

WEST VIRGINIA LEGISLATURE
EIGHTY-SECOND LEGISLATURE
REGULAR SESSION, 2015



E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 12

(SENATORS CARMICHAEL, BOLEY, FERNS, GAUNCH, D. HALL,
M. HALL, KARNES, MULLINS, SYPOLT, NOHE, TRUMP, BLAIR AND
COLE (MR. PRESIDENT), *ORIGINAL SPONSORS*)

[PASSED MARCH 13, 2015; IN EFFECT NINETY DAYS FROM PASSAGE.]

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COLE (MR. PRESIDENT), *ORIGINAL SPONSORS*)

[Passed March 13, 2015; in effect ninety days from passage.]

AN ACT to amend and reenact §21-5-1 and §21-5-4 of the Code of West Virginia, 1931, as amended, relating to payment of wages by employers; defining terms; providing for how payments may be made; requiring certain payments by the next regular payday; providing for payments pursuant to certain agreements; reducing amount of liquidated damages available for violation of this section; providing instance when liquidated damages are not available; clarifying that section does not address whether overtime pay is due; authorizing payment by mail if requested by employee; and establishing date paid if payment mailed pursuant to employee request.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-1. Definitions.

1 As used in this article:

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

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

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

21 (d) The term “commissioner” means Commissioner of
22 Labor or his or her designated representative.

23 (e) The term “railroad company” includes any firm or
24 corporation engaged primarily in the business of
25 transportation by rail.

26 (f) The term “special agreement” means an arrangement
27 filed with and approved by the commissioner whereby a
28 person, firm or corporation is permitted upon a compelling
29 showing of good cause to establish regular paydays less
30 frequently than once in every two weeks: *Provided*, That in
31 no event shall the employee be paid in full less frequently
32 than once each calendar month on a regularly established
33 schedule.

34 (g) The term “deductions” includes amounts required by
35 law to be withheld, and amounts authorized for union or club
36 dues, pension plans, payroll savings plans, credit unions,
37 charities and hospitalization and medical insurance.

38 (h) The term “officer” shall include officers or agents in
39 the management of a corporation or firm who knowingly
40 permit the corporation or firm to violate the provisions of this
41 article.

42 (i) The term “wages due” shall include at least all wages
43 earned up to and including the twelfth day immediately
44 preceding the regular payday.

45 (j) The term “construction” means the furnishing of work
46 in the fulfillment of a contract for the construction, alteration,
47 decoration, painting or improvement of a new or existing
48 building, structure, roadway or pipeline, or any part thereof,
49 or for the alteration, improvement or development of real
50 property: *Provided*, That construction performed for the
51 owner or lessee of a single family dwelling or a family
52 farming enterprise is excluded.

53 (k) The term “minerals” means clay, coal, flagstone,
54 gravel, limestone, manganese, sand, sandstone, shale, iron ore
55 and any other metallurgical ore.

56 (l) The term “fringe benefits” means any benefit provided
57 an employee or group of employees by an employer, or
58 which is required by law, and includes regular vacation,
59 graduated vacation, floating vacation, holidays, sick leave,
60 personal leave, production incentive bonuses, sickness and
61 accident benefits and benefits relating to medical and pension
62 coverage.

63 (m) The term “employer” means any person, firm or
64 corporation employing any employee.

65 (n) The term “doing business in this state” means having
66 employees actively engaged in the intended principal activity
67 of the person, firm or corporation in West Virginia.

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

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

8 (b) Whenever a person, firm or corporation discharges an
9 employee, or whenever an employee quits or resigns from
10 employment, the person, firm or corporation shall pay the
11 employee’s wages due for work that the employee performed
12 prior to the separation of employment on or before the next
13 regular payday on which the wages would otherwise be due
14 and payable: *Provided*, That fringe benefits, as defined in
15 section one of this article, that are provided an employee
16 pursuant to an agreement between the employee and
17 employer and that are due, but pursuant to the terms of the
18 agreement, are to be paid at a future date or upon additional

19 conditions which are ascertainable are not subject to this
20 subsection and are not payable on or before the next regular
21 payday, but shall be paid according to the terms of the
22 agreement. For purposes of this section, "business day"
23 means any day other than Saturday, Sunday or any legal
24 holiday as set forth in section one, article two, chapter two of
25 this code.

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

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

40 (e) If a person, firm or corporation fails to pay an
41 employee wages as required under this section, the person,
42 firm or corporation, in addition to the amount which was
43 unpaid when due, is liable to the employee for two times that
44 unpaid amount as liquidated damages. This section regulates
45 the timing of wage payments upon separation from
46 employment and not whether overtime pay is due.
47 Liquidated damages that can be awarded under this section
48 are not available to employees claiming they were
49 misclassified as exempt from overtime under state and federal
50 wage and hour laws. Every employee shall have a lien and all
51 other rights and remedies for the protection and enforcement

52 of his or her salary or wages, as he or she would have been
53 entitled to had he or she rendered service therefor in the
54 manner as last employed; except that, for the purpose of
55 liquidated damages, the failure shall not be deemed to
56 continue after the date of the filing of a petition in bankruptcy
57 with respect to the employer if he or she is adjudicated
58 bankrupt upon the petition.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the

Day of, 2015.

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Governor