

West Virginia Wage Bond Requirements General Reference Guide

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WEST VIRGINIA WAGE BOND REQUIREMENTS **West Virginia Code Chapter 21, Article 5, Section 14a**

With the exception of those companies that qualify for an exemption, every employer engaged in construction or the severance, production or transportation of minerals (excluding railroads and water transporters) in the state of West Virginia must furnish a wage bond to the Division of Labor to protect the wages and benefits of its employees. §21-5-14(a)

Wage bonds must be issued on forms authorized by the Commissioner of Labor, be made payable to the Division of Labor, and include an authorization from the company allowing the Division to use the bond to pay employee wages and fringe benefits should that become necessary.

COVERED INDUSTRIES

The requirement to post a wage bond is specific to companies involved in construction, mining, and the transportation of minerals. Those industries are defined as follows:

Construction is defined as meaning the furnishing of work in the fulfillment of a contract for the construction, alteration, decoration, painting or improvement of a new or existing building, structure, roadway or pipeline, or any part thereof, or for the alteration, improvement or development of real property: Provided, that construction performed for the owner or lessee of a single family dwelling or a family farming enterprise is excluded. §21-5-1(j)

Mining is the severance or production of a mineral from the earth such as clay, coal, flagstone, gravel, limestone, manganese, sand, sandstone, shale, iron ore and any other metallurgical ore. §21-5-1(k)

The transportation of minerals means any method, other than by rail or by water, of moving minerals such as clay, coal, flagstone, gravel, limestone, manganese, sand, sandstone, shale, iron ore and any other metallurgical ore from one physical location to another.

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EXEMPTIONS

Not all companies involved in a covered industry must post a wage bond. Any company that qualifies for one of the exemptions listed below may claim that exemption by submitting a "Wage Bond Status Affidavit" to the Division of Labor:

- Companies that have been in business in West Virginia, with employees, for a period of at least 1 year.
- Companies that have been in business in another state for 5 years.
- Companies that do not have employees physically working in West Virginia.
- Companies that are engaged solely in the construction of single family dwellings and/or family farming enterprises.
- Companies that report \$100,000.00 or more in available assets.
- Companies that are a subsidiary of a parent company that has been in business for 5 years.

APPLICABLE FORM TO CLAIM AN EXEMPTION

Wage Bond Status Affidavit

DETERMINING THE AMOUNT OF BOND TO BE POSTED

Once determined that a wage bond is required, the amount of the bond is calculated using the employer's gross payroll in West Virginia for a period of four weeks, plus an additional fifteen percent. This amount must reflect the company's payroll at full maximum capacity or production. (4 weeks gross payroll + 15% = bond amount)

The wages of every "employee" *working within the state of West Virginia* must be included in the gross payroll amount of the bond. This includes clerical and administrative staff as well as those employees that reside outside of West Virginia, but work in this state.

Exclusions – The wages of sole proprietors are automatically exempt from the wage bond calculation. An owner, partner, limited liability member or corporate officer holding at least twenty percent of shares in a business may also exclude their earnings by filing an Owner/Affidavit form with the Division of Labor, not to exceed a maximum of five (5) ownership exemptions for any one company. Once an affidavit of ownership is submitted, the individual claiming the exemption will not be included in any payout of wages or benefits from the bond.

APPLICABLE FORM:

Owner Affidavit

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. Such approval is contingent upon a determination that all employee wages are paid to date, and that the remaining bond amount is sufficient to cover the company's current payroll. §21-5-14(a)

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Sample wage bond amount calculation: *NOTE: Out-of-state companies determine the amount of wage bond required by entering the amount of their West Virginia payroll only.*

- | | |
|---|---------------------|
| 1. 4 weeks' payroll in WV @ maximum capacity or production. | \$ <u>10,000.00</u> |
| 2. Enter 15% of the amount entered above. | \$ <u>1,500.00</u> |
| Total the amounts on Lines 1 & 2 to determine bond amount. | \$ <u>11,150.00</u> |

APPLICABLE FORM

Wage Bond Status Affidavit

TYPES OF WAGE BONDS ACCEPTED

The Division of Labor accepts four different types of wage bonds and each different bond type requires the completion and submission of specific forms. Some of the forms require partial completion by both a company official as well as the financial institution or surety provider that's issuing the bond. When that's the case, it is important to make sure all sections of each form have been completed by the appropriate party before submission.

The four types of bonds accepted by the Division of Labor are described below. A complete list of the specific forms required for each type of bond is also provided.

The four types of acceptable bonding:

1. Checks / Money Orders / Cash.
2. Irrevocable Letters of Credit.
3. Surety Bonds.
4. Certificates of Deposit.

Checks, Money Orders, Cash

All types of "cash" deposits are acceptable. The Division will accept money orders, personal checks, company checks, cashier's checks, certified checks, etc. All checks or money orders must be made payable to the West Virginia Division of Labor.

When choosing this category of bonding, a company must also decide whether to have their funds deposited into an interest bearing or non-interest-bearing account.

Invested Cash Accounts

Companies that choose to have their funds deposited into an interest-bearing account will be required to complete a Request to Invest Form, a W-9 Form, and a Wage Bond Status Affidavit. Once the funds are deposited and transferred into a West Virginia Consolidated Investment Fund Account, the Fund itself determines the rate of applied interest is responsible for issuing monthly statements

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relating to account balances. However, all other activity relating to the account, such as additional deposits or withdrawals, must be processed through the Division of Labor.

APPLICABLE FORMS:

Request to Invest Form (all 3 pages)

W-9 Form

Wage Bond Status Affidavit

Non-Invested Cash Accounts

Companies that do not wish to have their funds deposited into an interest-bearing account will be required to submit an Employer's Authorization to Draw Upon a Cash Wage Bond Form, a W-9 form, and a Wage Bond Status Affidavit. Deposits that are not invested are maintained in a non-interest-bearing escrow account specifically set up for wage bond deposits for the Division of Labor.

APPLICABLE FORMS:

Employer's Authorization to Draw Upon a Cash Wage Bond Form (1 page)

W-9 Form

Wage Bond Status Affidavit

Irrevocable Letters of Credit

Letters of credit must be issued by a United States Bank insured by the Federal Deposit Insurance Corporation (FDIC), or a credit union insured by the National Credit Union Administration (NCUA). Letters of credit must be issued on forms prescribed by the Commissioner of Labor. §42CSR 33-5.3.1

The letter of credit form also contains a section that the business owner must complete for the purpose of authorizing the Division to draw upon the bond should it become necessary to pay employee wages. A Wage Bond Status Affidavit must also accompany the Letter of Credit form.

APPLICABLE FORMS:

Letter of Credit Form/ Employer Authorization (4 pages)

Wage Bond Status Affidavit

Surety Bonds

Surety bonds may be issued by any insurance company licensed by the Office of the West Virginia Insurance Commission. When issued, the bond must carry a guarantee by the surety provider that the bond will not be cancelled or withdrawn without providing the Commissioner of Labor with at least a 60 day notice.

There are two different types of surety bond forms. There's a specific form for sole proprietorships and partnerships, and another form for corporations, LLCs, and LLPs. Companies that choose a surety as their wage bond need to make sure they choose the form that matches their business type or structure because if the bond is issued on the wrong form it will be returned for correction. Both

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surety bond forms include a section that the business owner or company official must complete for the purpose of authorizing the Division to draw upon the bond should it become necessary to pay employee wages. A Wage Bond Status Affidavit must also accompany the submission of the appropriate surety bond form.

APPLICABLE FORMS:

Surety Bond Form for Sole Proprietors and Partnerships, including Owner Authorization Form

Surety Bond Form for Corporations, LLCs, and LLPs, including Owner Authorization Form

Wage Bond Status Affidavit

Certificates of Deposit

Certificates of Deposit must be issued by a United States Bank insured by the Federal Deposit Insurance Corporation (FDIC), or a credit union insured by the National Credit Union Administration (NCUA), which is physically located within the state of West Virginia. All certificates of deposit must be automatically renewable.

In addition to the actual certificate of deposit, or certificate of deposit receipt, we also require the completion of a Division of Labor Certificate of Deposit Form and a Wage Bond Status Affidavit. The Certificate of Deposit Form consists of five pages, which includes a section beginning with Page 3 that the employer must complete authorizing the Division of Labor to draw upon the certificate to pay employee wages.

APPLICABLE FORMS:

Certificate of Deposit Form, including Bank and Employer Authorization & Assignments

Wage Bond Status Affidavit

RELEASE / CANCELLATION PROCEDURES

In the absence of any pending wage claims, a wage bond becomes eligible for release whenever a company meets one or more of the following conditions:

1. Has maintained a payroll in West Virginia for a period of one year.
2. Has been in business in another state for five years.
3. Remains active in West Virginia in a covered industry but no longer maintains a payroll.
4. Has totally ceased operations.
5. Has reported \$100,000.00 or more in available assets to the Division of Labor.
6. Maintains a West Virginia payroll but is no longer involved in an industry that requires the posting of a wage bond. *Covered industries include construction, mining, and the transportation of minerals. Work relating to single family dwellings or family farming enterprises is not considered construction relating to wage bond enforcement.*

For all wage bond types other than sureties, companies qualifying for a release of their wage bond may initiate the process by submitting a completed Wage Bond Release Affidavit to the Division of Labor.

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By signing the affidavit, the company representative certifies that:

- The company has paid all employee wages and fringe benefits to date, and that notice was provided to all current employees that the company is submitting a request to the Division of Labor to have the bond released, or
- The company has never maintained a payroll in West Virginia, or
- The company has totally ceased operations and all employee wages and fringe benefits have been paid, but does not have the capability to provide notice to the employees whose wages were previously covered by the bond.

APPLICABLE FORMS:

Wage Bond Release Affidavit

Unresolved Wage Claims

The decision to approve or deny a company's request for release of a wage bond is contingent upon the Division's ability to determine whether there are any unpaid wages. Before the Division may release a bond, all pending wage claims must be resolved.

RELEASE PROCEDURES (BOND TYPES OTHER THAN SURETIES)

Once a company's wage bond is determined eligible for release, the bond will be returned to the company as follows:

Cash Bonds - The Division will request the State Treasury issue a check made payable in the company name for the amount of the bond posted. If the bond was invested, the amount released will include any accumulated interest.

Letters of Credit & Certificates of Deposit – The Division will return the original letter of credit or certificate of deposit back to the company.

SURETY BOND CANCELLATION PROCEDURES

Companies that posted a surety bond are not subject to the same release procedures that apply to other types of bonds. Once a company meets the conditions necessary to have their bond released, instead of contacting the Division of Labor to initiate release procedures they are to notify the surety provider that the bond is eligible for cancellation. The surety provider may then issue a notice of cancellation to the Division of Labor.

Upon receiving notice of cancellation by the surety company, the Division will send a letter to the company acknowledging the effective date of the cancellation. The letter will also request the

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company submit a “Wage Bond Surety Cancellation Affidavit” to the Division of Labor to report a qualifying exemption, or to acknowledge that another bond is required.

Although surety bonds may be cancelled without the Commissioner’s express consent, the bond will remain in full force and effect relating to any wage claims that occur within the effective dates of the bond.

APPLICABLE FORM:

Wage Bond Cancellation Affidavit