WEST VIRGINIA CODE: §21-5-4

§21-5-4. Cash orders; employees separated from payroll before paydays; employer provided property.

(a) In lieu of lawful money of the United States, any person, firm, or corporation may compensate employees for services by cash order which may include checks, direct deposits, payroll cards, or money orders on banks convenient to the place of employment where suitable arrangements have been made for the cashing of the checks by employees or deposit of funds for employees for the full amount of wages.

(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. For purposes of this section, "business day" means any day other than Saturday, Sunday, or any legal holiday as set forth in §2-2-1 of this code.

(c) Payment under this section may be made in person in any manner permissible under section three of this article, through the regular pay channels or, if requested by the employee, by mail. If the employee requests that payment under this section be made by mail, that payment shall be considered to have been made on the date the mailed payment is postmarked.

(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, 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 salary or wages, as he or she would have been entitled to had he or she rendered service therefor in the manner as

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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.

(f)(1) Notwithstanding any provision in this section to the contrary, if at the time of discharge or resignation, an employee fails to return employer provided property, as set forth by the parties under paragraph (C) of this subsection, the employer may withhold, deduct, or divert an employee's final wages, in an amount not to exceed the replacement cost of the employer provided property that was not returned as set forth under paragraph (C) of this subsection, to recover the replacement cost of the employer provided property, subject to the following:

(A) The employer provided property had been provided to the employee in the course of, and for use in, the employer's business;

(B) The employer provided property has a value in excess of $100;

(C) The employee had signed a written agreement with the employer contemporaneous with the obtaining of the employer provided property, or signed and ratified an agreement if property had been provided prior to the effective date of this provision; and such agreement contained, at a minimum, the following information:

(i) Specific itemization of the employer provided property, with a specified replacement cost;

(ii) Clear statement that such items are to be returned immediately upon discharge or resignation; and

(iii) Clear statement, coupled with the employee's acknowledgement and agreement, that should the employee fail to timely return the specified items, the replacement cost of such items may be recovered by the employer from the employee's final wages;

(D) The employer shall notify the employee in writing at the time of discharge or resignation by personal service, or as soon thereafter as practicable by personal service or via certified mail with return receipt requested, as to the replacement cost of the items and make a demand for return of such employer provided property within a certain date, not to exceed 10 business days of the notification; and

(E) The employer shall relinquish the withheld, deducted, or diverted wages to the employee if the employee returns the employer's property, equipment, supplies, and uniforms in a condition suitable for the age and usage of the items within the deadline specified in paragraph (D) of this subsection: *Provided*, That uniforms returned to the employer within three years of their issuance shall be deemed acceptable in their current condition at the time of separation from employment for purposes of this section: *Provided, however*, That replacement tools are deemed to be the property of the employee and are not subject to the provisions of this section.

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(2) Nothing herein precludes an employee from voluntarily consenting in writing to an employer's withholding, deduction, or diversion of a certain amount from the employee's final wages in satisfaction of subsection (1) of this section.

(3) If an employee objects to the replacement cost amount to be deducted by an employer, and provides such written objection within the deadline specified in paragraph (D), subsection (1) of this subsection, then the employer shall place the controverted amount in an interest bearing escrow account: *Provided*, That if a civil action or equitable relief is not brought by the employee for the claimed amount within three months, the employee shall forfeit the amount in escrow and such money shall revert to the employer.

(4) Nothing in this subsection is intended, nor shall it be construed, to abolish or limit any other remedies available to an employer to recover employer provided property, damages related to employer provided property or any other damages or relief, equitable or otherwise, available under any applicable law.

(5) Notwithstanding any provision in this section to the contrary, this provision shall not apply to employer-employee business relationships that are subject to, and governed by, collective bargaining agreements.

(6) For purposes of this section the following terms mean:

(A) The term "employer provided property" means all property provided by an employer to an employee for use in the employer's business, including but not limited to, equipment, phone, computer, supplies, or uniforms.

(B) The term "replacement cost" means actual cost paid by an employer for employer provided property, or for the same or similar property, if the original employer provided property no longer exists. In calculating the "replacement cost", the cost shall include any vendor discounts provided to the employer for such property.

(C) The term "replacement tools" means equipment, other than uniforms, provided by the employer to the employee for use in the course of the employer's business and to replace equipment provided by the employee that is lost.

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