiming they were misclassified as exempt from overtime under state and federal wage
11 and hour laws. Every employee shall have a lien and all other rights and remedies for the protection
12 and enforcement of his or her salary or wages, as he or she would have been entitled to had he or she
13 rendered service therefor in the manner as last employed; except that, for the purpose of liquidated
14 damages, the failure shall not be deemed to continue after the date of the filing of a petition in
15 bankruptcy with respect to the employer if he or she is adjudicated bankrupt upon the petition.