

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 2546**

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[Originating in the Committee on Judiciary]



1 A BILL to amend and reenact §21-5-1 and §21-5-4 of the Code of West Virginia, 1931, as  
2 amended, relating to allowing replacement costs of employer provided property to be  
3 deducted from an employee's final paycheck if the property is not returned; defining terms;  
4 setting forth conditions upon which an employer may withhold, deduct or divert  
5 replacement costs for employer provided property that has been timely returned; and  
6 authorizing withholding, deduction or diversion with consent of employee.

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

1 That §21-5-1 and §21-5-4 of the Code of West Virginia, 1931, as amended, be amended  
2 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, joint-stock company, trust,  
3 division of a corporation, the administrator or executor of the estate of a deceased individual, or  
4 the receiver, trustee or successor of any of the same, or officer thereof, employing any person.

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

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

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

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

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

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

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

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

30 (j) The term “construction” means the furnishing of work in the fulfillment of a contract for  
31 the construction, alteration, decoration, painting or improvement of a new or existing building,  
32 structure, roadway or pipeline, or any part thereof, or for the alteration, improvement or  
33 development of real property: *Provided,* That construction performed for the owner or lessee of a  
34 single family dwelling or a family farming enterprise is excluded.

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

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

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

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

44 (o) The term “employer provided property” means all property provided by an employer to  
45 an employee for use in the employer’s business, including but not limited to, equipment, phone,  
46 computer, supplies or uniforms.

47 (p) The term “replacement cost” means actual cost paid by an employer for employer  
48 provided property, or for the same or similar property, if the original employer provided property  
49 no longer exists. In calculating the “replacement cost”, the cost shall include any vendor discounts  
50 provided to the employer for such property.

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

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

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

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

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

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

37 (f)(1) Notwithstanding any provision in this section to the contrary, if an employee fails to  
38 return employer provided property at the time of discharge or resignation, the employer may  
39 withhold, deduct or divert any portion of an employee's final wages to recover the replacement  
40 cost of the employer provided property, subject to the following:

41 (A) The employer provided property had been given to the employee in the course of, and  
42 for use in, the employer's business;

43 (B) The employee had signed a written agreement with the employer contemporaneous  
44 with the obtaining of the employer provided property, or signed and ratified an agreement if  
45 property had been provided prior to the effective date of this provision; and such agreement  
46 contained, at a minimum, the following information:

47 (i) Specific itemization of the employer provided property, with a specified replacement  
48 cost;

49 (ii) Clear statement that such items are to be returned immediately upon discharge or  
50 resignation; and

51 (iii) Clear statement, coupled with the employee's acknowledgement and agreement, that  
52 should the employee fail to timely return the specified items, the replacement cost of such items  
53 may be recovered by the employer from the employee's final wages;

54 (C) The employer shall notify the employee in writing at the time of discharge or resignation  
55 by personal service, or as soon thereafter as practicable by personal service or via certified mail  
56 with return receipt requested, as to the replacement cost of the items and make a demand for  
57 return of such employer provided property within a certain date, not to exceed ten business days  
58 of the notification; and

59 (D) The employer shall relinquish the withheld, deducted or diverted wages to the  
60 employee if the employee returns the employer's property, equipment, supplies and uniforms in  
61 a condition suitable for the age and usage of the items within the deadline specified in paragraph  
62 (C), subdivision (1) of this subsection.

63 (2) Nothing herein precludes an employee from voluntarily consenting in writing to an  
64 employer's withholding, deduction or diversion of a certain amount from the employee's final  
65 wages in satisfaction of subsection (1) of this section.

66 (3) If an employee objects to the replacement cost amount to be deducted by an employer,  
67 and provides such written objection within the deadline specified in paragraph (C), subdivision (1)  
68 of this subsection, then the employer shall provide the wages owed under this section to the

69 employee less the claimed replacement cost amount, and shall place the controverted amount in  
70 an interest bearing escrow account: *Provided*, That if a civil action or equitable relief is not brought  
71 by the employee for the claimed amount within three months, the employee shall forfeit the  
72 amount in escrow and such money shall revert to the employer.

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