



## West Virginia Amends Law on Final Wages, Imposes Mitigation Duty on Former Employees Who Sue

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Significant changes to West Virginia's Wage Payment and Collection Act ("WPCA") and a cap on damages available to plaintiffs in employment litigation highlight the latest West Virginia Legislative Session for employers.

### Changes to WPCA

West Virginia's Wage Payment and Collection Act has placed significant burdens on employers in making payment of final wages to departing employees and has imposed steep penalties for violations. Changes were made to the WPCA last year, including the designation of multiple timeframes within which final wages must be remitted. This year's changes include the following:

#### ***Payment on Termination***

As of June 11, 2015, employers must pay a terminated employee all wages due *by the next regular payday*, rather than the earlier of the next regular payday or within four business days. The wages may be paid by mail at the employee's request. This does not affect payment to employees who quit or resign or in cases of a work suspension related to a labor dispute or layoff.

The Legislature also clarified that "wages" include accrued fringe benefits that are capable of calculation and payable directly to an employee. Further, fringe benefits to be paid at a future date in accordance with the terms of an agreement between an employer and an employee do not have to be paid on or before the next scheduled payday after the end of the employment relationship; rather, those fringe benefits should be paid in accordance with the terms of the agreement.

#### ***Penalties***

As of June 11, 2015, employers who fail to pay an employee in accordance with the WPCA's time limits will be liable to the employee for liquidated damages equal to twice the outstanding amount of wages due. Previously, the employer was liable for three times the outstanding amount.

#### ***Frequency of Payments***

West Virginia employers generally have been required to pay employees every two weeks. Effective June 12, 2015, employers must pay employees at least twice every month, with no more than 19 days between payments.

### New Law on Duty to Mitigate Damages

Contrary to the former law, as of June 8, 2015, former employees who file a claim against their former employer will have *an affirmative duty* to mitigate past and future lost wages in all employment litigation matters, regardless of whether the plaintiff can prove the employer acted with malice or malicious intent or in willful disregard of the plaintiff's rights.

Any award of back pay or front pay will be reduced by the amount of interim earnings or the amount the former employee could have earned with the exercise of reasonable diligence. The defendant-employer has the burden to

prove the lack of reasonable diligence.

The former law relieved employees from mitigating their damages if they could demonstrate the employer acted with malice.

If you have any questions about these or other workplace developments or require compliance assistance, please contact a Jackson Lewis attorney.

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