

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 2646**

BY DELEGATE HIGGINBOTHAM, FOSTER, PACK, WILSON,

SYPOLT, WESTFALL, HARDY, BUTLER, ATKINSON AND

CADLE

[Introduced January 24, 2019; Referred  
to the Committee on Industry and Labor then the  
Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §21-5-4a, relating to providing a safe harbor for employers to correct  
 3 underpayment or nonpayment of wages and benefits due to separated employees prior to  
 4 the filing of a lawsuit; prohibiting an employee from seeking liquidated damages or  
 5 attorney's fees when bringing an action for the underpayment or nonpayment of wages  
 6 and benefits due upon the employee's separation of employment without first making a  
 7 written demand on the employer; permitting only those employees who have made a  
 8 written demand on the employer may be included in a class action lawsuit brought for the  
 9 underpayment or nonpayment of wages and benefits due upon the employee's separation  
 10 of employment; and defining the term "written demand".

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

## **ARTICLE 5. WAGE PAYMENT AND COLLECTION.**

### **§ 21-5-4a. Safe Harbor.**

1 (a) An employee, in bringing an action for the underpayment or nonpayment of wages and  
 2 benefits due upon the employee's separation of employment as contemplated by §21-5-4 of this  
 3 code, is not entitled to seek liquidated damages or attorney's fees from an employer without first  
 4 making a written demand, as defined in subsection (c) of this section, to the employer seeking  
 5 the payment of any alleged underpayment or nonpayment as set forth in this section. The written  
 6 demand shall be mailed or delivered to the employer's correct address or delivered to the  
 7 employer's authorized representative. Upon receiving a written demand, the employer has 30  
 8 calendar days from receipt to correct the alleged underpayment or nonpayment of the wages and  
 9 benefits due. If, after the 30 days, the employer has not corrected the alleged underpayment or  
 10 nonpayment, or otherwise disputes the allegation, the employee shall be allowed to seek  
 11 liquidated damages and attorney's fees. Nothing in this section prohibits the employee from  
 12 presenting a claim under this article without making a written demand to the employer.

13 (b) In a class action lawsuit brought under this article for the underpayment or nonpayment

14 of wages and benefits due upon the employee's separation of employment, participation in the  
15 class shall be limited only to those individual employees who have made a written demand on the  
16 employer as required in subsection (a) of this section.

17 (c) For purposes of this section, a "written demand" means any writing, including e-mail,  
18 from or on behalf of an employee setting out the basis for the alleged underpayment or  
19 nonpayment of wages or compensation due, but shall not include a notice of complaint delivered  
20 to the employer or any text message or other similar instant messaging service.

NOTE: The purpose of this bill is to provide a safe harbor for employers to correct underpayment or nonpayment of wages and benefits due to separated employees prior to the filing of a lawsuit. The bill prohibits an employee from seeking liquidated damages or attorney's fees when bringing an action for the underpayment or nonpayment of wages and benefits due upon the employee's separation of employment without first making a written demand to that employer. The bill permits only those employees who have made a written demand on the employer to be included in a class action brought for the underpayment or nonpayment of wages and benefits due upon the employee's separation of employment. The bill defines the term "written demand".

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