

Wage Payment & Collection (WPCA) When Employee Fringe Benefits are Considered Wages

West Virginia Division of Labor
Wage & Hour Section

WPCA Fact Sheet 8 – §21-5-1 and §21-5-9
(July 2016)

EMPLOYEE FRINGE BENEFITS MAY BE CONSIDERED WAGES

Wages are compensation for labor or services rendered by an employee in behalf of an employer, whether based on a calculation of time, task, piece, commission or other basis. Accrued fringe benefits that are capable of calculation and payable directly to an employee are also considered wages. §21-5-1(c)

Definitions:

Fringe benefits include regular vacation, graduated vacation, floating vacation, holidays, sick leave, personal leave (PTO), production incentive bonuses, and sickness and accident benefits relating to medical and pension coverage. §21-5-1(l)

Accrued fringe benefits are those benefits that are earned and payable directly to an employee based on the terms and conditions of written company policy.

The Terms of Fringe Benefit Policies Established by the Employer

The West Virginia Wage Payment & Collection Act does not require the payment of employee fringe benefits of any kind. However, once an employer chooses to provide such benefits, a written policy must be established to define the terms and conditions for how those benefits are earned and paid. Once an employer establishes a written fringe benefit policy, the employees must be notified in writing of the terms and conditions of that policy. §21-5-9(3)

Whenever the terms and conditions of fringe benefit policies are well-defined, the Division of Labor will interpret and enforce the policy exactly as written. However, any vagueness or ambiguity relating to such terms and conditions may result in a favorable interpretation by the Division in behalf of the employee.

Fringe Benefits as Wages

In order for fringe benefits to be considered wages, such benefits must be capable of calculation and payable directly to employees. In order to meet those conditions, the terms of written company policy must explain the method(s) used to calculate the amount of fringe benefits earned and the conditions the employee must meet in order to become eligible for payment.