

## **WEST VIRGINIA DIVISION OF LABOR WAGE CLAIM PROCESS**

In order for the Division to process your complaint in a timely manner, it is important that you provide the following information on your complaint form:

- A phone number in which you may be contacted on week days between 8:00 am & 5:00 pm.
- Your current mailing address.
- Your employer's correct business name, address and office phone number.
- The amount of unpaid wages you feel you are owed.
- A brief description of the work performed.

### **SUPPORTING DOCUMENTATION:**

**Fringe Benefit Claims** – If your claim concerns vacation pay, holiday pay, sick leave, earned bonuses etc., you should attach a copy of the company's written policy regarding those benefits.

**Commissions** – Attach a copy of the company's policy on how commissions are earned and paid.

**Unpaid Hours of Work** - Attach any records you may have to show your actual hours worked to verify your complaint such as personal calendars, schedules, etc.

**Illegal Wage Deductions** - For claims concerning illegal wage deductions, include a copy of your check stub showing the amount and description of the deduction.

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### **ACCEPTABLE WAGE CLAIMS**

The following is a list of the most common examples of the types of wage claims accepted by the Division of Labor for investigation. If your situation is not listed, please contact our office for information.

#### **UNPAID WAGES**

- Unpaid wages for actual hours worked.
- Final wages.
- Not being paid the correct prevailing wage on construction projects.
- Commissions.
- Unauthorized wage deductions.
- Not being paid for mandatory training or meetings.
- Hourly rate of pay reduced without proper notice.
- Payroll checks that are returned for insufficient funds.
- Non commuting travel time.

## **CLAIMS CONCERNING FRINGE BENEFITS**

- **Vacation pay / PTO hours / Personal leave**
- **Sick leave**
- **Holiday Pay**
- **Bonus Pay**
- **WV Parental Leave Act**

## **NON-MONETARY ISSUES:**

- **Not being provided necessary lunch breaks.**
- **Not receiving check stubs.**
- **Not being paid at least every two weeks.**

## **CLAIMS FOR THE FOLLOWING ISSUES WILL ONLY BE ACCEPTED WHEN REQUIRED BY WRITTEN COMPANY POLICY OR EMPLOYMENT CONTRACT:**

- **Wages for hours not actually worked.**
  - **The reimbursement of employee business expenses such as mileage.**
  - **Severance pay.**
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## **The Division of Labor will not accept complaints concerning the following issues or situations:**

- **Illegal terminations.**
- **Being fired or terminated without notice.**
- **Work place harassment, discrimination or hostile work environments.**
- **Claims for liquidated damages. (the penalty assessed to employers for not paying within the timeframes as established by state law)**
- **Your employer has filed for bankruptcy protection.**
- **You did not work within the state of West Virginia.**
- **Not being allowed to work out your final notice.**
- **An employee/employer relationship did not exist between you and the company for which the work was performed. (Independent Contractors)**
- **You have already hired an attorney to represent you or have filed a complaint in magistrate court concerning your unpaid wages.**
- **Your complaint concerns the provisions of the Federal Family Medical Leave Act. (FMLA)**
- **Your complaint concerns not being paid the current minimum wage under the provisions of the federal Fair Labor Standards Act (FLSA)**
- **Your complaint concerns not being paid time and half for overtime hours under the provisions of the federal Fair Labor Standards Act. (FLSA)**
- **Federal COBRA and other pension requirements.**

- Not receiving W-2 forms.
  - Child support.
  - Non-craft related prevailing wages. (Administrative, Engineering, etc.)
  - Black lung payments.
  - Warn Act. (factory closings)
  - The issuance of immigrant or non immigrant work permits (visas, green cards)
  - Drug Testing.
  - Not being hired back after lay-off.
  - Seniority rights.
  - Worker's compensation issues.
  - Unemployment benefits.
  - Wage claims from employees of the Federal Government.
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### STANDARD INVESTIGATIVE PROCEDURES

Accepted wage complaints will be assigned to a labor compliance officer for investigation. Under most circumstances, your assigned officer will attempt to contact you regarding your complaint within two weeks of receiving the file to request additional information and to take your statement. Whenever possible, your investigating officer will make contact with you prior to discussing your case with the employer.

During this time, your employer will also be provided the opportunity to submit evidence to dispute your complaint. Your investigating officer will make his or her determination regarding whether or not you are owed the wages and/or benefits indicated in your complaint based on all the evidence presented.

If a determination is made that wages are owed, your employer will be presented with a detailed audit showing how the amount owed was calculated. Your employer will then have the opportunity through due process to dispute our findings by requesting an Administrative Hearing. Cases that are presented before a hearing examiner may require the testimony of the complainant(s).

If the Hearing Examiner finds that wages are owed based on the evidence submitted by all parties, an Order of Findings of Fact, Conclusions of Law will be issued for the Commissioner's signature for presentation to the company. If after (30) days of notification, the company has not filed an appeal with the Circuit Court or issued payment for the wages owed, the Division will provide each employee with a copy of the Order to be perfected in a court of law.