

Wage & Hour Section

Frequently Asked Questions

January 4, 2010

Wage & Hour Section

Wage Payment & Collection

WHAT DOES THE WAGE & HOUR SECTION DO AND WHAT SERVICES DOES IT PROVIDE?

The Wage & Hour Section enforces many aspects of labor law; however, most of our enforcement is based on the provisions of the Wage Payment & Collection Act (WPC). The main issues covered by the WPC concern the payment of wages for all hours worked; the timely payment of final wages; the payment of any fringe benefits earned under company policy as well as, illegal payroll withholdings.

Upon receipt of a complaint alleging a violation has occurred, this agency will investigate the complaint and issue a final determination based on the facts of the case. When necessary, an administrative hearing will be held to determine what wages, if any, are owed. The entire investigative process is provided without monetary cost to the complainant.

CAN ANYONE OBTAIN ASSISTANCE FROM WAGE & HOUR TO COLLECT UNPAID MONIES/WAGES?

No. The Division can only accept complaints from actual employees. Independent contractors, etc. must address their complaints through magistrate OR circuit court.

IF I FEEL I'VE BEEN UNFAIRLY TERMINATED, CAN THE WAGE & HOUR SECTION GET MY JOB BACK?

No. As West Virginia follows the at-will doctrine for hiring and firing, employers have the right to hire and fire "at will" without having a valid reason. However, this does not mean your employer has the right to discriminate against you. If you feel you've been discriminated against, you should contact legal counsel for assistance OR the Human Rights Commission @ 304 558 2616.

CAN WAGE & HOUR ASSIST ME WITH A HOSTILE WORK ENVIRONMENT?

The Wage & Hour Section can only provide assistance concerning unpaid wages and or benefits, etc., and has no authority to intervene in such matters. If you feel you're working in a hostile work environment, you need to obtain the advice of an attorney.

DOES THE WAGE PAYMENT & COLLECTION ACT COVER EMPLOYEE SENIORITY RIGHTS?

No. Seniority rights may be addressed by private contract and/or employment agreement but they're not addressed by state law. This means that layoffs and/or promotions are at the discretion of the employer and not under the jurisdiction of this agency.

DOES THE WPC REQUIRE THAT I RECEIVE AN AUTOMATIC COST OF LIVING INCREASE EACH YEAR OR A RAISE AFTER RECEIVING A FAVORABLE EVALUATION?

No. As long as you're receiving the current minimum wage of \$7.25 per hour, Wage & Hour cannot force your employer to give you a raise; unless, you're working under a contract and/or employment agreement guaranteeing such increases.

CAN MY EMPLOYER REDUCE MY HOURLY RATE OF PAY?

Yes, but only after providing you with a full pay period's notice of the reduction. If your wages are reduced without such notification, you can file a complaint with this agency. However, your complaint will be limited to the difference in your hourly rate for the initial pay period in which the change occurred.

IF MY EMPLOYER SENDS ME HOME AFTER ARRIVING TO WORK OR CHANGES MY SCHEDULE WITHOUT PRIOR NOTIFICATION, AM I ENTITLED TO RECEIVE SHOW UP TIME?

No. Wage & Hour can only require employers to pay their employees for actual hours worked; unless, that employer has a written policy that requires payment under such circumstances.

CAN I BE FIRED FOR NOT REPORTING TO WORK WHEN THE GOVERNOR HAS ISSUED A STATE OF EMERGENCY?

State law does not prohibit such firings. As previously stated, employers in the state of West Virginia may hire and fire "at will" without notice or cause.

IF MY EMPLOYER CLOSES THEIR BUSINESS DUE TO WEATHER OR OTHER UNFORSEEN CIRCUMSTANCES AND DOES NOT ALLOW ME TO WORK, AM I ENTITLED TO PAYMENT FOR THE HOURS THAT I WASN'T ALLOWED TO WORK?

No. Wage & Hour can only require employers to pay their employees for actual hours worked; unless, that employer has a written policy that requires payment under such circumstances.

IF NOT, CAN THEY TAKE MY VACATION DAYS TO MAKE UP FOR THE AMOUNT OF TIME I WASN'T ALLOWED TO WORK?

Employers are within their rights to require employees to use their vacation days, etc. to fill in for such days.

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Timely Payment of Wages

HOW OFTEN SHOULD I RECEIVE A PAYCHECK?

Employers must pay their employees all wages due at least once in every two (2) weeks unless they have been granted a special agreement by the Commissioner of Labor to pay less frequently.

HOW DO I KNOW IF MY EMPLOYER HAS BEEN ISSUED A SPECIAL AGREEMENT?

You'll may call the Division of Labor at 304 558 7890 and ask for extension 124 or send an email to the Commissioner's secretary @ barbara.m.mcclure@wv.gov for information.

WHAT IF THE COMPANY DOES NOT HAVE AN AGREEMENT WITH THE COMMISSIONER AND YET I STILL DO NOT GET PAID EVERY TWO WEEKS?

You should file a formal complaint with this office by completing and returning one of our Request For Assistance forms that's available on our website.

WHO DECIDES WHEN PAYDAY WILL BE?

Employers have the right to set the time and place for the payment of wages; when the work week begins and ends and when the pay period begins and ends.

WHAT IF MY PAYCHECK IS LATE?

Employers are required to meet payroll at least once in every two weeks and pay their employees all wages earned for up to five (5) days previous to pay day. Should your employer fail to pay you on the time and date they've designated as payday, you may be eligible to file a complaint in magistrate court for liquidated damages if your wages were more than five (5) days late. If your wages were paid late but within the five (5) day requirement, no violation would exist. However, if your employer is consistently late in paying wages, you need to file a formal complaint with this agency.

WHEN SHOULD I RECEIVE MY FINAL WAGES?

The following table outlines the established time frames that an employer must meet when paying final wages.

Reason for Separation of Employment	Time Frame
Terminated / Fired	72 hours
Quit without notice/ Lay off	Next regular payday
Quit with a full pay periods notice	Last day of work

WHAT IF THE TIME FRAME HAS PASSED BUT I STILL HAVEN'T BEEN PAID?

If you feel that your employer is going to pay you just not within the time frame listed above, you may want to wait a full pay period before contacting our office for assistance. If you're concerned that you won't be paid at all or still haven't been paid by the next regularly scheduled pay day, you need to file a formal wage complaint with our office by completing and returning one of our Request For Assistance forms that's available on our website.

WHAT IF MY EMPLOYER PAID ME BUT NOT WITHIN THE TIME FRAME STATED IN THE ABOVE SCHEDULE?

The West Virginia Wage Payment & Collection Act provides for the assessment of liquidated damages, which is a monetary penalty, calculated at three (3) times the total amount of gross wages owed. In order to pursue those damages, you will be required to file a complaint on your own in magistrate court in the county where you worked or hire an attorney for assistance.

IS MY UNUSED VACATION PAY TO BE INCLUDED WITH MY FINAL WAGES?

Vacation pay and other fringe benefits earned according to company policy are also considered wages and may be payable upon separation of employment. In order to determine if any of your unused benefits (such as vacation pay) should be paid out as part of your final wages, you should review the provisions of your company's written policy relating to that benefit. If after reviewing the policy you feel you should have been paid for your unused vacation benefits or you do not have access to the policy at all, you may file a formal complaint with this agency concerning the payment of those benefits.

IS AN EMPLOYER ALLOWED TO WITHHOLD WAGES BECAUSE THE EMPLOYEE FAILED TO TURN IN A UNIFORM OR KEY?

No. State law does not allow employers to withhold an employee's wages for any reason. Unreturned property or equipment or damaged property must be addressed through magistrate or circuit court.

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Fringe Benefits

IS AN EMPLOYER REQUIRED TO PROVIDE VACATION AND SICK LEAVE BENEFITS TO THEIR EMPLOYEES?

Employers are not required by law to provide paid fringe benefits such as holiday pay; vacation pay; sick leave or any other type of paid leave to their employees. However, if they do provide such benefits they are responsible for establishing a written policy outlining how those benefits are earned and paid.

DOES AN EMPLOYER HAVE THE OPTION OF CHANGING THEIR FRINGE BENEFIT POLICY?

Since there's no requirement for employers to provide benefits in the first place, they may stop them entirely or change them at any time as long as they provide written notice to the affected employees at least one pay period in advance of the change.

WHAT IF HAVE UNUSED BENEFITS COMING TO ME WHEN THE POLICY IS CHANGED?

Although the employer may change their policy at any time to reduce or stop existing benefits, they cannot take back those benefits already earned under the previous policy. For example, an employer has the option to discontinue providing vacation benefits; however, they must allow their employees to use the vacation hours they've already earned.

CAN AN EMPLOYER PAY OUT UNUSED BENEFITS TO SOME EMPLOYEES WHEN THEY LEAVE THE COMPANY AND NOT TO OTHERS?

Employers have the option of including specific wording in their benefit policy that would exclude the payment of unused benefits under certain conditions such as when someone is terminated for cause. Otherwise, employers may not pick and choose which employees will receive benefits.

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Employee Break Requirements

DOES STATE LAW REQUIRE EMPLOYERS TO PROVIDE THEIR EMPLOYEES WITH ANY TYPE OF A LUNCH OR REST BREAK?

All West Virginia employers are required to provide their employees working at least six (6) or more hours AND are not already being provided a rest or meal break with a twenty (20) minute unpaid break period. However, this requirement does not apply when the employees are allowed to eat and visit the restroom while working nor does it apply when employees are already being provided a lunch or meal break regardless of their duration.

WHAT IF I'M PROVIDED A TWENTY MINUTE LUNCH PERIOD BUT I HAVE TO TAKE PHONE CALLS OR PERFORM OTHER WORK DUTIES DURING THAT TIME? IS THE BREAK STILL UNPAID?

Uninterrupted break periods lasting twenty-minutes or longer may be unpaid. However, if those twenty minutes are interrupted by your work duties OR the break is cut short of lasting the full twenty minutes, that time is considered to be work time and fully compensable.

MY EMPLOYER WANTS TO GIVE ME MY BREAK IMMEDIATELY WHEN MY SHIFT STARTS. ARE THERE ANY GUIDELINES THAT REQUIRE THE TWENTY MINUTE BREAK TO BE GIVEN AFTER A CERTAIN NUMBER OF HOURS WORKED?

No. The break is to be given at times reasonable as established by the employer. What that means is that the employer is allowed to schedule your break at any time during your work shift.

IF I WORK OVER MORE THAN TWELVE STRAIGHT HOURS, DOES THAT MEAN I'M ENTITLED TO TWO (2) TWENTY MINUTE BREAKS?

No. Coverage is determined by the minimum number of hours worked and not the total number of hours.

WHAT DO I DO IF MY EMPLOYER IS NOT FOLLOWING THESE GUIDELINES?

You need to file a formal complaint with this agency by completing a Request for Assistance form which can be found on our website under Forms/RFA.