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A Word About This Presentation



We speak in general terms today. The specific facts of a situation can make a difference in the legal principles that apply



Do not treat this presentation as legal advice about any specific situation



Information we present may at any time become outdated by changes in the school laws



When in doubt, don't act or rely on the information in this presentation without seeking legal advice

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WAGE GARNISHMENT



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What is Wage Garnishment?

- ▶ "Garnishment" means any legal or equitable procedure through which the earnings of an individual are required to be withheld for payment of a debt.

- ▶ §46A-2-130(b)

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Wage Garnishment Limits

- ▶ §46A-2-130. Limitation on garnishment.
 - ▶ (a) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld

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§38-8-1. Exemptions of personal property.

- ▶ (c) Wages or salary are automatically exempt from execution or other process but only to the extent set forth in section three, article five-a of this chapter.
- ▶ No person may file for an exemption of wages or salary pursuant to this section in an amount above that set forth in section three, article five-a of this chapter.
- ▶ **Who can claim protections?**
 - ▶ “Any individual residing in” West Virginia. Single or married, with children or family, or living alone, it doesn’t matter. Anyone earning wages has this protection.

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- ▶ May not exceed:
 - ▶ 20% of his or her disposable earnings for that week, or
 - ▶ the amount by which his or her disposable earnings for that week exceed fifty times the federal minimum hourly wage.
- ▶ The federal minimum hourly wage is currently \$7.25/hour.
 - ▶ $\$7.25 \times 50 = \362.50
 - ▶ This is the minimum amount an employee must be left with per week, after taxes

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WV Code 38-5A-3.

- ▶ Garnishment can be done only against wages “after the deduction of all state and federal taxes.”

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Salary v. Hourly...does it matter?

- ▶ The statute is very clear: “Salary and wages” are “sums based upon work done or results produced.”
- ▶ WV Code §38-5A-2.
 - ▶ Salary or wages payable to any person engaged in private employment, whether due and owing or to become due and owing, shall be subject to suggestion by judgment creditors only as provided by this article.
- ▶ WV Code §38-5A-1(1)
 - ▶ (1) "Salary" and "wages" shall be given their ordinary meaning but in any event shall include compensation measured partly or wholly by commissions, percentages or share of profits or by other sums based upon work done or results produced whether or not the judgment debtor is given a drawing account.

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W. Va. Code §46A-2-131. No discharge or reprisal because of garnishment.

- ▶ No employer shall discharge or take any other form of reprisal against an employee for the reason that a creditor of the employee has subjected or attempted to subject unpaid earnings of the employee to garnishment or like proceedings directed to the employer for the purpose of paying a judgment arising from a consumer credit sale, consumer lease or consumer loan.

- ▶ “The fact that a wage withholding may create an inconvenience or embarrassment to the obligor is generally an insufficient reason to stay the execution of the withholding in the instance of a support obligor who is chronically late in making payments.”
 - ▶ *State ex rel., Stutler v. Watt*, 188 W. Va. 426, 430, 424 S.E.2d 771, 775 (1992)

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One at a time...

- ▶ “...Only one such execution shall be satisfied, at one time, except that in the event two or more such executions have been served and satisfaction of the one having priority is completed without exhausting the amount of the salary or wages then due and payable that is subject to suggestion under this article the balance of such amount shall be paid in satisfaction, in the order of their priority, of junior suggestee executions against such salary or wages theretofore served.”
 - ▶ WV Code §38-5A-3

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...But which one?

- ▶ Support Withholdings
- ▶ Child support withholdings take priority over all other garnishments against the same wages except federal tax liens. Only after satisfying the child support obligation (to the maximum allowed limit) may you honor the other wage attachments.
 - ▶ WV Code § 48-14-417

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- ▶ WV Consumer Credit Protection: (W. Va. Code Chapter 46A, Article 2)
- ▶ No garnishment governed by the provisions of this section will be given priority over a voluntary assignment of wages to fulfill a support obligation, a garnishment to collect arrearages in support payments, or a notice of withholding from wages of amounts payable as support, notwithstanding the fact that the garnishment in question or the judgment upon which it is based may have preceded the support-related assignment, garnishment, or notice of withholding in point of time or filing.

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§48-14-206. Priority over other legal process.

- ▶ Writs of execution, suggestions or suggestee executions issued pursuant to the provisions of this article shall have priority over any other legal process under the laws of this state against the same income, except for withholding from income of amounts payable as support in accordance with the provisions of section 14-401 of this chapter, and shall be effective notwithstanding any exemption that might otherwise be applicable to the same income.

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Support ▶ Withholdings

Under the West Virginia Domestic Relations Act


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Child Support Withholdings


- W. Va. Code § 48-14
- Enforced by the Bureau of Child Support
- Obligations following receipt of Notice of Withholding
- Different withholding amounts
- Bonuses


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Four basic responsibilities in the child support operation:

- 

REPORTING NEW HIRES AND RESPONDING TO EMPLOYMENT VERIFICATION REQUESTS,
- 

WITHHOLDING INCOME AND PREMIUMS FOR MEDICAL INSURANCE,
- 

SENDING PAYMENTS TO BCSE, AND
- 

REPORTING EMPLOYMENT TERMINATIONS WHEN THERE ARE EXISTING ORDERS.

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§48-1-202. Adjusted gross income

- ▶ "Adjusted gross income" means gross income less the payment of previously ordered child support, spousal support or separate maintenance.
- ▶ (b) A further deduction from gross income for additional dependents may be allowed by the court if the parent has legal dependents other than those for whom support is being determined.
- ▶ The term "legal dependents" means:
 - ▶ (1) Minor natural or adopted children who live with the parent; and
 - ▶ (2) Natural or adopted adult children who are totally incapacitated because of physical or emotional disabilities and for whom the parent owes a duty of support.

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§48-14-408. Determination of amounts to be withheld.

Notwithstanding any other provision of this code to the contrary which provides for a limitation upon the amount which may be withheld from earnings through legal process, the amount of an obligor's aggregate disposable earnings for any given workweek which may be withheld as support payments is to be determined in accordance with the provisions of this subsection, as follows:

As of January 2001, if no arrearage is owed or the arrearage has been owed for less than 12 weeks, the limit is:

- a. 40% of the obligor's disposable earnings if the obligor is supporting another spouse or other dependents; OR
- b. 50% of the obligor's disposable earnings if the obligor has no other spouse or dependents.

As of January 2001, if the arrearage is owed for twelve (12) weeks or more, the limit is:

- a. 45% of the obligor's disposable earnings if the obligor is supporting another spouse or other dependents; OR
- b. 55% of the obligor's disposable earnings if the obligor does not have another spouse or other dependents.

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Bonuses

- ▶ Withholding limitations do not apply to bonuses.
- ▶ §48-14-408(10)(A)
 - ▶ (10) Notwithstanding any other provision of this section, the Bureau for Child Support Enforcement may withhold not more than **fifty percent** of any earnings denominated as an employment-related bonus to satisfy an outstanding child support arrearage.
 - ▶ (A) **Two weeks** prior to issuing **any bonus equal to or in excess of \$100** to an employee or employees, an employer shall notify the Bureau for Child Support Enforcement, in a manner prescribed by the bureau, of the employee or employees' name, address, social security number, date of birth and amount of the bonus.
- ▶ Bonus checks should be reported to the Employer Relations unit electronically or by fax.
- ▶ An Income Withholding Notice/Order will be mailed or faxed informing you of the appropriate amount to be withheld on a case-by-case basis.

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Support Obligations From Other States?

- ▶ §48-16-502. Employer's compliance with income withholding order of another state.
 - ▶ (a) Upon receipt of an income withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor.
 - ▶ (b) The employer shall treat an income withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this state.
- ▶ (c) Except as otherwise provided in subsection (d) of this section and section 16-503 [§48-16-503], the employer shall withhold and distribute the funds as directed in the withholding order by complying with the terms of the order...
- ▶ An employer that complies with an income withholding order issued in another state in accordance with this article is not subject to civil liability to any individual or agency with regard to the employer's withholding of child support from the obligor's income. (W. Va. Code §48-16-504)

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Common Questions:

The Employee reports that the amount to be withheld is incorrect?

What if the employee says they want to pay it on their own?

Can you pre-pay in advance?

Can you withhold additional money if requested by employee?

Can we charge a fee for processing withholdings?

When must we submit the withholdings?

Can they be combined?

Do we need to report if an employee is terminated or receiving workers comp?

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Death of Employee

(a) In the event of the death of any party to a domestic relations support action, support payments or a refund of support payments due to the party by the obligee, obligor or the Bureau for Child Support Enforcement, not in excess of \$1,000, may, upon proper demand, be paid, in the absence of actual notice of the pendency of probate proceedings, without requiring letters testamentary or of administration in the following order of preference to decedent's:

- (1) Surviving spouse;
- (2) Children eighteen years of age and over in equal shares;
- (3) Father and mother, or survivor; and
- (4) Sisters and brothers.

(b) Payments under this section shall release and discharge the obligee, obligor or the Bureau for Child Support Enforcement to the amount of such payment.

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As for other potential withholdings, remember...

- ▶ W. Va. Code §18A-4-9 recently amended to provide:
- ▶ (6) No deductions or assignments of earnings shall be allowed for union, labor organization, or club dues or fees from the compensation of teachers and other employees covered by this section.

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Termination of Support Withholding

You must continue to withhold wages according to the Order/Notice to withhold until you are notified by the child support enforcement agency to change the amount being withheld or to stop withholding. Please advise the employee to contact the child support agency directly.

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Overtime & Hot Topic\$

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Fair Labor Standards Act (FLSA)

- ▶ The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, record keeping, and child labor standards affecting full-time and part-time workers in the private sector and in federal, state, and local governments.
- ▶ The FLSA requires that most employees in the United States be paid at least the federal minimum wage for all hours worked and overtime pay at time and one-half the regular rate of pay for all actual hours worked in excess of forty (40) hours in a workweek. In many cases, however, state statutes alter these requirements.

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Compensable Hours Worked

- ▶ Include:
 - ▶ all the time that an employee must be on duty;
 - ▶ all the time that an employee must be on the employer's premises;
 - ▶ all the time that an employee must be at any other prescribed place of work;
 - ▶ and any additional time that the employee is allowed (i.e., "suffered or permitted" to work).
- ▶ This includes the employee's primary and subsidiary duties, including extra-curricular and extra-duty assignments such as mid-day, evening and weekend bus trips for bus operators, coaching, performing duties at evening and weekend activities, and attending training conferences, workshops and meetings related to work.

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Sitler v. Boone County Board of Education

- ▶ Docket No. 00-03-353 (April 17, 2001)
 - ▶ Teachers are salaried, professional employees. As such, they are not entitled to overtime compensation for hours worked beyond their regularly scheduled workday

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Overtime, generally

- ▶ Generally, the FLSA requires that all non-exempt employees be compensated at one and one-half times their regular rate of pay for all actual hours worked in excess of 40. A workweek consists of seven consecutive 24-hour periods, i.e., 168 consecutive hours, designated by the employer.
- ▶ Time taken off work on paid or unpaid leave, including personal, sick, or military leave, vacation, time off without pay, jury duty, or other absences from work, whether approved or unapproved, outside school environment days, and days canceled due to inclement weather (snow days) is not counted as hours worked.

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Voluntary Overtime

- ▶ Employees who, with the knowledge or acquiescence of their employer, continue to work after their shift is over, albeit voluntarily, are engaged in compensable working time. The reason for the work is immaterial; as long as the employer “suffers or permits” employees to work on its behalf, proper compensation must be paid.
- ▶ West Virginia Code §18A-4-8(d) states that no service employee, **without his or her agreement**, may be required to report for work more than five days per week and no part of any working day may be accumulated by the employer for future work assignments, unless the employee agrees thereto.
- ▶ Employees cannot volunteer to perform their regular work duties off the clock and without compensation. Employees cannot waive the requirements of the FLSA.
- ▶ What about work on the weekends?

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Weekend Work

- ▶ West Virginia Code §18A-4-8(e) requires that an employee whose regular work week is scheduled from Monday through Friday and agrees to perform any work assignments on a Saturday or Sunday is to be paid for at least one-half day of work for each day he or she reports for work, and if the employee works more than three and one-half hours on any Saturday or Sunday, the employee is to be paid for at least a full-day of work.
- ▶ ONLY ACTUAL HOURS WORKED on a Saturday or Sunday need to be included in the overtime computations.
- ▶ The pay for hours not actually worked may be EXCLUDED from overtime, but must be paid at the employee's regular rate of pay.

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Waiting Time



- ▶ Whether waiting time is time worked under the FLSA or off duty time depends upon particular circumstances.
- ▶ “Engaged to wait” or “waited to be engaged”

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On Duty vs. Off Duty

- ▶ **ON DUTY:** Periods of time when an employee is performing duties for the benefit of his or her employer, whether the duties are performed on the employer's premises or elsewhere, are considered hours of work. On duty time may include periods of inactivity.
 - ▶ Examples:
 - ▶ A bus operator who is reading a newspaper while waiting for a football game to end in order to transport students back to school
 - ▶ a custodian who is knitting while waiting for a basketball game to end in order to clean the gymnasium
 - ▶ a maintenance worker who is watching television in the shop while waiting for a maintenance call are all working during their periods of inactivity
- = Engaged to wait

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On Duty vs. Off Duty

- ▶ **OFF DUTY:** Periods during which an employee is completely relieved from duty and which are long enough to enable him or her to use the time effectively for his or her own purposes are not hours worked, even if the employee is away from his or her normal work location overnight.
- ▶ **MUST BE TOLD IN ADVANCE**, otherwise, not completely relieved from duty
- ▶ Generally, the Department of Labor uses a minimum of 30 minutes
- ▶ Let's Compare:
 - ▶ If the bus operator for a school district is told in advance that upon arrival at the destination, he/she will be completely relieved from all duties until a specific time
 - ▶ If the bus operator who transports students on a school sponsored activity is not told in advance of a specific time when the activity will end, and therefore must wait until the activity ends to transport the students on the return trip, is working during the entire activity.

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Overnight Trips: Sleeping Period

- ▶ If the sleeping period is of more than eight hours, only eight hours will be credited. Where no expressed or implied agreement to the contrary is present, the eight hours of sleeping time and meal periods constitute hours worked.
- ▶ Where no expressed or implied agreement to the contrary is present, the eight hours of sleeping time and meal periods constitute hours worked.
- ▶ If the sleeping period is interrupted by a call to duty, the interruption must be counted as hours worked. If the period is interrupted to such an extent that the employee cannot get a reasonable night's sleep, the entire period must be counted.
- ▶ Department of Labor has adopted the rule that if the employee cannot get at least five hours' sleep during the scheduled period, the entire time is working time.

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Single Day Trips

- ▶ There is a difference between Service and Professional Personnel
- ▶ On single day trips of less than 24 hours duration, the entire day is counted as work time.
- ▶ Even if an employee is permitted to sleep during a portion of the trip, the entire trip is compensable working time.
- ▶ Allowing employees to sleep when they are not busy does not render the time "sleep time"; nor does the furnishing of facilities to sleep, as long as the employee is still on duty.
- ▶ Breaks?
 - ▶ County boards of education are not required to grant breaks in excess of the thirty-minute duty-free lunch during the workday, but if breaks are granted, they must be counted as hours worked.
 - ▶ Compensable time during rest periods may not be offset against other working time, including waiting time or on call time.

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Cole v. Putnam County Board of Education

- ▶ Docket No. 00-40-331 (March 2, 2001)
 - ▶ Field trips which occur between a bus operator's morning and evening run are within the employee's regular workday. As such, these field trips are not extra-duty assignments

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Overnight Field Trips

- ▶ Teachers are exempt employees
- ▶ Overnight field trip for FLSA purposes is merely an extension of their regular teaching duties.
- ▶ Aides and other service personnel are not exempt
- ▶ Aide must be paid one and one-half times his/her regular rate for any hours worked in excess of 40 hours during the workweek.
- ▶ On call? Sleep period?
- ▶ Can an aide volunteer to go on a trip unpaid? NO!

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Working Through Lunch?

- ▶ West Virginia Code §18A-4-14, however, requires that every teacher who is employed for more than one-half of the class periods of the regular school day and every service personnel who is employed for more than three and one-half hours each day be provided a daily lunch recess of at least 30 consecutive minutes
 - ▶ Not to be assigned any responsibilities during such recess, and the meal break must be included in the number of hours worked.
 - ▶ No county board may increase the number of hours to be worked as a result of the meal break.
 - ▶ The employee is not relieved if he or she is required to perform any duties, whether active or inactive, while eating.

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Extracurricular v. Extra Duty

- ▶ **Extra-curricular assignment:** As defined by West Virginia Code §18A-4-16, an extracurricular duty is any job assignment that occurs at times other than regularly scheduled working hours and which may include, but is not limited to, the instructing, coaching, chaperoning, escorting, providing support service or caring for the needs of students and which occur on a regularly scheduled basis.
 - ▶ shall be made only by mutual agreement of the employee and the superintendent, or designed representative, subject to board approval. A minimum rate of pay, however, is not specified for extra-curricular assignments.
- ▶ **Extra-Duty assignment:** As defined by West Virginia Code §18A-4-8b, an irregular job that occurs periodically or occasionally, such as, but is not limited to, field trips, athletic events, proms, banquets and band festival trips. Extra-duty pay is governed by West Virginia Code §18A-4-8a(9).

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Extracurricular assignments

- ▶ **An extracurricular assignment must be...**
 - ▶ Service or professional based upon the assignment, not the applicants
 - ▶ Independent of an employee's regular contract (with one exception we'll discuss in a minute)
 - ▶ Not conditioned on the regular contract
 - ▶ Memorialized in a written contract
 - ▶ Specifying the maximum hour of the assignment in each school year
 - ▶ Repetitive: regularly scheduled basis

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Coaching and other extracurricular compensation to consider

- ▶ Must consider the hours worked under BOTH contracts
- ▶ Keep an accurate record of all hours actually worked in a workweek by non-exempt employees, including the hours worked as coaches, and compute overtime based on a weighted average of the rates paid for each job.
- ▶ Are coaching stipends in compliance with FLSA when exclusively coaching?

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What about...

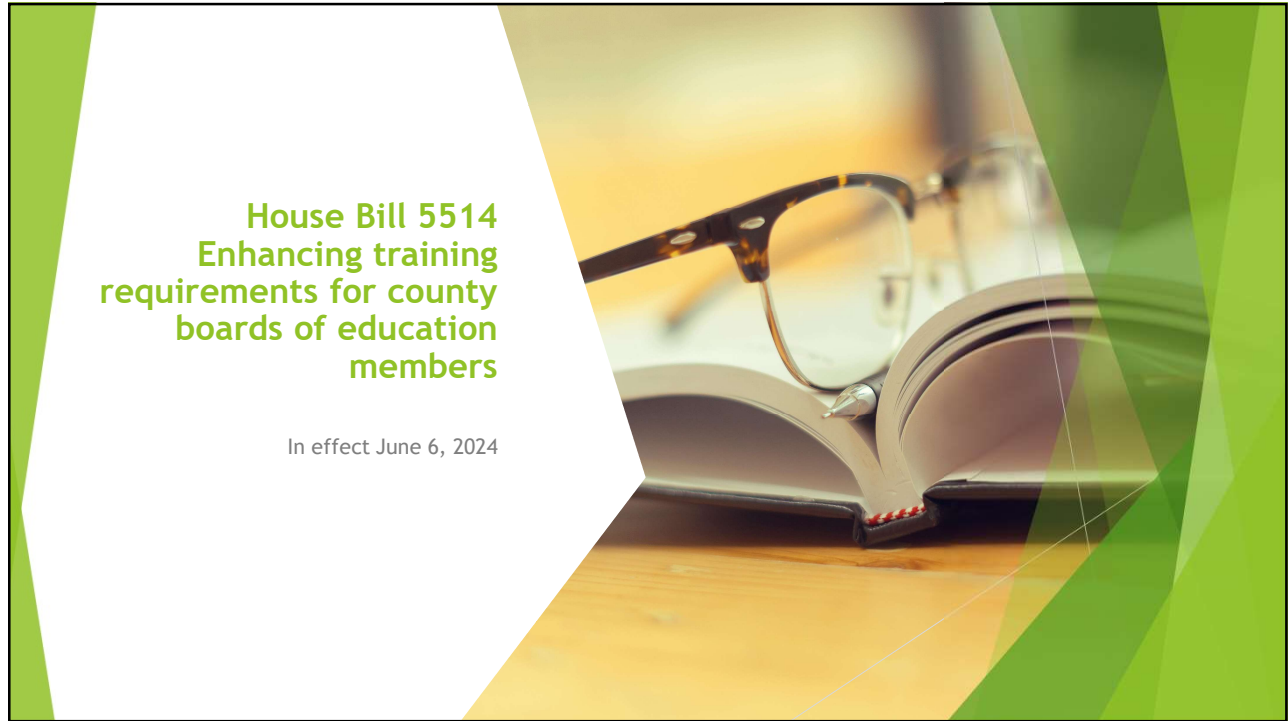
- ▶ A non-exempt secretary who calls for substitutes?
- ▶ Working from home?
- ▶ Volunteering to perform same duties?
- ▶ Compensatory time off instead o

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Compensatory Time Off Instead of Overtime?

- ▶ If there is a policy and agreement in place employee can be credited at one and a half hours per actual overtime hour worked, up to a total of 240 hours.
- ▶ Must be permitted to do so in a reasonable period of time after the request.
- ▶ West Virginia Code §21-5C-3(f)(5)(B) specifies that compensatory time must be used within one year after it is earned.

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**House Bill 5514
Enhancing training
requirements for county
boards of education
members**


In effect June 6, 2024

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Compensation

- 

Cap on allowable meeting pay = ~~\$160~~ \$260
- 

Cap on paid meetings per year = ~~50~~ 40
- 

Plus, members



May be paid for up to 5 more meetings held for certain purposes, e.g., personnel hearings, student expulsion hearings, school closing hearings, to cope with a disaster

Shall be paid for up to 2 trainings

May be paid for up to 12 meetings of multicounty center administrative councils on which they serve

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Compensation






$(40 \times \$260) + (5 \times \$260) + (2 \times \$260) > 50 \times \160

$\$12,220 > \8000

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Compensation

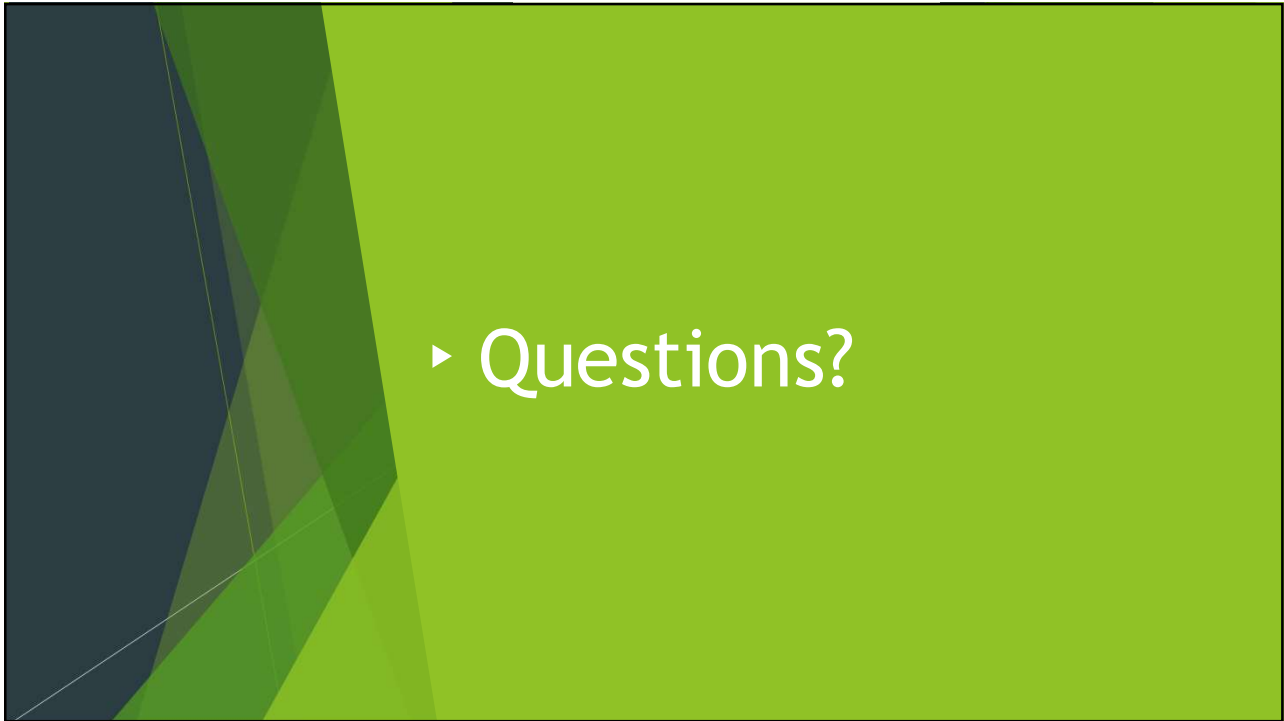


While in default of a training requirement, a member can receive no meeting pay

Upon completing unfulfilled training, must be paid for those meetings (without interest)

Failure to satisfy training requirements is still a ground for removal from office

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