

## WEST VIRGINIA DIVISION OF LABOR WAGE BOND REQUIREMENTS

If you are working employees in a covered activity AND your company has NOT been actively and actually engaged with employees in the State of West Virginia for the past five consecutive years, you will be required to post a wage bond according to the following provisions of the West Virginia Code.

**Chapter 21-5-14** of the Wage Payment and Collection Act states that with the exception of those who have been *doing business in this state* actively and actually engaged in construction work, or the severance, production or transportation of minerals for at least five consecutive years next preceding the posting of the bond required by this section, every employer, person, firm or corporation engaged in or about to engage in construction work, or the severance, production or transportation of minerals, must furnish a bond on a form prescribed by the labor commissioner to protect their employee's wages.

The amount of your wage bond is based on your gross payroll for the period of four (4) weeks at maximum capacity plus an additional fifteen percent and must cover all your West Virginia Projects. Any of the following methods of bonding will be accepted:

1. Check – Cashier/Certified Check - Money Order
  - ❖ Checks and/or money orders must be made payable to the West Virginia Division of Labor.
  - ❖ A completed “W-9” form is required for all check or money order deposits.
  - ❖ In order to earn interest on your deposit, a “Request to Invest” form is required.
  - ❖ Our office must receive all documents.
2. Letters of Credit
  - ❖ All letters of credit must be issued in the standardized format authorized by DOL (the Division of Labor).
  - ❖ DOL must receive the original document for safekeeping.
3. Certificates of Deposit
  - ❖ Must be drawn on a West Virginia Bank.
  - ❖ The certificate must be issued in the name of both your company and the Division of Labor. Both names must be joined by the word “OR”. **Example: “John Doe Construction OR West Virginia Division of Labor.”**
  - ❖ The certificate must be automatically renewable.
  - ❖ Must be accompanied by the following documents:
    - ❖ Bank assignment form.
    - ❖ Company assignment form.
  - ❖ Our office must receive all three (3) original documents for safekeeping.
4. Wage Payment Collection Surety Bond
  - ❖ The form is to be completed by the insurance company with the exception of the Acknowledgement by Principal Section on Page 2 which is to be completed by the employer.
  - ❖ Our office must receive the original document.

**Wage Bond Status Affidavit** - A wage bond affidavit is also required with the submission of all bonds. All necessary forms are available for printing directly from our website @ [www.wvlabor.org](http://www.wvlabor.org) or [www.wv.labor.com](http://www.wv.labor.com).

## APPLYING FOR A “PLUS FIVE” EXEMPTION

Chapter 21-5-14 of the Wage Payment and Collection Act states that **with the exception of those who have been *doing business in this state* actively and actually engaged in construction work, or the severance, production or transportation of minerals for at least five consecutive years next preceding the posting of the bond required by this section**, every employer, person, firm or corporation engaged in or about to engage in construction work, or the severance, production or transportation of minerals, must furnish a bond on a form prescribed by the labor commissioner to protect their employees wages.

The Commissioner of Labor is charged with assuring that companies working within the covered industries have either posted an adequate bond to protect their employee’s wages OR have submitted *conclusive* documentation verifying employee activity in this state for each of the last five consecutive years. As the term **“*doing business in this state*” is defined** in § 21-5-1(n) as ***having employees actively engaged in the intended principal activity of the person, firm or corporation in West Virginia, you must be able to verify to the Commissioner of Labor that your company has:***

- Maintained a payroll showing your employees performed labor on projects within West Virginia for each of the last five consecutive years relating to construction, mining or the transportation of minerals.

If you feel your company meets the above qualifications, you may make application for an exemption by submitting the information stated on the following pages:

### PLEASE NOTE:

**IF YOUR COMPANY HAS BEEN ISSUED A CEASE & DESIST ORDER, YOUR COMPANY WILL BE CONSIDERED IN VIOLATION OF THAT ORDER FROM THE EFFECTIVE DATE STATED THEREON UNTIL YOUR WAGE BOND HAS BEEN RECEIVED OR YOUR APPLICATION FOR “PLUS FIVE” STATUS HAS BEEN APPROVED.**

Pursuant to the provisions of § 21-5-15(c)(1) any person, firm or corporation who continues to engage in construction work or the severance, production or transportation of minerals without an approved bond after the time period specified on the Cease & Desist Order shall be guilty of a felony.

*Wage & Hour Section / Bonding Unit  
Wage & Hour Section  
Capitol Complex  
Building 5, Room B-749  
Charleston, WV 25305  
Phone 304 558 7890, ext. 162 - Fax 304 558 3797*

## WAGE BOND / PLUS FIVE WORKSHEET

<b>Company Name</b>		<b>Business Began Date</b>		<b>Date company first obtained a business registration certificate with the WV Tax Department</b>
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Example: 5/12/1990 ↑

	Target Year Begin Date	Target Year Ending Date	A	B	C	D	
<b>First Target Year</b>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Circle the category of documentation needed. A B C D A B C D A B C D A B C D A B C D
<b>Second Target Year</b>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Third Target Year</b>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Fourth Target Year</b>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Fifth Target Year</b>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Example: 5/12/2009 ↑

Example: 5/12/2010 ↑

**Requirement Categories Defined:**

- A) The work was performed within the boundaries of the state of West Virginia.
- B) The work performed involved construction, mining or the transportation of minerals.
- C) The work was actually performed by an employee of the company. (Not an officer, owner, partner, llc member, etc.)
- D) The employee was paid for the work performed.

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**Dear Company,**

We have searched our records and determined that additional information is needed to determine whether or not your company has been actively engaged in our state, with employees, for the last five (5) consecutive years. The type of information needed (identified above as categories A, B, C & D) to qualify your company for a current exemption is indicated by the category type(s) circled above. Only one (1) example is needed for each category type. The other side of this form identifies the types of documents that we will accept for each category. Each target year is based on the month and date that you registered with the State Tax Department in WV to do business for each of the last five consecutive years. In above example: Target years # 5 is 5/12/09 – 5/12/10; Year # 4 is 5/12/08-5/12/09; Target Year # 3 is 5/12/07-5/12/08; Target Year # 2 is 5/12/06-5/12/07; Target Year # 1 5/12/05-5/12/06.

Once you have compiled the required documentation, return that information along with this form to the Division of Labor for processing. If the documentation submitted meets our requirements, you will receive a letter of exemption through the end of the 5th target year identified above. However, if your documentation does not meet our requirements, we will return this form to you outlining what additional information is still needed. If you cannot provide the specified information, you will be required to post an adequate wage bond, calculated as follows: Four (4) weeks gross payroll (at maximum capacity) plus an additional 15%. Each company is responsible for submitting the necessary documentation to receive and maintain their exemption for being in business in West Virginia for the last five consecutive years OR to post an adequate wage bond as required by §21-5-14 of the West Virginia Code.

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## **CERTIFIED PAYROLLS** (Special Instructions)

Complete and accurate certified payrolls showing the project location, date work was performed, employee names (or identifying number) and a description of work performed by each employee will satisfy the requirements of A, B, C & D for that specific target year.

### **REQUIREMENTS A & B** – Examples of acceptable documentation

- Invoices (or other billing methods) / Job Proposals that include the following information:
  - Must show that the work was performed in the state of West Virginia.
  - Must show that the type of work performed involved construction, mining or the transportation of minerals. (scope of work)
  - An approximate date the work was actually performed.
- Copies of contracts
  - Must show the project location was within West Virginia.
  - Must include a scope of work to show the work performed involved construction, mining or the transportation or minerals.
- Load tickets showing when, where and what was delivered and by whom.

### **REQUIREMENT C** – Examples of acceptable documentation.

- A worksheet, timesheet or calendar connecting a specific employee to a qualifying project.
- Load tickets bearing the employee's name.

### **REQUIREMENT D** - Examples of acceptable documentation.

- A copy of a payroll register or other evidence of payment with the following information: (Payroll registers showing a job name or number will also satisfy the requirements of Requirement C)
  - Employee name
  - Pay period ending date
  - Gross and net wages
  - List of deductions

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All bond forms and affidavits are available for printing on our website at [www.wvlabor.org](http://www.wvlabor.org). **The evidence you submit for each category (A B C & D ) should be grouped together for each target year in a clear and understandable format. For example, the evidence you have that matches specific employees to specific projects should be attached to the contract, invoice or proposal for that project.**

**If you have questions concerning any of this material, please feel free to contact the Wage & Hour Section for information.**

*West Virginia Division of Labor  
Wage & Hour Section  
Capitol Complex  
Building 5, Room B-749  
Charleston, WV 25305  
Phone 304 558 7890, ext. 162 - Fax 304 558 3797*

## EMPLOYER'S BOND FOR WAGES & BENEFITS

**§21-5-14(a) Bond required.** -- With the exception of those who have been doing business in this state actively and actually engaged in construction work, or the severance, production or transportation of minerals for at least five consecutive years next preceding the posting of the bond required by this section, every employer, person, firm or corporation engaged in or about to engage in construction work, or the severance, production or transportation (excluding railroads and water transporters) of minerals, shall, prior to engaging in any construction work, or the severance, production or transportation of minerals, furnish a bond on a form prescribed by the commissioner, payable to the state of West Virginia, with the condition that the person, firm or corporation pay the wages and fringe benefits of his or its employees when due. The amount of the bond shall be equal to the total of the employer's gross payroll for four weeks at full capacity or production, plus fifteen percent of the said total of employer's gross payroll for four weeks at full capacity or production. The amount of the bond shall increase or decrease as the employer's payroll increases or decreases: **Provided**, that the amount of the bond shall not be decreased, except with the commissioner's approval and determination that there are not outstanding claims against the bond.

(b) **Waiver.** -- The commissioner shall waive the posting of any bond required by subsection (a) of this section upon his determination that an employer is of sufficient financial responsibility to pay wages and fringe benefits. The commissioner shall promulgate rules and regulations according to the provisions of chapter twenty-nine-a of this code which prescribe standards for the granting of such waivers.

(c) **Form of bond; filing in office of circuit clerk.** -- The bond may include, with the approval of the commissioner, surety bonding, collateral bonding (including cash and securities), letters of credit, establishment of an escrow account or a combination of these methods. The commissioner shall accept an irrevocable letter of credit in lieu of any other bonding requirement. If collateral bonding is used, the employer may deposit cash, or collateral securities or certificates as follows: Bonds of the United States or its possessions, or of the federal land bank, or of the homeowner's loan corporation; full faith and credit general obligation bonds of the state of West Virginia or other states, and of any county, district or municipality of the state of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the state. The cash deposit or market value of such securities or certificates shall be equal to or greater than the sum of the bond. The commissioner shall, upon receipt of any such deposit of cash, securities or certificates, promptly place the same with the state treasurer whose duty it shall be to receive and hold the same in the name of the state in trust for the purpose for which such deposit is made. The employer making the deposit shall be entitled from time to time to receive from the state treasurer, upon the written approval of the commissioner, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with him in lieu thereof, cash or other securities or certificates of the classes herein specified having value equal to or greater than the sum of the bond. The commissioner shall cause a copy of the bond to be filed in the office of the clerk of the county commission of the county wherein the person, firm or corporation is doing business to be available for public inspection.

(d) **Employee cause of action.** -- Notwithstanding any other provision in this article, any employee, whose wages and fringe benefits are secured by the bond, as specified in subsection (c) of this section, has a direct cause of action against the bond for wages and fringe benefits that are due and unpaid.

(e) **Action of commissioner.** -- Any employee having wages and fringe benefits unpaid may inform the commissioner of the claim for unpaid wages and fringe benefits and request certification thereof. If the commissioner, upon notice to the employer and investigation, finds that such wages and fringe benefits or a portion thereof are unpaid, he shall make demand of such employer for the payment of such wages and fringe benefits. If payment for such wages and fringe benefits is not forthcoming within the time specified by the commissioner, not to exceed thirty days, the commissioner shall certify such claim or portion thereof, and forward the certification to the bonding company or the state treasurer, who shall provide payment to the affected employee within fourteen days of receipt of such certification. The bonding company, or any person, firm or corporation posting a bond, thereafter shall have the right to proceed against a

defaulting employer for that part of the claim the employee paid. The procedure specified herein shall not be construed to preclude other actions by the commissioner or employee to seek enforcement of the provisions of this article by any civil proceedings for the payment of wages and fringe benefits or by criminal proceedings as may be determined appropriate.

(f) **Posting and reporting by employer.** -- With the exception of those exempt under subsection (a) of this section, any employer who is engaged in construction work or the severance, production or transportation (excluding railroad and water transporters) of minerals shall post the following in a place accessible to his or its employees:

(1) A copy of the bond or other evidence of surety specifying the number of employees covered as provided under subsection (a) of this section, or notification that the posting of a bond has been waived by the commissioner; and

(2) A copy of the notice in the form prescribed by the commissioner regarding the duties of employers under this section. During the first two years that any person, firm or corporation is doing business in this state in construction work, or in the severance, production or transportation of minerals, such person, firm or corporation shall on or before the first day of February, May, August and November of each calendar year file with the department a verified statement of the number of employees, or a copy of the quarterly report filed with the bureau of employment programs showing the accurate number of employees, unless the commissioner waives the filing of the report upon his determination that the person, firm or corporation is of sufficient stability that the reporting is unnecessary.

g) **Termination of bond.** -- The bond may be terminated, with the approval of the commissioner, after an employer submits a statement, under oath or affirmation lawfully administered, to the commissioner that the following has occurred: The employer has ceased doing business and all wages and fringe benefits have been paid, or the employer has been doing business in this state for at least five consecutive years and has paid all wages and fringe benefits. The approval of the commissioner will be granted only after the commissioner has determined that the wages and fringe benefits of all employees have been paid. The bond may also be terminated upon a determination by the commissioner that an employer is of sufficient financial responsibility to pay wages and fringe benefits.

**§21-5-14a. Insufficiency of bond; manner of distribution.**

In the event that the claim of any employee or group of employees having wages and fringe benefits unpaid is in an amount in excess of the bond required in section fourteen of this article, the manner of distribution and order of priority of claims shall be as follows: Unpaid wages; unpaid fringe benefits; damages or expenses incurred or arising out of actual injury: **Provided,** That nothing contained in this section shall be construed so as to limit any other cause of action against any person, firm or corporation.

**§21-5-15. Violations; cease and desist orders and appeals therefrom; criminal penalties.**

(a) Any person, firm or corporation who knowingly and willfully fails to provide and maintain an adequate bond as required by section fourteen of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than two hundred dollars nor more than five thousand dollars, or imprisoned in the county jail not more than one month, or both fined and imprisoned.

(b) Any person, firm or corporation who knowingly, willfully and fraudulently disposes of or relocates assets with intent to deprive employees of their wages and fringe benefits is guilty of a felony, and, upon conviction thereof, shall be fined not less than five thousand dollars nor more than thirty thousand dollars, or imprisoned in the penitentiary not less than one nor more than three years, or both fined and imprisoned.

c) (1) At any time the commissioner determines that a person, firm or corporation has not provided or maintained an adequate bond, as required by section fourteen of this article, the commissioner shall issue a cease and desist order which is to be issued and posted requiring that said person, firm or corporation

either post an adequate bond or cease further operations in this state within a period specified by the commissioner; which period shall be not less than five nor more than fourteen days. The cease and desist order may be issued by the commissioner at his own instance or at his direction, with or without application to or the approval of any other officer, agent, department or employee of the state or application to any court for approval thereof. Any person, firm or corporation who continues to engage in construction work or the severance, production or transportation of minerals without an approved bond after such specified period shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than five thousand dollars nor more than thirty thousand dollars, or imprisoned in the penitentiary not less than one nor more than three years, or both fined and imprisoned. Any cease and desist order issued by the commissioner pursuant to this subsection may be directed by the commissioner to the sheriff of the county wherein the business activity of which the order is the subject, or to any officer or employee of the department, commanding such sheriff, officer or employee to serve such order upon the business in question within seventy-two hours and to make proper return thereof.

(2) Any other provision of law to the contrary notwithstanding, any person against whom a cease and desist order has been directed shall be entitled to judicial review thereof by filing a verified petition taking an appeal therefrom within fifteen days from the date of service of such order. Such verified petition shall be filed in the circuit court of the county wherein service of the order was completed, at the option of the petitioner, or, in the circuit court of Kanawha County, West Virginia. If the appeal is not perfected within such fifteen day period, the cease and desist order shall be final and shall not thereafter be subject to judicial review. No appeal shall be deemed to have been perfected except upon the filing with the clerk of the circuit court of the county wherein the appeal is taken, of a bond or other security to be approved by the court, in an amount of not less than the amount of the bond otherwise required to be posted under the provisions of section fourteen of this article. The person so filing a petition of appeal shall cause a copy of the petition and bond or other posted security to be served upon the commissioner by certified mail, return receipt requested, within seven days after the date upon which the petition for appeal is filed.

d) Any person who threatens any officer, agent or employee of the department or other person authorized to assist the commissioner in the performance of his duties under any provision of section fourteen of this article or of this section or who shall interfere with or attempt to prevent any such officer, agent, employee or other person in the performance of such duties shall be guilty of a felony, and, upon conviction thereof, shall be fined in an amount of not less than one thousand dollars nor more than three thousand dollars or imprisoned in the penitentiary not less than one nor more than three years, or both such fine and imprisonment.

**§21-5-16. Contractors and subcontractors to notify commissioner.**

Whenever a person, firm or corporation (hereinafter referred to in this section as "the prime contractor") contracts or subcontracts with an employer and such contract or subcontract contemplates the performance of either construction work or the severance, production or transportation (excluding railroads or water transporters) of minerals or any combination of the foregoing, then the prime contractor shall, within ten days next following the execution of such contract or subcontract, notify the commissioner in writing by certified mail, return receipt requested, of such contract, which notice shall include the employee's name, the location of the job site and the employer's principal business location: **Provided,** That if it is ascertained by the prime contractor from the commissioner that the commissioner has obtained the information required to be included in such notice from another agency of this state, then the filing of such notice by the prime contractor shall not be required. If the prime contractor is a firm, corporation or association, then any and all of the officers of such firm, corporation or association shall be responsible to see to the proper notification required by this section. If any prime contractor fails to give the notice required by this section when required to do so, such prime contractor is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than five thousand dollars.

## §21-5-1. Definitions.

As used in this article:

- (a) The term "firm" includes any partnership, association, joint-stock company, trust, division of a corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, or officer thereof, employing any person.
- (b) The term "employee" or "employees" includes any person suffered or permitted to work by a person, firm or corporation.
- (c) The term "wages" means compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission or other basis of calculation. As used in sections four, five, eight-a, ten and twelve of this article, the term "wages" shall also include then accrued fringe benefits capable of calculation and payable directly to an employee: **Provided**, That nothing herein contained shall require fringe benefits to be calculated contrary to any agreement between an employer and his employees which does not contradict the provisions of this article.
- d) The term "commissioner" means commissioner of labor or his designated representative.
- (e) The term "railroad company" includes any firm or corporation engaged primarily in the business of transportation by rail.
- (f) The term "special agreement" means an arrangement filed with and approved by the commissioner whereby a person, firm or corporation is permitted upon a compelling showing of good cause to establish regular paydays less frequently than once in every two weeks: **Provided**, That in no event shall the employee be paid in full less frequently than once each calendar month on a regularly established schedule.
- (g) The term "deductions" includes amounts required by law to be withheld, and amounts authorized for union or club dues, pension plans, payroll savings plans, credit unions, charities and hospitalization and medical insurance.
- h) The term "officer" shall include officers or agents in the management of a corporation or firm, who knowingly permit the corporation or firm to violate the provisions of this article.
- (i) The term "wages due" shall include at least all wages earned up to and including the fifth day immediately preceding the regular payday.
- (j) The term "construction" means the furnishing of work in the fulfillment of a contract for the construction, alteration, decoration, painting or improvement of a new or existing building, structure, roadway or pipeline, or any part thereof, or for the alteration, improvement or development of real property: **Provided**, That construction performed for the owner or lessee of a single family dwelling or a family farming enterprise is excluded.
- (k) The term "minerals" means clay, coal, flagstone, gravel, limestone, manganese, sand, sandstone, shale, iron ore and any other metallurgical ore.
- (l) The term "fringe benefits" means any benefit provided an employee or group of employees by an employer, or which is required by law, and includes regular vacation, graduated vacation, floating vacation, holidays, sick leave, personal leave, production incentive bonuses, sickness and accident benefits and benefits relating to medical and pension coverage
- m) The term "employer" means any person, firm or corporation employing any employee. (n) The term "doing business in this state" means having employees actively engaged in the intended principal activity of the person, firm or corporation in West Virginia. (n) The term "doing business in this state" means having employees actively engaged in the intended principal activity of the person, firm or corporation in West Virginia.