

The Clock is Always Ticking Under State's Wage Payment Laws

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Unfortunately, the current recession is still taking its toll in West Virginia and nationwide, with economists predicting the unemployment rate will continue to rise until at least early 2010. Laying off or otherwise terminating an individual's employment is never pleasant, and becomes even more stressful for employers as they attempt to comply with the various laws that come into effect when terminations are implemented. One of these laws is the West Virginia Wage Payment and Collection Act (The Act). The Act, which applies to all employers regardless of size, requires that payment for an employee's service be made in the form of actual money, or an instrument redeemable for money (a provision originally aimed at the old company store concept). It also governs the timing of wage payments to employees. The Act is separate and distinct to those laws dealing with minimum wages and maximum hours. Thus, it does not require any particular amount of wages be paid to employees -- it merely governs when those payments must be made.

Employers must provide laid off employees with their wages in full by the next regularly scheduled payday. Payment can be made by the regular channels, or by mail if requested by the employee. Discharged employees must be paid within 72 hours. There are various ways to meet this requirement, including handing a discharged employee his or her final paycheck during a termination meeting, or by sending the check to him or her via overnight mail.

Under the Act, the term "wages" includes fringe benefits capable of calculation, which would include accrued vacation or other types of leave payable to employees at the conclusion of their employment. Note, however, that whether such leave is payable in the first place is dictated by the employer's policies. As stated, the Act itself does not require any particular amount of wages and/or benefits.

As for those employers who do not foresee any imminent terminations, the Act contains other important requirements that must be followed. The most noteworthy is the requirement that employees be paid every two weeks for wages earned up to and including the fifth day immediately preceding the payday. Note that every two weeks is not the same thing as twice a month. The only exception to this rule is if a company has a special agreement with the West Virginia Division of Labor.

The Act also prohibits certain deductions from an employee's pay without a wage assignment from the employee. This requirement does not apply to legal deductions, such as those for taxes, or to deductions for union dues, health care premiums, pension plans, payroll savings plans, charitable contributions, or hospitalization. The requirement would apply, however, to an attempt to recoup a prior overpayment to an employee, or a deduction for an employee's purchase of company merchandise. The assignment must contain the notarized signature of the employee and be signed by the employer. It must also state the total amount due, that three-fourths of the employee's wages are exempt from the assignment, and that it is only good for one year. A form wage assignment is available on the Division of Labor's website.

Finally, employers should note that employees who voluntarily terminate their employment, like those who

are laid off, must be paid their final wages by the next regularly scheduled payday. An exception to this rule exists when an employee provides at least one pay period's notice of his resignation. In that case, he must be paid his final wages on his last day of employment.

Penalties for violating the Act can be severe. For example, an employer that fails to timely provide an employee's final check can be held liable for not only the amount of that check, but an additional three times that amount as liquidated damages. Obviously, the dollars can quickly add up when an employee has accrued significant vacation pay, or when multiple employees are involved. Moreover, plaintiffs who prevail in their claims under the Act are entitled to their costs of the action, including reasonable attorney fees. Therefore, it is definitely in an employer's best interest to pay close attention to the timing of wage payments to employees. As with other areas of the law, attention to detail now may save money and aggravation later.