

WEST VIRGINIA DIVISION OF LABOR

1900 Kanawha Boulevard East - State Capitol Complex – Building 3, Room 200 - Charleston, WV 25305

Telephone: (304)558-7890

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MINIMUM WAGE REQUIREMENTS

An employer employing 6 or more employees in any one separate, distinct and permanent location during any calendar week, including the State of West Virginia, and its agencies and departments, must comply with the state minimum wage law, §21-5C.

Required Minimum Wage Rate

- Beginning January 1, 2016, employers must pay employees at least \$8.75 per hour.

Required Minimum Training Wage Rate

- An employer may pay an employee under the age of 20 years, first hired on or after January 1, 2015, a training wage of at least \$6.40 per hour for the first 90 days of employment.
- Beginning with the 91st day of employment, an employer must pay the employee the required minimum wage rate.

Permissible Minimum Wage Credit for Tipped Employees

- Beginning January 1, 2016, employers may take up to a 70% credit, or \$6.13 per hour, against the required minimum wage rate for employees who customarily receive tips, resulting in a reduced hourly wage rate of at least \$2.62 per hour.
- To qualify for the credit, employers must ensure that the employees' tips and the reduced hourly wage rate equal at least the required minimum wage rate and must keep accurate records of employees' tips.

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THE WEST VIRGINIA NURSES OVERTIME AND PATIENT SAFETY ACT

This poster is required to be posted in a place accessible in accordance with Chapter 21, Article 5F, Section 3(h) of the Code of West Virginia.

HOSPITAL NURSING OVERTIME LIMITATIONS AND REQUIREMENTS

Except as provided in subsections (b), (c), (d), (e) and (f) of this section, a hospital is prohibited from mandating a nurse, directly or through coercion, to accept an assignment of overtime and is prohibited from taking action against a nurse solely on the grounds that the nurse refuses to accept an assignment of overtime at the facility if the nurse declines to work additional hours because doing so may, in the nurse's judgment, jeopardize patient or employee safety.

In the interest of patient safety, any nurse who works twelve or more consecutive hours, as permitted by this section, shall be allowed at least eight consecutive hours of off-duty time immediately following the completion of the shift. No nurse shall work more than sixteen hours in a twenty-four-hour period. The nurse is responsible for informing the employer hospital of other employment experience during the twenty-four-hour period in question if this provision is to be invoked. To the extent that an on-call nurse has actually worked sixteen hours in a hospital, efforts shall be made by the hospital to find a replacement nurse to work.

A covered hospital is defined as a facility licensed under the provisions of article five-b, chapter sixteen of this code, but does not include hospitals operated by state or federal agencies.

A nurse is defined as a certified or licensed practical nurse or a registered nurse who is providing nursing services and is involved in direct patient care activities or clinical services but does not include certified nurse anesthetists. Nurse Managers are included with respect to their delivery of in-hospital patient care, but this is in no way intended to impact on their 24-hour management responsibility for a unit, area or service.

Exceptions:

- A nurse may be scheduled for duty or mandated to continue on duty in overtime status in an unforeseen emergent situation that jeopardizes patient safety.
- A nurse may be required to fulfill prescheduled on-call time, but nothing in this article shall be construed to permit an employer to use on-call time as a substitute for mandatory overtime.
- A nurse may be required to work overtime to complete a single patient care procedure already in progress, but nothing in this article shall be construed to permit an employer to use a staffing pattern as a means to require a nurse to complete a procedure as a substitute for mandatory overtime.
- These provisions do not apply when a collective bargaining agreement is in place between nurses and the hospital which is intended to substitute for the provisions of this article by incorporating a procedure for the hospital to require overtime.
- These provisions do not apply to voluntary overtime.

Complaint Process - Each hospital shall designate an anonymous process for patients and nurses to make staffing complaints related to patient safety. Any complaint to the Division of Labor regarding an alleged violation of the provisions of this article must be made within thirty days following the occurrence of the incident giving rise to the alleged violation. The commissioner shall keep each complaint anonymous until the commissioner finds that the complaint has merit.

Penalties:

1st offense – Reprimand

2nd offense* – Reprimand and a fine not to exceed five hundred dollars.

3rd offense* – Fine of not less than two thousand five hundred dollars and not more than five thousand dollars for each violation.

*Second or third offenses only apply if the next occurrence is within 12 months of a prior offense.

All moneys paid as administrative penalties shall be deposited into the Health Care Cost Review Fund provided by Section Eight, Article twenty-nine-b, Chapter Sixteen of the West Virginia Code.

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WEST VIRGINIA WAGE PAYMENT AND COLLECTION ACT

This abstract must be placed in an area accessible to all employees in accordance with the requirements of W. Va. Code §21-5-9.

§21-5 REQUIRES THE EMPLOYER TO:

Pay employee wages at least twice a month, with no more than 19 days between paydays.

Compensate employees for services rendered by cash, check, direct deposit, or money order, and make arrangements with a bank convenient to the place of employment for employees to have immediate access to their wages.

When an employee is discharged, quits, resigns, is laid off, or is on strike, pay the employee on or before the next regularly scheduled payday for all work he or she performed prior to his or her separation from employment.

On separation from employment, pay an employee the fringe benefits due and payable according to the time, terms, and conditions of an employer-employee agreement, whether verbal or written, if any.

Notify employees in writing at the time of hire, or by a posted notice that is accessible to all employees, identifying the employer's established work week, pay periods, regularly scheduled pay days, and employment practices and policies regarding vacation, sick leave and other fringe benefits, if any.

Provide employees with at least 1 full pay period's written notice before making any changes to an employee's rate of pay, fringe benefits, the time and place for meeting payroll, or any other existing terms or conditions of employment.

Furnish each employee with a written itemized statement of deductions withheld from his or her wages each pay period.

§21-5 PREVENTS THE EMPLOYER FROM:

Selling goods or supplies to employees at prices higher than the current market value.

Deducting more than 25% of an employee's net earnings under a wage assignment (excluding amounts required by law to be withheld or paid for union or club dues, pension plans, payroll savings plans, credit unions, charities, and hospitalization and medical insurance).

Accepting a wage assignment that does not contain the employee's notarized signature, specify the total amount due and the amount to be deducted, and state that 75% of the employee's net wages are exempt from assignment.

Refusing to pay wages owed, up to \$800.00, to the relatives of a deceased employee.

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PARENTAL LEAVE ACT

PARENTAL LEAVE ACT – (W. Va. Code §21-5D-1, *et. seq.*). This legislation, enacted in 1989, covers employees of all departments, divisions, boards, bureaus, agencies, commissions or other units of State Government and County Boards of Education.

Under this law, an employee shall be entitled to a total of 12 weeks of unpaid *Parental Leave* following the exhaustion of all his or her annual and personal leave, during any 12-month period. The unpaid leave shall be granted to an employee for any of the following reasons:

- The birth of a son or daughter of the employee
- The placement of a son or daughter with the employee for adoption
- To care for the employee's son or daughter, spouse, parent, or dependent who has a serious health condition

The statute further states that in the case of a serious health condition, the leave may be taken intermittently when medically necessary.

If a leave of absence due to the birth or adoption of a child is foreseeable, the employee shall provide the employer with a two weeks written notice. If a leave of absence is foreseeable due to planned medical treatment or medical supervision, the employee shall make a reasonable effort to schedule the leave of absence so as not to disrupt the operations of the employer, subject to the approval of the health care provider.

If an employee requests *Parental Leave* to care for a family member with a serious health condition, the employer may require the employee to provide certification by a health care provider of the family member's health condition and that the employee's assistance is necessary. The certification shall be sufficient if it contains the following:

- That the child, dependent, parent, or employee has a serious health condition
- The date the serious health condition commenced and its probable duration
- The medical facts regarding the serious health condition, upon release by the patient

The position held by an employee immediately before the leave of absence shall be held and the employee shall be returned to that position upon his or her return to work. However, the employer may hire a temporary employee to fill the position for the period of time the employee is off work.

No employer may, because an employee received *Parental Leave*, reduce or deny any employment benefit or seniority which accrued to the employee before his or her leave commenced.