

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2646

BY DELEGATES HIGGINBOTHAM, FOSTER, WILSON,

SYPOLT, HARDY, BUTLER, ATKINSON AND CADLE

[Passed March 6, 2020; in effect ninety days from
passage.]

1 AN ACT 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 fringe benefits due to separated employees
4 prior to the filing of a lawsuit; prohibiting an employee from seeking liquidated damages
5 or attorney's fees when bringing an action for the underpayment or nonpayment of wages
6 and fringe benefits due upon the employee's separation of employment without first
7 making a written demand to the employer; requiring the employer to inform the employee
8 in writing of who the authorized representative is and where to send a written demand;
9 exempting employee from compliance where employer fails to provide written notice;
10 providing a time limit during which the employer must correct the nonpayment or
11 underpayment; permitting an employee to file a written demand with the employer on
12 behalf of a class; and allowing the class action to proceed if only the named employee is
13 paid; 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 fringe benefits due upon the employee's separation of employment as contemplated by §21-5-4
3 of this code, is not entitled to seek liquidated damages or attorney's fees from an employer without
4 first 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: *Provided,*
6 That upon separation or with the issuance of the final paycheck, the employer shall notify the
7 employee in writing who the employer's authorized representative is and where to send a written
8 demand by both e-mail and regular mail: *Provided however,* that if the employer fails to provide
9 the required written notice, the employee is not required to comply with the provisions of this
10 section. Upon receiving a written demand, the employer has seven calendar days from receipt to

11 correct the alleged underpayment or nonpayment of the wages and fringe benefits due. If, after
12 seven days, the employer has not corrected the alleged underpayment or nonpayment, or paid
13 all undisputed amounts due to the employee, the employee may seek liquidated damages and
14 attorney's fees. Nothing in this section prohibits the employee from presenting a claim under this
15 article without making a written demand to the employer.

16 (b) In a class action lawsuit brought under this article for the underpayment or nonpayment
17 of wages and fringe benefits due upon the employees' separation of employment, the employee,
18 prior to the filing of the class action, shall submit a written demand stating it is a demand for all
19 other employees similarly situated for the underpayment or nonpayment of their wages and fringe
20 benefits: *Provided*, That if only the underpayment or nonpayment of wages and fringe benefits of
21 the named employee is corrected, a class action may proceed for the underpayment or
22 nonpayment of wages and fringe benefits still owed to the other members of the class.

23 (c) For purposes of this section, a "written demand" means any writing, including e-mail,
24 from or on behalf of an employee stating that the employer has not paid all of the wages or fringe
25 benefits which the employee is owed.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2020.

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Governor