

WEST VIRGINIA LEGISLATURE
EIGHTY-SECOND LEGISLATURE
REGULAR SESSION, 2015



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 344

(SENATORS TRUMP, CARMICHAEL AND BLAIR, *ORIGINAL SPONSORS*)

[PASSED MARCH 10, 2015; IN EFFECT NINETY DAYS FROM PASSAGE.]

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[Passed March 10, 2015; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §55-7E-1, §55-7E-2 and §55-7E-3, all relating to setting adequate and reasonable amounts of compensatory damages available to an employee in statutory and common law wrongful or retaliatory discharge causes of action and other employment law claims; setting forth definitions; setting forth legislative findings and declaration of public policy; placing duty to mitigate damages on plaintiffs in employment-related lawsuits and causes of action; and requiring a judge to make a finding on the appropriateness of remedy versus reinstatement before front pay damages are to be considered by a jury.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §55-7E-1, §55-7E-2 and §55-7E-3, all to read as follows:

ARTICLE 7E. DUTY TO MITIGATE DAMAGES IN EMPLOYMENT CLAIMS.

§55-7E-1. Definitions.

1 In this article:

2 (a) “Back pay” means the wages that an employee would
3 have earned, had the employee not suffered from an adverse
4 employment action, from the time of the adverse employment
5 action through the time of trial.

6 (b) “Front pay” means the wages that an employee would
7 have earned, had the employee not suffered from an adverse
8 employment action, from the time of trial through a future
9 date.

§55-7E-2. Legislative findings and declaration of purpose.

1 (a) The Legislature finds that:

2 (1) Employees of this state are entitled to be free from
3 unlawful discrimination, wrongful discharge and unlawful
4 retaliation in the workplace. Employers are often confronted
5 with difficult choices in the hiring, discipline, promotion,
6 layoff and discharge of employees.

7 (2) The citizens and employers of this state are entitled to
8 a legal system that provides adequate and reasonable
9 compensation to those persons who have been subjected to
10 unlawful employment actions, a legal system that is fair,
11 predictable in its outcomes, and a legal system that functions
12 within the mainstream of American jurisprudence.

13 (3) The goal of compensation remedies in employment
14 law cases is to make the victim of unlawful workplace actions

15 whole, including back pay; reinstatement or some amount of
16 front pay in lieu of reinstatement; and under certain statutes,
17 attorney's fees for the successful plaintiff.

18 (4) In West Virginia, the amount of damages recently
19 awarded in statutory and common law employment cases
20 have been inconsistent with established federal law and the
21 law of surrounding states. This lack of uniformity in the law
22 puts our state and its businesses at a competitive
23 disadvantage.

24 (b) The purpose of this article is to provide a framework
25 for adequate and reasonable compensation to those persons
26 who have been subjected to an unlawful employment action,
27 but to ensure that compensation does not far exceed the goal
28 of making a wronged employee whole.

§55-7E-3. Statutory or common law employment claims ; duty to mitigate damages.

1 (a) In any employment law cause of action against a
2 current or former employer, regardless of whether the cause
3 of action arises from a statutory right created by the
4 Legislature or a cause of action arising under the common
5 law of West Virginia, the plaintiff has an affirmative duty to
6 mitigate past and future lost wages, regardless of whether the
7 plaintiff can prove the defendant employer acted with malice
8 or malicious intent, or in willful disregard of the plaintiff's
9 rights. The malice exception to the duty to mitigate damages
10 is abolished. Unmitigated or flat back pay and front pay
11 awards are not an available remedy. Any award of back pay
12 or front pay by a commission, court or jury shall be reduced
13 by the amount of interim earnings or the amount earnable
14 with reasonable diligence by the plaintiff. It is the
15 defendant's burden to prove the lack of reasonable diligence.

16 (b) In any employment law claim or cause of action, the
17 trial court shall make a preliminary ruling on the
18 appropriateness of the remedy of reinstatement versus front
19 pay if such remedies are sought by the plaintiff. If front pay
20 is determined to be the appropriate remedy, the amount of
21 front pay, if any, to be awarded shall be an issue for the trial
22 judge to decide.

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