

FREQUENTLY ASKED QUESTIONS
West Virginia Division of Labor
Wage Bond Requirements

WHAT IS A WAGE BOND AND WHAT IS IT USED FOR?

A wage bond is a guarantee issued to the West Virginia Division of Labor to protect the wages and benefits of employees. The bond is maintained by the Division's Wage & Hour Section, which is also responsible for the investigation of employee wage complaints. After an investigation, any wages (or fringe benefits) that remain unsatisfied after the employer has been afforded due process will be paid to the employees from the proceeds of the bond. The bond can also be used to satisfy a legal judgement relating to earned wages and/or fringe benefits for work performed in West Virginia.

ARE ALL COMPANIES WORKING IN WEST VIRGINIA REQUIRED TO POST A WAGE BOND?

A wage bond is only required for those companies that are engaged in construction, mining, or the transportation of minerals. For the purpose of wage bond enforcement, the term "construction" does not apply to work performed for the owner (or lessee) of a single family dwelling or family farming enterprise.

ARE THERE ANY PROVISIONS FOR OBTAINING A WAIVER OF THE BOND REQUIREMENT?

The Commissioner of Labor may waive the wage bond requirements if he or she determines that the employer is of sufficient financial responsibility to pay wages and fringe benefits. Applications for waiver must be submitted in writing to the Commissioner and must include notarized financial statements prepared in accordance with generally accepted accounting principles covering at least the 2 most recent years of operation. Although permissible by law, the Commissioner is not compelled by law to grant a request for a waiver.

WHAT TYPES OF SECURITIES ARE ACCEPTED AS A WAGE BOND?

The Division accepts four different types of securities as a wage bond. The four types are listed as follows: 1.) Cash deposits {checks or money orders} 2.) Irrevocable Letters of Credit 3.) Surety Bonds, and 4.) Certificates of Deposit. Each security type requires the completion of a different set of forms, some of which must be completed by a representative of the company, and others by the financial institution or surety provider issuing the bond. A completed "Wage Bond Status Affidavit" must also be submitted with every bond.

HOW DOES A COMPANY OBTAIN THE FORMS NEEDED TO POST A WAGE BOND?

All forms required to post a wage bond are available directly from the Division of Labor's website. Forms may also be acquired by calling 304 356 3930, 304 558 7890 or sending an email to wageandhour@wv.gov.

IS THERE A SPECIFIC AMOUNT OF BOND REQUIRED?

Once it is determined a wage bond is required, the amount of the bond is based on the company's gross payroll in West Virginia over a period of four weeks, plus an additional fifteen percent. The gross payroll amount must reflect the company's payroll at full maximum capacity or production.

$$\{4 \text{ weeks gross payroll} + 15\% = \text{bond amount}\}$$

WHAT IF MY EMPLOYEES ARE NOT ASSIGNED TO THE PROJECT ON A FORTY HOUR PER WEEK BASIS?

Whenever a project's expected completion time is less than four weeks, or the hours worked on the project each week will be less than a regular forty hours, the amount of the bond must still be calculated based on the hourly rate of each employee working on the project at forty hours for an entire four (4) week period. However, once a project has lasted for one (1) or more full months, the employer's payroll records may be used to establish the project's maximum capacity at a lesser amount. The Division will consider a reduction in the amount of the bond posted upon receipt of such evidence.

ARE ALL EMPLOYEES COVERED BY THE BOND?

With the exception of owners, partners, or corporate officers having at least twenty percent ownership in the company, the wages of every employee working within the state of West Virginia must be included in the gross payroll amount. This includes the company's clerical staff, administrative staff, and any employees that are working in West Virginia that reside in another state. Any owner, partner, or corporate officer that would like to exclude his or her wages from the wage bond amount must first submit an affidavit to the Division requesting the exemption. The form used for this purpose is available from the Division's website.

WHAT HAPPENS IF MY PAYROLL AMOUNT IS REDUCED AFTER THE BOND IS POSTED?

The amount of the bond may be increased or decreased as the employer's payroll increases or decreases. However, the amount of the bond shall not be decreased, except with the Commissioner of Labor's approval and determination there are no outstanding wage claims. Companies that experience a reduction in payroll and wish to have the amount of their bond reduced will be required to submit evidence to support the reduction of their gross payroll amount, and that their employees are paid current.

HOW LONG IS A WAGE BOND REQUIRED?

Wage bonds are held by the Division of Labor until a company meets one or more of the following conditions:

1. The company has maintained a payroll in West Virginia for 1 year.
2. The company has been in business in another state for 5 years.
3. The company can verify it has \$100,000.00 or more in available assets.
4. The company is active but no longer has employees.

5. The company has ceased operations.
6. The company is a subsidiary of a parent company that has been in business for five years.
7. Although the company still maintains an active payroll, the company is no longer engaged in construction work, mining, or the transportation of minerals in West Virginia.

WHAT STEPS ARE REQUIRED TO HAVE THE BOND RETURNED?

The requirements for requesting the release of a wage bond are different depending upon the type of bond posted. *For all types of bonds other than sureties*, the company may initiate the release process by submitting a completed “Wage Bond Release Affidavit”, which is available directly from our website. *Companies that posted a surety bond* may initiate the process by contacting their surety provider to request the bond be cancelled. Although the Division cannot stop the cancellation of a surety bond, employee wages will still be protected during the period of time the bond was in effect.

ONCE A COMPANY QUALIFIES FOR THE RETURN OF A WAGE BOND, ARE THERE ANY CONDITIONS THAT WOULD CAUSE THE DIVISION TO DENY THE RELEASE?

The decision to either approve or deny a company’s request for the release of a wage bond is contingent upon the Division’s ability to determine the existence of any unresolved wage claims. Any pending claims filed against the bond relating to employee wages or fringe benefits must be satisfied before the bond will be released.