

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2546

BY DELEGATES FORSTER, G., HIGGINBOTHAM, HOWELL,

WILSON, FAST, ZATEZALO, KELLY, HARSHBARGER,

MAYNARD AND WALTERS

[Introduced February 20, 2017; Referred
to the Committee on Industry and Labor then the
Judiciary.]

1 A BILL to amend and reenact §21-5-4 of the Code of West Virginia, 1931, as amended, relating
 2 to allowing uniform costs to be deducted from an employee’s final paycheck if the uniform
 3 is not returned.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§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) Notwithstanding any provision to the contrary, if an employee fails to return his or her
38 uniforms provided by the employer within one day of discharge or resignation, the employer may
39 reduce the wages to be paid to an employee under this section by an amount equal to the
40 replacement cost: *Provided*, That the employer shall notify the employee at the time of discharge
41 or resignation as to the cost of the uniform and make a demand for return within twenty-four hours:
42 *Provided, however*, That an employee may voluntarily consent to such withholding from wages
43 and the employee may make such deduction from wages to be paid to the employee under this
44 section. If an employee objects to the replacement cost amount to be deducted by an employer,

45 and provides such written objection within the twenty-four hour deadline, then the employer shall
46 provide the wages owed under this section to the employees less the claimed uniform amount,
47 and shall place the controverted amount in an interest bearing escrow account: *Provided*, That if
48 a civil action or equitable relief is not brought by the employee for the claimed amount within three
49 months, the employee shall forfeit the amount in escrow and such money shall revert to the
50 employer: *Provided, however*, That if an employer is found to have withheld such costs in bad
51 faith or to have artificially inflated the cost of replacement greater than 10% then such employer
52 shall: (1) Provide such controverted money in escrow to the employee; and (2) pay additional
53 treble damages from the amount in escrow. For purposes of this subsection, "replacement cost"
54 shall mean actual cost paid by employer to its uniform provider for the same or similar uniform.

NOTE: The purpose of this bill is to allow uniform costs to be deducted from an employee's final paycheck if the uniform is not returned.

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