WEST VIRGINIA CODE: §21-5-4a

§21-5-4a. Safe Harbor.

(a) An employee, in bringing an action for the underpayment or nonpayment of wages and fringe benefits due upon the employee's separation of employment as contemplated by §21-5-4 of this code, is not entitled to seek liquidated damages or attorney's fees from an employer without first making a written demand, as defined in subsection (c) of this section, to the employer seeking the payment of any alleged underpayment or nonpayment as set forth in this section: *Provided,* That upon separation or with the issuance of the final paycheck, the employer shall notify the employee in writing who the employer's authorized representative is and where to send a written demand by both e-mail and regular mail: *Provided however*, that if the employer fails to provide the required written notice, the employee is not required to comply with the provisions of this section. Upon receiving a written demand, the employer has seven calendar days from receipt to correct the alleged underpayment or nonpayment of the wages and fringe benefits due. If, after seven days, the employer has not corrected the alleged underpayment or nonpayment, or paid all undisputed amounts due to the employee, the employee may seek liquidated damages and attorney's fees. Nothing in this section prohibits the employee from presenting a claim under this article without making a written demand to the employer.

(b) In a class action lawsuit brought under this article for the underpayment or nonpayment of wages and fringe benefits due upon the employees' separation of employment, the employee, prior to the filing of the class action, shall submit a written demand stating it is a demand for all other employees similarly situated for the underpayment or nonpayment of their wages and fringe benefits: *Provided,* That if only the underpayment or nonpayment of wages and fringe benefits of the named employee is corrected, a class action may proceed for the underpayment or nonpayment of wages and fringe benefits still owed to the other members of the class.

(c) For purposes of this section, a "written demand" means any writing, including e-mail, from or on behalf of an employee stating that the employer has not paid all of the wages or fringe benefits which the employee is owed.

WV Legislature