

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

House Bill 2646

BY DELEGATES HIGGINBOTHAM, FOSTER, WILSON,

SYPOLT, 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 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 of who the authorized representative is and where to send a written demand; permitting
9 only those employees who have made a written demand to the employer to be included
10 in a class action lawsuit brought for the underpayment or nonpayment of wages and fringe
11 benefits due upon the employee's separation of employment; allowing the class action to
12 proceed if only the named employee is 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 must 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. Upon receiving a written demand, the employer has 7
9 calendar days from receipt to correct the alleged underpayment or nonpayment of the wages and
10 fringe benefits due. If, after the 7 days, the employer has not corrected the alleged underpayment
11 or nonpayment, or paid all undisputed amounts due to the employee shall be allowed to seek

12 liquidated damages and attorney's fees. Nothing in this section prohibits the employee from
13 presenting a claim under this article without making a written demand to the employer.

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

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

NOTE: The purpose of this bill is to provide a safe harbor for employers to correct underpayment or nonpayment of wages and fringe 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 fringe benefits due upon the employee's separation of employment without first making a written demand to that employer. The bill requires the employer to inform the employee of who the authorized representative is and where to send a written demand. The bill permits class actions, however, if the underpaid or unpaid wages and fringe benefits of only the named employee are paid, then the remaining class members may proceed with the lawsuit. 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.