

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4141

BY DELEGATES FOSTER, FAST, COWLES, HIGGINBOTHAM,

MOORE, BLAIR, SUMMERS, WILSON, KESSINGER, CRISS

AND ELLINGTON

[Introduced January 16, 2018; Referred
to the Committee on the 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, all 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:

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 §21-5-4, §21-5-5, §21-5-8a, §21-5-10 and §21-5-12 of this code, the term "wages"
10 shall also include then accrued fringe benefits capable of calculation and payable directly to an
11 employee: *Provided*, That nothing herein contained shall require fringe benefits to be calculated
12 contrary to any agreement between an employer and his or her employees which does not
13 contradict the 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 §21-5-1 of this code that are provided
11 an employee pursuant to an agreement between the employee and employer and that are due,
12 but pursuant to the terms of the agreement, are to be paid at a future date or upon additional
13 conditions which are ascertainable are not subject to this subsection and are not payable on or
14 before the next regular payday, but shall be paid according to the terms of the agreement. For
15 purposes of this section, "business day" means any day other than Saturday, Sunday or any legal
16 holiday as set forth in §2-2-1 of this code.

17 (c) Payment under this section may be made in person in any manner permissible under
18 §21-5-3 of this code, through the regular pay channels or, if requested by the employee, by mail.

19 If the employee requests that payment under this section be made by mail, that payment shall be
20 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.

NOTE: The purpose of this bill is to allow replacement costs of employer provided property to be deducted from an employee's final paycheck if the property is not returned. The bill defines terms. The bill sets forth conditions upon which an employer may withhold, deduct or divert replacement costs for employer provided property that has been timely returned. The bill authorizes withholding, deduction or diversion with consent of employee.

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