WEST VIRGINIA LEGISLATURE
EIGHTY-SECOND LEGISLATURE
REGULAR SESSION, 2015

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 344
(Senators Trump, Carmichael and Blair, original sponsors)

[Passed March 10, 2015; in effect ninety days from passage.]
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §55-7E-1, §55-7E-2 and §55-7E-3, all relating to setting adequate and reasonable amounts of compensatory damages available to an employee in statutory and common law wrongful or retaliatory discharge causes of action and other employment law claims; setting forth definitions; setting forth legislative findings and declaration of public policy; placing duty to mitigate damages on plaintiffs in employment-related lawsuits and causes of action; and requiring a judge to make a finding on the appropriateness of remedy versus reinstatement before front pay damages are to be considered by a jury.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §55-7E-1, §55-7E-2 and §55-7E-3, all to read as follows:
ARTICLE 7E. DUTY TO MITIGATE DAMAGES IN EMPLOYMENT CLAIMS.

§55-7E-1. Definitions.

1. In this article:

(a) "Back pay" means the wages that an employee would have earned, had the employee not suffered from an adverse employment action, from the time of the adverse employment action through the time of trial.

(b) "Front pay" means the wages that an employee would have earned, had the employee not suffered from an adverse employment action, from the time of trial through a future date.

§55-7E-2. Legislative findings and declaration of purpose.

1. (a) The Legislature finds that:

(1) Employees of this state are entitled to be free from unlawful discrimination, wrongful discharge and unlawful retaliation in the workplace. Employers are often confronted with difficult choices in the hiring, discipline, promotion, layoff and discharge of employees.

(2) The citizens and employers of this state are entitled to a legal system that provides adequate and reasonable compensation to those persons who have been subjected to unlawful employment actions, a legal system that is fair, predictable in its outcomes, and a legal system that functions within the mainstream of American jurisprudence.

(3) The goal of compensation remedies in employment law cases is to make the victim of unlawful workplace actions
whole, including back pay; reinstatement or some amount of
front pay in lieu of reinstatement; and under certain statutes,
attorney's fees for the successful plaintiff.

(4) In West Virginia, the amount of damages recently
awarded in statutory and common law employment cases
have been inconsistent with established federal law and the
law of surrounding states. This lack of uniformity in the law
puts our state and its businesses at a competitive
disadvantage.

(b) The purpose of this article is to provide a framework
for adequate and reasonable compensation to those persons
who have been subjected to an unlawful employment action,
but to ensure that compensation does not far exceed the goal
of making a wronged employee whole.

§55-7E-3. Statutory or common law employment claims; duty to mitigate
damages.

(a) In any employment law cause of action against a
current or former employer, regardless of whether the cause
of action arises from a statutory right created by the
Legislature or a cause of action arising under the common
law of West Virginia, the plaintiff has an affirmative duty to
mitigate past and future lost wages, regardless of whether the
plaintiff can prove the defendant employer acted with malice
or malicious intent, or in willful disregard of the plaintiff's
rights. The malice exception to the duty to mitigate damages
is abolished. Unmitigated or flat back pay and front pay
awards are not an available remedy. Any award of back pay
or front pay by a commission, court or jury shall be reduced
by the amount of interim earnings or the amount earnable
with reasonable diligence by the plaintiff. It is the
defendant's burden to prove the lack of reasonable diligence.
(b) In any employment law claim or cause of action, the trial court shall make a preliminary ruling on the appropriateness of the remedy of reinstatement versus front pay if such remedies are sought by the plaintiff. If front pay is determined to be the appropriate remedy, the amount of front pay, if any, to be awarded shall be an issue for the trial judge to decide.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 24th Day of March, 2015.

Governor
PRESENTED TO THE GOVERNOR

MAR 16 2015

Time: 10:46 AM