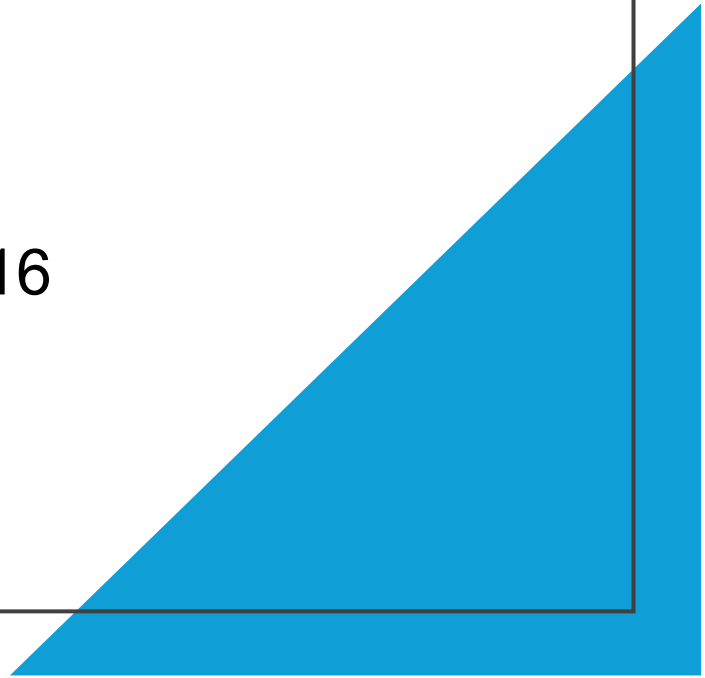


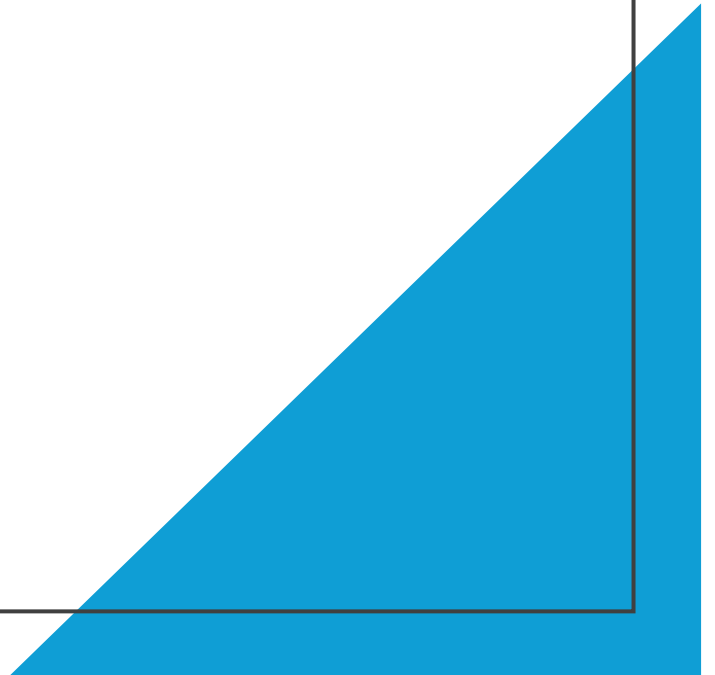
# The FLSA Does Not Regulate:

- Vacation, holiday, severance, or sick pay
- Meal or rest periods; holidays off; vacations
- Premium pay for weekend or holiday work
- Fringe benefits or pay raises
- Discharge notice; reason for discharge
- Limits on the number of hours or days employees 16 years or older may work



# State Law Does Regulate (Depending on Type of Employment/Other Factors):

- Fringe benefits
- Meal or rest periods; holidays off
- Premium pay for weekend or holiday work
- Discharge notice; reason for discharge
- Limit on the number of days employees 16 years or older may work



# The West Virginia Division of Labor

Responsible for enforcing:

The West Virginia Wage Payment and Collection Act (W. Va. Code §21-5-1 *et seq.*)

The Minimum Wage and Maximum Hours Standards for Employees Act (W. Va. Code §21-5C-1 *et seq.*)

The Safety and Welfare of Employees Act (W. Va. Code §21-3-1 *et seq.*)



# The West Virginia Wage Payment and Collection Act



- “Wages” defined as compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis of calculation (See §21-5-1(c))

# The West Virginia Wage Payment and Collection Act



- “Fringe benefits” defined as any benefit provided to employees by an employer and includes vacation, holidays, sick and personal leave, and medical and pension coverage (See §21-5-1(I))

# The West Virginia Wage Payment and Collection Act



- Fringe benefits are considered wages owed to an employee upon separation of employment when accrued fringe benefits are capable of calculation and payable directly to an employee (See §21-5-1(c))

# The West Virginia Wage Payment and Collection Act



- Whether fringe benefits have accrued, are capable of calculation and payable directly to an employee so as to be considered wages is determined by the terms of an employment agreement  
(*Meadows v. Wal-Mart Stores, Inc.*, 207 W.Va. 203 (1999))

# The West Virginia Wage Payment and Collection Act



- The employment agreement may either be written or in the form of a consistently applied unwritten policy (*Adkins v. American Mine Research, Inc.*, 234 W.Va. 328 (2014))



# West Virginia Wage Payment and Collection Act



- Whenever an employer discharges an employee, or whenever an employee quits or resigns from employment, the employer is required to pay the wages due to the employee on or before the next regular payday (See §21-5-4(b))

# The West Virginia Wage Payment and Collection Act



- If the employer fails to pay the employee for wages due on or before the next regular payday, the employer is liable to the employee for, in addition to the unpaid amount, two times the unpaid amount as liquidated damages (See §21-5-4(e))
- See *Carr-Lambert v. Grant County Board of Education*, 837 F.Supp.2d 594 (2011)

# The West Virginia Minimum Wage and Maximum Hours Standards for Employees Act



- In addition to federal law requirements for overtime compensation and compensatory time, state law permits county and municipal governments to provide compensatory time to employees in lieu of overtime compensation (See §21-5C-3(e)(f)(1))

# The West Virginia Minimum Wage and Maximum Hours Standards for Employees Act



- County and municipal governments are required to obtain written permission of individual employees before performance of the work for which compensatory time will be provided (See §21-5C-3(e)(f)(2))

# The West Virginia Minimum Wage and Maximum Hours Standards for Employees Act



- Employees of county and municipal governments who have accrued compensatory time off shall, upon separation of employment, be paid for the unused compensatory time by whichever is the higher rate of:
  - The average rate received by the employee during the last three years of employment; or
  - The final regular rate received by the employee (See §21-5C-3(e)(f)(4))

# The West Virginia Safety and Welfare of Employees Act



- Employers required to provide employees that work six or more hours a day with at least a 20-minute meal or break period unless such employees are already provided a meal/break period or are allowed to eat while working (See §21-3-10a)

# The West Virginia Safety and Welfare of Employees Act



- Meal or break periods lasting 20 minutes or less treated as compensable (paid) time (42 CSR 11.3.1)
- Meal or break periods lasting 30 minutes or longer may be treated as non-compensable but it's up to the employer (42 CSR 11.3.2)

# W. Va. Code Ch. 18A: School Personnel- Meal/Rest Periods

- Every teacher employed for more than half of the class periods must be provided a daily compensable 30-minute lunch period (See §18A-4-14)
- Service personnel employed for more than 3 ½ hours must be provided a daily compensable 30-minute lunch period (See §18A-4-14)
- 7 paid holidays for all school personnel (See §18A-5-2 and 126 CSR 73.6.1.c.1 )

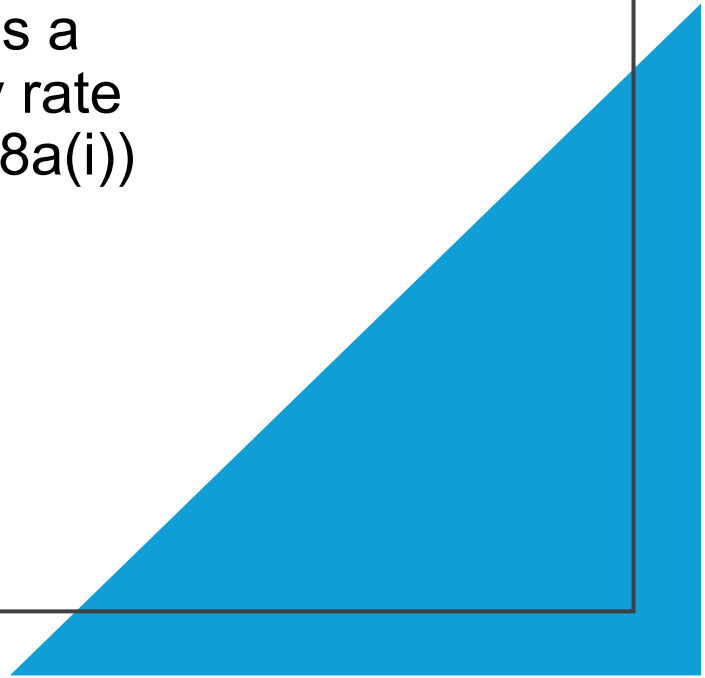


# W. Va. Code Ch. 18A: School Personnel- Premium Pay for Weekend/Holiday Work

- If a service person whose regular workweek is scheduled Monday-Friday agrees to perform a work assignment on a Saturday or Sunday, they must be paid for at least one-half day of work for each day, and if they work more than 3 1/2 hours, they must be paid for one full day of work (See §18A-4-8(e))
- If a service person is required to work on any legal school holiday, they must be paid 1 1/2 times their usual hourly rate (See §18A-4-8a(h))

# W. Va. Code Ch. 18A: School Personnel- Premium Pay for Weekend/Holiday Work

- Any full-time service personnel required to work in excess of their normal working day during any week which contains a school holiday must be paid 1 ½ times their usual hourly rate for all additional hours worked during the week (§18A-4-8a(i))



# W. Va. Code Ch. 18A: School Personnel-Discharge Notice/Reason for Discharge

- The due process requirements of W. Va. Code §18A-2-8 require that school personnel be afforded written notice of the charges [for termination of employment], an explanation of the evidence, and opportunity to respond before a school board decides to terminate employment (*Board of Education of Mercer County v. Wirt*, 192 W.Va. 568 (1994))

# W. Va. Code Ch. 18A: School Personnel-Limit on the Number of Days Employees 16 Years or Older May Work

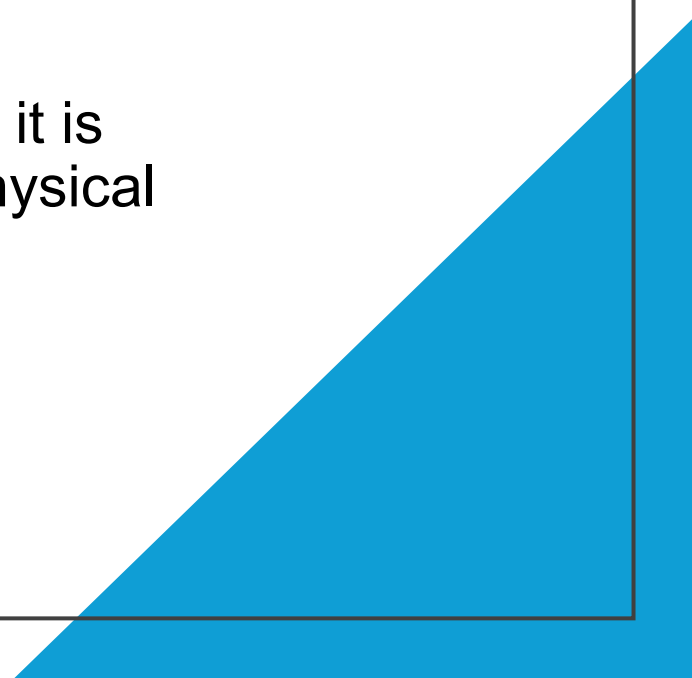
- A service person may not be required to report for work more than five days per week without his or her agreement (See § 18A-4-8(d))

# Contact the West Virginia Division of Labor – Wage and Hour Section



- Call (304) 558-7890
- Email [WageandHour@WV.gov](mailto:WageandHour@WV.gov)

# Questions

- (1) If an extracurricular bus trip is canceled prior to the driver arriving on site, what, if anything, are we required to pay them? Physical time worked?
  - (2) If an employee chooses to work on a weekend and it is approved by their administrator, do we pay them for physical hours worked or is a half or full day?
- 

# Questions

- (3) If a service employee has an addenda on their contract for being a coordinator, director, or supervisor, are they still entitled to overtime wages?
- (4) If an employee works past their contracted daily hours, is the straight time (if not 40 hours) or the overtime (over 40 hours) only physical time worked or are they entitled to a half day or full day?