

LIQUIDATED DAMAGES

REQUIREMENTS FOR FILING A CLAIM

Liquidated damages are the monetary penalties that may be assessed against an employer for failing to pay employee wages in a timely manner. The Division of Labor does not have the authority to assess, or collect, liquidated damages on behalf of any employee, or complainant, relating to the timely payment of wages. Any employee that was not paid his or her wages in accordance with the requirements of the West Virginia Wage Payment & Collection Act (§21-5-4) and would like to file for liquidated damages, must file a complaint in magistrate or circuit court, usually in the county where he or she worked.

Should an employee choose to file a complaint in magistrate or circuit court for liquidated damages, he or she will be responsible for citing the sections of state code that were allegedly violated in the complaint. As the Judge or Magistrate's decision concerning whether to award damages will be based on the evidence presented to the court, any employee that is unsure of his or her ability to present the case properly may want to consider hiring an attorney.

NOTE: This information is being provided for the purpose of aiding individuals with the filing process only and is not to be misconstrued as legal advice or representation. Nor is this information intended to address every aspect involved in filing the necessary complaint.

Sections of State Code Relating to the Payment of Final Wages

In addition to Chapter 21, Article 5, Section 4(e), which is the specific section of code that addresses the penalty of liquidated damages, employees must also consider and reference the specific section of code that applies to the alleged violation. Each of the three sections of code that apply to the payment of final wages and liquidated damages are explained below and cited in their entirety at the end of this material.

- If you quit, resigned, or were fired by your employer but were not paid your wages or benefits on the next regular payday in which the wages would have otherwise been due and payable, reference §21-5-4 (b).
- If you lost your job relating to a lay-off due to economic conditions and were not paid in full by the next regular payday, reference §21-5-4 (d).
- §21-5-4(e) is the section of code that refers to the penalty of liquidated damages for both §21-5-4(b) & (d). This section of code must be cited on the complaint, regardless of the reason for separation of employment.

Calculating the Amount Owed:

Liquidated damages are calculated at two (2) times the amount of gross wages and/or fringe benefits that remain unpaid or that were paid late.

Amount of gross wages and/or gross fringe benefits owed X 2 = amount of damages that may apply

Complaints under \$10,000.00

As of June 2016, the dollar threshold for filing a complaint in magistrate court raised to \$10,000.00. If the amount of the damages are equal to, or less than, this amount the

complaint may be filed in magistrate court. As the forms necessary for filing may differ from county to county, it is important to obtain a complaint form directly from the county in which you intend to file.

Complaints Exceeding \$10,000.00

Complaints for more than \$10,000.00 must be filed in circuit court, usually in the county where the work was performed. Individuals filing in circuit court may want to hire an attorney for legal representation.

APPLICABLE STATE CODES

§21-5-4 Cash Orders; Employees Separated From Payroll Before Payday

(b) Whenever a person, firm or corporation discharges an employee, or whenever an employee quits or resigns from employment, the person, firm or corporation shall pay the employee's wages due for work that the employee performed prior to the separation of employment on or before the next regular payday on which the wages would otherwise be due and payable: Provided, That fringe benefits, as defined in section one of this article, that are provided an employee pursuant to an agreement between the employee and employer and that are due, but pursuant to the terms of the agreement, are to be paid at a future date or upon additional conditions which are ascertainable are not subject to this subsection and are not payable on or before the next regular payday, but shall be paid according to the terms of the agreement.

(d) When work of any employee is suspended as a result of a labor dispute, or when an employee for any reason whatsoever is laid off, the person, firm or corporation shall pay in full to the employee not later than the next regular payday, either through the regular pay channels, or by mail if requested by the employee, the wages earned at the time of suspension or layoff.

(e) If a person, firm or corporation fails to pay an employee wages as required under this section, the person, firm or corporation, in addition to the amount which was unpaid when due, is liable to the employee for two times that unpaid amount as liquidated damages. This section regulates the timing of wage payments upon separation from employment and not whether overtime pay is due. Liquidated damages that can be awarded under this section are not available to employees claiming they were misclassified as exempt from overtime under state and federal wage and hour laws. Every employee shall have a lien and all other rights and remedies for the protection and enforcement of his or her such salary or wages, as he or she would have been entitled to had he or she rendered service therefore in the manner as last employed; except that, for the purpose of liquidated damages, the failure shall not be deemed to continue after the date of the filing of a petition in bankruptcy with respect to the employer if he or she is adjudicated bankrupt upon the petition.