

# WHAT YOU NEED TO KNOW ABOUT WEST VIRGINIA EMPLOYMENT LAW

Employment law in West Virginia is constantly evolving, and employers must stay up-to-date to avoid problems. Here are the top 10 laws you should know.

**1 The minimum wage is increasing January 1, 2015.** In the past, a state-level hike would only impact employers not otherwise covered by federal law. The West Virginia Legislature, however, took action to make sure the increase will apply to all employers. The rate increases from the current \$7.25 per hour to \$8 per hour on January 1, 2015, then to \$8.75 on January 1, 2016.

**2 Pregnant workers recently gained greater protection.** The West Virginia Pregnant Workers' Fairness Act now in effect requires employers to provide reasonable accommodations to pregnant applicants or employees to allow them to continue working. As with disability law, there is an exception if an accommodation would create an undue hardship on the employer.

**3 Same-sex sexual harassment is illegal.** In addition, subordinate employees and non-employees can be the cause of sexual harassment claims if the employer knows about the conduct and fails to take action. Thus, sexual harassment encompasses more instances than you might otherwise think.

**4 Sexual orientation is not (yet) a protected class in West Virginia.** A bill is introduced every year in the Legislature, but it has not yet gained much traction. Nevertheless, some localities, including Charleston and

Morgantown, have enacted ordinances prohibiting discrimination on the basis of sexual orientation.

**5 Video surveillance of common areas is permissible.** Employers should not, however, engage in audio surveillance or they risk running afoul of the West Virginia Wiretapping Act.

**6 Drug testing employees is tricky business.** Because privacy rights are at issue, private employers in West Virginia may generally only drug test employees under two scenarios: 1. where there is a reasonable, good faith, objective suspicion that an employee is presently under the influence; 2. where an employee works in a safety-sensitive position. The only "random" drug testing that is legal is for safety-sensitive employees. Employers may, however, drug test applicants on a post-offer, pre-employment basis.

**7 Employers must pay employees every two weeks.** Twice per month is not the same thing. The only exception is if the employer has a special agreement with the West Virginia Division of Labor. This rule also means that an employer cannot hold a paycheck for disciplinary or other reasons.

**S Employers must pay discharged employees within four business days** or the next payday, whichever comes first. Employees who quit or are laid off must be paid by the next payday.



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**9 Certain deductions from pay require a notarized wage assignment.** If an employer overpays an employee or the employee owes money for meals or merchandise, the money cannot automatically be deducted from the next paycheck. The employer needs a notarized wage assignment from the employee. A form is available on the West Virginia Division of Labor's website. This rule does not apply to "legal deductions," such as those for taxes, health insurance, and union dues.

**10 Twenty-minute meal breaks are required for employees who work six or more hours.** The only exception is if the employer otherwise provides breaks or lets employees eat while working.