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OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1975

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ENROLLED
Committee Substitute
For
SENATE BILL NO. 482

(By Mr. *Rogerson, original sponsor*)

—•—
PASSED *March 8,* 1975

In Effect *ninety days from* Passage



482

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 482

(By MR. ROGERSON, *original sponsor*)

[Passed March 8, 1975; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, two, four and seven, article five, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto six new sections, designated sections eight-a, nine, ten, eleven, twelve and thirteen, all relating to wages and their payment, definitions, separation of employees, payment of wages conceded to be due, contractor's responsibility for wage payments, deceased employees, withholding of wages, notification posting and record keeping, no-waiver provisions, enforcement, and employees civil remedies for nonpayment of wages.

Be it enacted by the Legislature of West Virginia:

That sections one, two, four and seven, article five, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and to further amend said article by adding thereto six new sections, designated sections eight-a, nine, ten, eleven, twelve and thirteen, all to read as follows:

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-1. Definitions.

- 1 As used in this article:
- 2 (a) The term "firm" includes any partnership, as-
- 3 sociation, joint stock company, trust, division of a cor-

4 poration, the administrator or executor of the estate
5 of a deceased individual, or the receiver, trustee, or suc-
6 cessor of any of the same, or officer thereof, employing
7 any person.

8 (b) The term "employee" or "employees" includes
9 any person suffered or permitted to work by a person,
10 firm, or corporation.

11 (c) The term "wages" means compensation for labor
12 or services rendered by an employee, whether the amount
13 is determined on a time, task, piece, commission, or other
14 basis of calculation.

15 (d) The term "commissioner" means commissioner
16 of labor.

17 (e) The term "railroad company" includes any firm
18 or corporation engaged primarily in the business of
19 transportation by rail.

20 (f) The term "special agreement" means an arrange-
21 ment filed with and approved by the commissioner where-
22 by a person, firm or corporation is permitted upon a
23 compelling showing of good cause to establish regular
24 paydays less frequently than semimonthly, provided
25 that in no event shall the employee be paid in full less
26 frequently than once each calendar month on a regularly
27 established schedule.

28 (g) The term "deductions" includes amounts required
29 by law to be withheld, and amounts authorized for union
30 or club dues, pension plans, payroll savings plans,
31 credit unions, charities and hospitalization and medi-
32 cal insurance.

33 (h) The term "officer" shall include officers or agents
34 in the management of a corporation or firm, who know-
35 ingly permits the corporation or firm to violate the pro-
36 visions of this article.

37 (i) The term "amount due" shall include at least
38 all wages earned up to and including the fifth day im-
39 mediately preceding the regular payday.

§21-5-2. Semimonthly payment of wages by railroads.

1 Every railroad company, authorized to do business by
2 the laws of this state shall, on or before the first day of

3 each month, pay the employees thereof the wages earned
4 by them during the first half of the preceding month,
5 ending with the fifteenth day thereof; and on or before
6 the fifteenth day of each month, pay the employees
7 thereof the wages earned by them during the last half
8 of the preceding calendar month: *Provided*, That if, at
9 any time of payment, any employee shall be absent from
10 his regular place of labor, and shall not receive his
11 wages through a duly authorized representative, he shall
12 be entitled to such payment at any time thereafter upon
13 demand upon the proper paymaster at the place where
14 such wages are usually paid and where the next pay
15 is due, and the proper mailing in the United States post
16 office of such payment in time to reach the usual post
17 office of the employee by the time aforesaid, in the usual
18 course of the mails, shall be a compliance with this sec-
19 tion.

20 It shall not be lawful for any railroad company to
21 enter into or make any agreement with any employee
22 for the payment of wages of any such employee other-
23 wise than as provided in this section, except to pay such
24 wages at shorter intervals than herein provided. Every
25 agreement made in violation of this section shall be
26 deemed to be null and void.

**§21-5-4. Cash orders; employees separated from payroll before
paydays.**

1 (a) In lieu of lawful money of the United States,
2 any person, firm or corporation may compensate em-
3 ployees for services by cash order which may include
4 checks or money orders on banks convenient to the
5 place of employment where suitable arrangements have
6 been made for the cashing of such checks by employees
7 for the full amount of wages.

8 (b) Whenever a person, firm or corporation dis-
9 charges an employee, such person, firm or corpora-
10 tion shall pay the employee's wages in full within seventy-
11 two hours.

12 (c) Whenever an employee quits or resigns, the per-
13 son, firm or corporation shall pay the employee's wages
14 no later than the next regular payday, either through

15 the regular pay channels or by mail if requested by
16 the employee, except that if the employee gives at least
17 one pay period's notice of intention to quit the person,
18 firm or corporation shall pay all wages earned by the
19 employee at the time of quitting.

20 (d) When work of any employee is suspended as a
21 result of a labor dispute, or when an employee for any
22 reason whatsoever is laid off, the person, firm or cor-
23 poration shall pay in full to such employee not later
24 than the next regular payday, either through the reg-
25 ular pay channels or by mail if requested by the em-
26 ployee, wages earned at the time of suspension or lay-
27 off.

28 (e) If a person, firm or corporation fails to pay an
29 employee wages as required under this section, such
30 person, firm or corporation shall, in addition to the amount
31 due, be liable to the employee for liquidated damages in
32 the amount of wages at his regular rate for each day
33 the employer is in default, until he is paid in full, with-
34 out rendering any service therefor: *Provided, however,*
35 That he shall cease to draw such wages thirty days after
36 such default. Every employee shall have such lien and
37 all other rights and remedies for the protection and
38 enforcement of such salary or wages, as he would have
39 been entitled to had he rendered service therefor in
40 manner as last employed; except that, for the purpose
41 of such liquidated damages, such failure shall not be
42 deemed to continue after the date of the filing of a peti-
43 tion in bankruptcy with respect to the employer if he
44 is adjudicated bankrupt upon such petition.

§21-5-7. Prime contractor's responsibility for wage payments.

1 Whenever any person shall contract with another for
2 the performance of any work which the prime con-
3 tracting person has undertaken to perform for another,
4 the prime contractor shall become civilly liable to em-
5 ployees engaged in the performance of work under such
6 contract for the payment of wages, exclusive of liquidated
7 damages as provided in section four (e) of this article,
8 to the extent that the employer of such employees fails
9 to pay such wages: *Provided,* That such employees have

10 exhausted all feasible remedies contained in this article
11 against such employer: *Provided, however,* That such
12 employer shall become civilly liable to such prime con-
13 tractor for any sum of money paid by him under this
14 section.

§21-5-8a. Deceased employees.

1 In the event of the death of any employee, wages due
2 him by a person, firm or corporation not in excess of
3 eight hundred dollars may upon proper demand be paid,
4 in the absence of actual notice of the pendency of pro-
5 bate proceedings, without requiring letters testamentary
6 or of administration in the following order of preference
7 to decedent's: (1) Surviving spouse, (2) children eigh-
8 teen years of age and over in equal shares, (3) father
9 and mother, or survivor, (4) sisters and brothers, or to
10 the person who pays the funeral expenses. Payments
11 under this section shall release and discharge the person,
12 firm or corporation to the amount of such payment.

§21-5-9. Notification, posting and records.

1 Every person, firm and corporation shall:
2 (1) Notify his employees in writing, at the time of
3 hiring of the rate of pay, and of the day, hour, and place
4 of payment.
5 (2) Notify his employees in writing, or through a
6 posted notice maintained in a place accessible to his
7 employees of any changes in the arrangements specified
8 above prior to the time of such changes.
9 (3) Make available to his employees in writing or
10 through a posted notice maintained in a place accessible
11 to his employees, employment practices and policies with
12 regard to vacation pay, sick leave, and comparable mat-
13 ters.
14 (4) Furnish each employee with an itemized state-
15 ment of deductions made from his wages for each pay
16 period such deductions are made.
17 (5) Keep posted in a place accessible to his em-
18 ployees an abstract of this act furnished by the commis-
19 sioner, and
20 (6) Make such records of the persons employed by

21 him, including wage and hour records, preserve such
22 records for such periods of time, and make such reports
23 therefrom to the commissioner, as the commissioner shall
24 prescribe by regulation as necessary or appropriate for
25 the enforcement of the provisions of this article.

§21-5-10. Provisions of law may not be waived by agreement.

1 Except as provided in section thirteen, no provision
2 of this article may in any way be contravened or set
3 aside by private agreement, and the acceptance by an
4 employee of a partial payment of wages shall not con-
5 stitute a release as to the balance of his claim and any
6 release required as a condition of such payment shall
7 be null and void.

§21-5-11. Administrative enforcement.

1 (a) The commissioner shall enforce and administer
2 the provisions of this article in accordance with chapter
3 twenty-nine-a of this code. The commissioner or his
4 authorized representatives are empowered to enter and
5 inspect such places, question such employees, and in-
6 vestigate such facts, conditions, or matters as they may
7 deem appropriate, to determine whether any person,
8 firm or corporation has violated any provision of this
9 article, or any rule or regulation issued hereunder or
10 which may aid in the enforcement of the provisions of
11 this article.

12 (b) The commissioner or his authorized representa-
13 tives shall have power to administer oaths and examine
14 witnesses under oath, issue subpoenas, compel the at-
15 tendance of witnesses, and the production of papers,
16 books, accounts, records, payrolls, documents, and testi-
17 mony, and to take depositions and affidavits in any pro-
18 ceeding before said commissioner.

19 (c) In case of failure of any person to comply with
20 any subpoena lawfully issued, or on the refusal of any
21 witness to testify to any matter regarding which he
22 may be lawfully interrogated, it shall be the duty of
23 the circuit court, on application by the commissioner,
24 to compel obedience by attachment proceedings for con-
25 tempt, as in the case of disobedience of the requirements

26 of a subpoena issued from such court or a refusal to
27 testify therein.

§21-5-12. Employees' remedies.

1 (a) Any person whose wages have not been paid in
2 accord with this article, or the commissioner or his
3 designated representative, upon the request of such per-
4 son, may bring any legal action necessary to collect a
5 claim under this article. With the consent of the em-
6 ployee, the commissioner shall have the power to settle
7 and adjust any claim to the same extent as might the
8 employee.

9 (b) The court in any action brought under this ar-
10 ticle may, in the event that any judgment is awarded
11 to the plaintiff or plaintiffs, assess costs of the action,
12 including reasonable attorney fees against the defendant.
13 Such attorney fees in the case of actions brought under
14 this section by the commissioner shall be remitted by
15 the commissioner to the treasurer of the state. The com-
16 missioner shall not be required to pay the filing fee or
17 other costs or fees of any nature or to file bond or other
18 security of any nature in connection with such action
19 or with proceedings supplementary thereto, or as a con-
20 dition precedent to the availability to the commissioner
21 of any process in aid of such action or proceedings. The
22 commissioner shall have power to join various claim-
23 ants in one claim or lien, and in case of suit to join them
24 in one cause of action.

§21-5-13. Rules and regulations.

1 The commissioner shall make rules and regulations
2 to the extent necessary to effectuate the purposes of this
3 article, in accordance with the provisions of chapter
4 twenty-nine-a of the code of West Virginia, as amended.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis

Chairman Senate Committee

Clarence C. Christensen

Chairman House Committee

Originated in the Senate.

Takes effect ninety days from passage.

J. C. McLaughlin

Clerk of the Senate

L. A. Blankenship

Clerk of the House of Delegates

H. D. Bostwick

President of the Senate

Lewis H. Thomas

Speaker House of Delegates

The within *approved* this the *24th*
day of *March*, 1975.

Arthur A. Shaarey

Governor



PRESENTED TO THE
GOVERNOR

Date 3/18/75

Time 4:55 p.m.