

WEST VIRGINIA DIVISION OF LABOR
WAGE & HOUR SECTION
INVESTIGATION AUTHORITY &
TYPES OF COMPLAINTS INVESTIGATED

The following information is being provided in an effort to explain the types of complaints the Wage & Hour Section of the West Virginia Division of Labor has, or does not have, the authority to investigate. Also provided is some general referral information to other state and federal agencies responsible for enforcing the most common issues brought to our attention that are not under our authority and jurisdiction. We ask if your situation falls within one of those categories that you contact the appropriate agency using that information.

If after reviewing all of this information you find your issue was not addressed, please contact our office for information before filing a complaint. You may contact us by calling 304 558 7890, Ext. 10474 or by sending an email to wageandhour@wv.gov.

The following is a list of the most common type of complaints investigated by this agency.

UNPAID WAGE COMPLAINTS

- You were not paid for all hours worked.
- You were not paid your final wages.
- You are not being paid the required minimum wage for this state.
- You are not being paid the correct prevailing wage rate for construction work performed on a state funded public improvement project that was bid prior to May 12, 2016.
- You were not paid sales commissions earned according to company policy.
- Deductions other than normal taxes etc., were withheld from your wages that were not authorized.
- You were not paid to attend a mandatory training session or a meeting.
- Your hourly wage (or salary amount) was reduced without the benefit of a pay period's advance notice.
- Your payroll check was returned for insufficient funds (bounced).
- Part of your job requires traveling from one place to another within the course of a regular workday and you are not being paid for that time.
- You were denied payment of a fringe benefit earned according to the terms and conditions of written company policy. (See next section for further information)

WAGE COMPLAINTS RELATING TO UNPAID FRINGE BENEFITS

Employers are not required by West Virginia state law to provide their employees with any type of fringe benefit. However, when an employer chooses to implement an employee fringe benefit policy and sets the terms and conditions for how those benefits are earned and paid in writing, such benefits become a collectable wage for any employee that is determined to have met those terms and conditions. Some examples of fringe benefits that could be collected as an unpaid wage include:

- Vacation pay/ PTO hours / Personal leave
- Sick leave
- Holiday pay
- Bonuses that are based on measurable production and/or incentives that are capable of calculation

NON-MONETARY COMPLAINTS

In addition to unpaid wages, this agency also accepts complaints that do not involve monetary compensation. Some examples include:

- When employees working a minimum 6 hour shift are not provided the minimum requirement of a 20 minute break and are not allowed to eat while working.
- When an employer does not meet payroll at least twice a month, or meets payroll twice a month but allows more than 19 days between paydays.
- Employees are not being provided a statement of earnings showing their rate of pay or salary amount, how their wages were calculated, and a listing of all wage deductions.
- Wages are being paid but not by the date set by the employer as when wages are regularly owed.
- Employees are not being paid for all wages earned up to and including the twelfth day preceding each payday.
- Outside of an unseen emergency situation, when hospital nurses involved in direct patient care are “required” to work more than 16 hours per shift or are not being provided a full 8 hours of time off between shifts.

ISSUES NOT UNDER THE AUTHORITY OF THE WV DIVISION OF LABOR

The Division of Labor does not have the authority to accept or investigate complaints concerning the following issues or situations:

- Wages for hours not actually worked such as vacation pay, PTO benefits, sick leave, holiday pay, etc. when not authorized by written company policy.
- The reimbursement of employee business expenses such as mileage etc.
- Severance pay.
- Overtime wages under the authority of the Federal Fair Labor Standards Act.
- Bonuses that are given as gifts that are not based on production or incentive measures.
- Terminations assumed to be illegal.
- Being terminated or fired without involving unpaid wages.
- Work place harassment, discrimination or hostile work environments.
- Claims for liquidated damages only. Liquidated damages are the penalty assessed to employers for not paying within the timeframes as established by the West Virginia Wage Payment & Collection Act.
- When wages are owed but the employer has filed for protection under federal bankruptcy laws.
- The work was not performed within the State of West Virginia.
- Wages for hours an employee was not permitted to work after giving final notice.

- When an employee was not rehired or called back after lay-off.
- Employee seniority rights.
- An employee/employer relationship does not (or did not) exist between the worker and the company for which the work was performed.
- The matter has already been, or is in the process of being, adjudicated in a court of law.
- Employee drug testing requirements.
- Worker's compensation issues.
- Unemployment benefits.
- Unpaid wages owed to federal employees.
- You did not receive a W-2 form or your W-2 form was incorrect.
- Wage Garnishments ordered by a Court of Law.
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REFERENCE & REFERRAL INFORMATION

The following is a list of issues the West Virginia Division of Labor commonly receive inquiries about that we do have the authority to enforce. Contact information for the agency responsible for the enforcement of each issue listed is provided. If your question or issue falls within any of these categories, we ask that you contact the appropriate agency for further information.

- Family Medical Leave Act (FMLA). USDOL, Wage & Hour Division - 866 487 9243
- Work place discrimination issues under the authority of the West Virginia Human Rights Commission – 304 558 2616
- The rights of nursing mothers under the authority of the Federal Patient Protection & Affordable Care Act (PPACA). USDOL, Wage & Hour Division – 866 487 9243
- Overtime wage complaints under the authority of the Federal Fair Labor Standards Act (FLSA). USDOL, Wage & Hour Section – 304 347 5206
- Unpaid construction prevailing wages under the authority of the Federal Davis Bacon Act (DBA). USDOL, Wage & Hour Section – 866 487 9243
- Non-construction related prevailing wage requirements relating to Administrative, Engineering, Janitorial positions, etc. relating to the Federal Service Contract Act (SCA). USDOL, Wage & Hour Section – 866 487 9243
- COBRA rights and other pension requirements under the authority of the Federal Employee Retirement Insurance Security Act (ERISA). USDOL, Employee Benefits Security Administration Section - 866 444 3272
- Miner black lung payments and claims. USDOL, Office of Workers Compensation Programs, Division of Coal Mine Workers - 800 638 7072
- Not being provided proper notification of factory closures under the authority of the Federal Worker Notification and Retraining (WARN) Act. USDOL, Employment & Training Administration - 202 693-3500
- The issuance of immigrant or non immigrant work permits (visas, green cards). Home Land Security, US Citizen & Immigration Services - 202 693-3010
- Not receiving a W-2 form, or you have a W-2 form that needs corrected. . Internal Revenue Service (IRS) - 800 829 1040
- The rules for satisfying multiple wage garnishment orders. USDOL - Wage & Hour Division - 866 487 9243