

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

Senate Bill 245

BY SENATORS TRUMP AND WOELFEL

[Originating in the Committee on Judiciary; reported
on February 3, 2022]

1 A BILL to amend and reenact §21-5-3 and §21-5-4 of the Code of West Virginia, 1931, as
2 amended, all relating to wage payment; setting forth methods for employer payment of
3 wages; eliminating the requirements that wage payment by payroll card and direct deposit
4 be agreed upon in writing by both payor and payee; requiring an employer paying wages
5 by payroll card to disclose certain information to employees; and requiring an employer
6 paying wages by payroll card to ensure that an employee can make a single withdrawal
7 per pay period without cost to the employee.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-3. Payment of wages by employers other than railroads; assignments of wages.

1 (a) Every person, firm, or corporation doing business in this state, except railroad
2 companies as provided in §21-5-1 *et seq.* of this code, shall settle with its employees at least
3 twice every month in a manner of the person, firm, or corporation's choosing, as set forth in
4 subsection (b) of this section, and with no more than 19 days between settlements, unless
5 otherwise provided by special agreement, and pay them the wages due, less authorized
6 deductions and authorized wage assignments, for their work or services.

7 (b) Payment required in subsection (a) of this section shall be made by the person, firm,
8 or corporation in one of the following ways:

9 (1) In lawful money of the United States;

10 (2) ~~By cash order as described and required in §21-5-4 of this code~~ check or money order;

11 (3) By deposit or electronic transfer of immediately available funds into an employee's
12 payroll card account in a federally insured depository institution: Provided, That ~~The term "payroll~~
13 ~~card account" means an account in a federally insured depository institution that is directly or~~
14 ~~indirectly established through an employer and to which electronic fund transfers of the~~
15 ~~employee's wages, salary, commissions, or other compensation are made on a recurring basis,~~
16 ~~whether the account is operated or managed by the employer, a third person payroll processor,~~

17 ~~a depository institution, or another person. "Payroll card" means a card, code, or combination~~
18 ~~thereof or other means of access to an employee's payroll card account, by which the employee~~
19 ~~may initiate electronic fund transfers or use a payroll card to make purchases or payments.~~
20 ~~Payment of employee compensation by means of a payroll card must be agreed upon in writing~~
21 ~~by both the person, firm, or corporation paying the compensation and the person being~~
22 ~~compensated~~ an employer who compensates its employees using payroll cards shall provide full
23 written disclosure of any applicable fees associated with the payroll card: *Provided, however, That*
24 if an employer compensates its employees using payroll cards, the employer shall ensure that
25 the employee has the ability to make at least one withdrawal or transfer from the payroll card per
26 pay period without cost or fee to the employee for any amount contained on the card: *Provided*
27 further, That if an employer compensates its employees using payroll cards, the employer shall
28 ensure that the employee has the ability to make in-network withdrawals or transfers from the
29 payroll card without cost or fee to the employee for any amount contained on the card.

30 (4) By any method of depositing immediately available funds in an employee's demand or
31 time account in a bank, credit union, or savings and loan institution ~~that may be agreed upon in~~
32 ~~writing between the employee and such person, firm, or corporation, which agreement shall~~
33 ~~specifically identify the employee, the~~ upon the employee's identification of his or her financial
34 institution, the type of account, and the account number: *Provided, That if an employee does not*
35 identify the information necessary to enable a deposit pursuant to this subdivision, the employer
36 may pay the employee by payroll card pursuant to subdivision (3) of this subsection: *Provided,*
37 *however,* That nothing herein contained shall be construed in a manner to require any person,
38 firm, or corporation to pay employees by depositing funds in a financial institution.

39 (c) If, at any time of payment, any employee is absent from his or her regular place of labor
40 and does not receive his or her wages through a duly authorized representative, he or she is
41 entitled to payment at any time thereafter upon demand upon the proper paymaster at the place
42 where his or her wages are usually paid and where the next pay is due.

43 (d) Nothing herein contained may affect the right of an employee to assign part of his or
44 her claim against his or her employer except as in subsection (e) of this section.

45 (e) No assignment of or order for future wages may be valid for a period exceeding one
46 year from the date of the assignment or order. An assignment or order shall be in writing and shall
47 specify thereon the total amount due and collectible by virtue of the same and, unless otherwise
48 provided for in subsection (f) of this section, three-fourths of the periodical earnings or wages of
49 the assignor are all times exempt from such assignment or order and no assignment or order is
50 valid which does not so state upon its face: *Provided*, That no such order or assignment is valid
51 unless the written acceptance of the employer of the assignor to the making thereof is endorsed
52 thereon: *Provided, however*, That nothing herein contained may be construed as affecting the
53 right of a private employer and its employees to agree between themselves as to deductions to
54 be made from the payroll of employees.

55 (f) If an employee of the state has been overpaid wages, including incremental salary
56 increases pursuant to §5-5-2 of this code, an employee may voluntarily authorize a written
57 assignment or order for future wages to the state to repay the overpayment in an amount not to
58 exceed three-fourths of his or her periodical earnings or wages.

59 (g) Nothing in this chapter shall be construed to interfere with the right of an employee to
60 join, become a member of, contribute to, donate to, or pay dues or fees to a union, labor
61 organization, or club.

62 (h) For purposes of this article:

63 (1) "Payroll card" means a card, code, or combination thereof or other means of access to
64 an employee's payroll card account, by which the employee may initiate electronic fund transfers
65 or use a payroll card to make purchases or payments.

66 (2) "Payroll card account" means an account in a federally insured depository institution
67 that is directly or indirectly established through an employer and to which electronic fund transfers
68 of the employee's wages, salary, commissions, or other compensation are made on a recurring

69 basis, whether the account is operated or managed by the employer, a third person payroll
70 processor, a depository institution, or another person.

§21-5-4. Cash orders; employees separated from payroll before paydays; employer provided property.

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,
3 payroll cards, or money orders on banks convenient to the place of employment where suitable
4 arrangements have been made for the cashing of the checks by employees or deposit of funds
5 for employees 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 §2-2-1 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,
27 is 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 at the time of
38 discharge or resignation, an employee fails to return employer provided property, as set forth by
39 the parties under paragraph (C) of this subsection, the employer may withhold, deduct, or divert
40 an employee's final wages, in an amount not to exceed the replacement cost of the employer
41 provided property that was not returned as set forth under paragraph (C) of this subsection, to
42 recover the replacement cost of the employer provided property, subject to the following:

43 (A) The employer provided property had been provided to the employee in the course of,
44 and for use in, the employer's business;

45 (B) The employer provided property has a value in excess of \$100;

46 (C) The employee had signed a written agreement with the employer contemporaneous
47 with the obtaining of the employer provided property, or signed and ratified an agreement if
48 property had been provided prior to the effective date of this provision; and such agreement

49 contained, at a minimum, the following information:

50 (i) Specific itemization of the employer provided property, with a specified replacement
51 cost;

52 (ii) Clear statement that such items are to be returned immediately upon discharge or
53 resignation; and

54 (iii) Clear statement, coupled with the employee's acknowledgement and agreement, that
55 should the employee fail to timely return the specified items, the replacement cost of such items
56 may be recovered by the employer from the employee's final wages;

57 (D) The employer shall notify the employee in writing at the time of discharge or resignation
58 by personal service, or as soon thereafter as practicable by personal service or via certified mail
59 with return receipt requested, as to the replacement cost of the items and make a demand for
60 return of such employer provided property within a certain date, not to exceed ~~ten~~ 10 business
61 days of the notification; and

62 (E) The employer shall relinquish the withheld, deducted, or diverted wages to the
63 employee if the employee returns the employer's property, equipment, supplies, and uniforms in
64 a condition suitable for the age and usage of the items within the deadline specified in paragraph
65 (D) of this subsection: *Provided*, That uniforms returned to the employer within three years of their
66 issuance shall be deemed acceptable in their current condition at the time of separation from
67 employment for purposes of this section: *Provided, further however, That* replacement tools are
68 deemed to be the property of the employee and are not subject to the provisions of this section.

69 (2) Nothing herein precludes an employee from voluntarily consenting in writing to an
70 employer's withholding, deduction, or diversion of a certain amount from the employee's final
71 wages in satisfaction of subsection (1) of this section.

72 (3) If an employee objects to the replacement cost amount to be deducted by an employer,
73 and provides such written objection within the deadline specified in paragraph (D), subsection (1)
74 of this subsection, then the employer shall place the controverted amount in an interest bearing

75 escrow account: *Provided*, That if a civil action or equitable relief is not brought by the employee
76 for the claimed amount within three months, the employee shall forfeit the amount in escrow and
77 such money shall revert to the employer.

78 (4) Nothing in this subsection is intended, nor shall it be construed, to abolish or limit any
79 other remedies available to an employer to recover employer provided property, damages related
80 to employer provided property or any other damages or relief, equitable or otherwise, available
81 under any applicable law.

82 (5) Notwithstanding any provision in this section to the contrary, this provision shall not
83 apply to employer-employee business relationships that are subject to, and governed by,
84 collective bargaining agreements.

85 (6) For purposes of this section the following terms mean:

86 (A) The term “employer provided property” means all property provided by an employer to
87 an employee for use in the employer’s business, including but not limited to, equipment, phone,
88 computer, supplies, or uniforms.

89 (B) The term “replacement cost” means actual cost paid by an employer for employer
90 provided property, or for the same or similar property, if the original employer provided property
91 no longer exists. In calculating the “replacement cost”, the cost shall include any vendor discounts
92 provided to the employer for such property.

93 (C) The term “replacement tools” means equipment, other than uniforms, provided by the
94 employer to the employee for use in the course of the employer’s business and to replace
95 equipment provided by the employee that is lost.