



West Virginia

Human Resources Legal Fact Sheet

Disclaimer: This fact sheet summarizes state laws and regulations on a variety of human resource issues for dairy farms, including wages, paystubs, deductions, child labor and more. It is not intended to provide legal advice. The fact sheet is simply an overview of select issues with a high-level explanation of key requirements for each one, with links to more information and resources throughout the document. This fact sheet does not include all legal requirements for dairies. It was created in January 2019, and while it will be periodically updated, it may not reflect the current state of the law on every topic covered. Dairies should also review the federal fact sheet because employers—depending on size—may be required to comply with some or all of the applicable federal laws and regulations as well. By using this fact sheet you understand that there is no attorney-client relationship between you and the attorneys who were involved in developing the fact sheet. This fact sheet should not be used as a substitute for competent legal advice from a licensed attorney.

ARE THERE WEST VIRGINIA STATE LAWS PERTAINING TO DAIRY FARMS ABOUT:

HIRING

TOPIC	ANSWER	DETAILS
Notice of Payday / Pay Rate ¹	YES	Employers must <u>notify employees in writing</u> 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.
Reporting ²	YES	New hires and rehires must be reported to the <u>West Virginia New Hire Reporting Center</u> within 14 days after the employee is hired, rehired or returns to work.

WAGES

TOPIC	ANSWER	DETAILS
Payday ³	YES	<u>An employer must pay</u> employees at least twice a month, with no more than 19 days between paydays, unless otherwise agreed to by the employer and the employee. If an employee is absent from his regular place of labor and does not receive his wages, the employer must pay the wages due upon demand at the place where his wages are usually paid.
Final Pay ⁴	YES	Employees that have been <u>discharged or who have resigned</u> must be paid their wages in full on or before the next regular payday on which the wages would otherwise be due and payable.
Overtime ⁵	NO	West Virginia’s exempts employees employed in agriculture from the overtime wage requirements. Please refer to federal fact sheet for additional information.
Minimum Wage ⁶	NO	West Virginia’s exempts employees employed in agriculture from the minimum wage requirements. Please refer to federal fact sheet for additional information.

This fact sheet contains embedded hyperlinks. If you are viewing a printed copy, please refer to the FARM website at www.nationaldairyfarm.com for the online version to access the links.



WAGES

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TOPIC	ANSWER	DETAILS
Hours Worked ⁷	YES	West Virginia requires that employees be paid for all hours worked. Hours worked is defined to include all time during which an employee is necessarily required to be on the employer's premises on duty or at a prescribed workplace. It also includes all time an employee spends in physical or mental exertion under control or direction of his or her employer and any work not requested but allowed or permitted to be performed. Hours worked does not include time spent changing clothes or washing at the beginning or end of each workday, unless there is a contract, custom, or practice to the contrary or it is indispensable to the employees' work; time spent in walking, riding, or traveling to and from the place an employee's principal work activities will be performed; and time spent in activities prior to or after principal activities are performed
Pay Stub ⁸	YES	Employers must give employees an itemized statement of pay deductions made from their wages for each pay period.
Reporting Time Pay	NO	West Virginia law does not require reporting time pay, i.e., an employee is only required to be paid for actual hours worked.
Taxes and Withholding ⁹	YES	<p>West Virginia law requires employers to withhold state income taxes from the wages of residents and certain non-residents. Employers may calculate the amount that must be withheld from employees' paychecks using either the wage-bracket tables or the percentage method issued by the State Tax Department.</p> <p>Non-residents who live in Kentucky, Maryland, Ohio, Pennsylvania and Virginia are not subject to West Virginia withholding if they file Form IT-104, Certificate of Non-residence, with their employer.</p> <p>Agricultural employers must pay unemployment insurance taxes if the employer:</p> <ul style="list-style-type: none"> • <i>paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor during any calendar quarter in either the current or the preceding calendar year; or</i> • <i>employed ten or more individuals in agricultural labor, regardless of whether they were employed at the same moment of time, for some portion of a day in at least twenty different calendar weeks during either the current or the preceding calendar year</i> <p>More details.</p>
Deductions and Allowances ¹⁰	YES	<p>An employer may not withhold or deduct an employee's wages unless required to do so by law or agreed to by the employee. More information.</p> <p>Deductions required by law include federal, state and local income tax withholding; Federal Insurance Contribution Act (FICA) tax withholding; and court-ordered garnishments or other deductions.</p> <p>Permissible deductions include payments authorized by the employee for:</p> <ul style="list-style-type: none"> • <i>Union or club dues</i> • <i>Pension plans</i> • <i>Payroll savings plans</i> • <i>Credit unions</i> • <i>Charities</i> • <i>Hospitalization or medical insurance</i>
Bonuses ¹¹	YES	Employers are not required by West Virginia state law to provide their employees with any type of fringe benefit, including bonuses . However, when an employer chooses to implement a policy regarding bonuses that are based on measurable production and/or incentives that are capable of calculation and sets the terms and conditions for how that bonus is earned and paid in writing, that bonus become a collectable wage for any employee that is determined to have met those terms and conditions. Bonuses that are given as gifts that are not based on production or incentive measures are not covered under the West Virginia Division of Labor.

RECORD KEEPING

TOPIC	ANSWER	DETAILS
Payroll ¹²	YES	An employer must keep and preserve at his place of business for a period of two years, a written record or records for each employee of: <ul style="list-style-type: none"> • <i>Name and address;</i> • <i>Rate of pay;</i> • <i>Hours of employment;</i> • <i>Payroll deductions; and</i> • <i>Amount paid for each pay period.</i>
Personnel File — Employee Access	NO	West Virginia does not have a law on access to personnel files that applies to private employers.
Unemployment Insurance ¹³	YES	Employers are required to file quarterly wage and tax reports by the last day of the month following the end of each calendar quarter. Electronic filing is optional in West Virginia. Employers are required to keep specific payroll records for state unemployment insurance purposes for four years.
Workers' Compensation ¹⁴	YES	Injury and illness records are not explicitly required for employers under West Virginia's Workers' Compensation law. However, there are recordkeeping requirements under OSHA. Also, every employer is required to post a notice upon its premises in a conspicuous place identifying its workers' compensation insurer. The notice must include the name, business address and telephone number of the insurer and of the person to contact with questions about a claim. The employer shall at all times maintain the notice provided for the information of his or her employees.
OSHA	YES/NO	West Virginia has incorporated the federal standard for OSHA recordkeeping and reporting. Refer to the federal fact sheet.
Federal	YES/NO	There are numerous federal rules about recordkeeping. Employers should review the federal fact sheet.

WORKING CONDITIONS

TOPIC	ANSWER	DETAILS
Bathrooms ¹⁵	YES	West Virginia has incorporated the federal Pasteurized Milk Ordinance (PMO). The PMO specifies that dairy farms have one or more toilets that are conveniently located, properly constructed, properly operated, and maintained in a sanitary manner.
Working Hours	NO	West Virginia law does not limit the number of hours or days that an adult can work.
Rest and Meal Breaks ¹⁶	YES	Employees working 6 or more hours are entitled a meal period of at least 20 minutes, at times reasonably designated by the employer. The meal period requirement does not apply where employees are otherwise afforded necessary breaks or are permitted to eat while working. Meal periods of 30 minutes or more may be treated as non-working time. Rest periods of 20 minutes or less must be treated as compensable time.
Labor Relations	NO	No provision in state law recognizing farm worker rights to organize.
Whistleblower Protection	YES/NO	West Virginia law does not provide a general protection for private sector employees in whistleblower cases. However, topic-specific laws (like wage discrimination, wage laws, etc.) may protect employees that report unlawful practices. And specific employee disclosures (for example, OSHA-related violations) are protected from retaliation.

WORKING CONDITIONS

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TOPIC	ANSWER	DETAILS
Paid Sick and Vacation Leave	NO	West Virginia law does not require <u>paid sick or vacation leave</u> . Employers who choose to provide such benefits must follow their written policy/contract.
Breaks for Nursing Mothers	YES/NO	West Virginia law does not address workplace accommodations for employees that are nursing, but there may be requirements under federal law. Employers should refer to the federal fact sheet.
Pregnancy Accommodations and Leave ¹⁷	YES	West Virginia employers with 12 or more employees must make a reasonable accommodation to the known limitations related to pregnancy, childbirth or related medical conditions for a job applicant or employee. Similarly, employers may not refuse to hire applicants where that refusal is based on the employer's unwillingness to make reasonable accommodations due to pregnancy, childbirth, or related medical conditions. However, employers who demonstrate that the accommodation would impose an undue hardship on the operation of the business may be exempt from this requirement.
Family and Medical Leave	YES/NO	West Virginia law does not have a state specific family and medical leave law, but there are such requirements under the federal law (FMLA). Employers should refer to the federal fact sheet.
Military and other Service Leave	YES/NO	West Virginia law does not have a state specific military leave law for private employers, but there are such requirements under federal law (USERRA). Employers should refer to the federal fact sheet.
Crime Victim and Witness Leave	NO	West Virginia law does not address leave for crime victims or witnesses for private sector employees.
Jury Duty Leave ¹⁸	YES	Employers must excuse employees for the day(s) they <u>are on jury duty</u> . Any employee terminated in violation of the law may be entitled to reinstatement, back pay and attorneys' fees. West Virginia law also prohibits an employer from terminating or threatening to terminate, discriminating against or threatening to decrease the regular compensation of an employee because he or she has been summoned for or is absent because of jury duty.
Voting Leave ¹⁹	YES	Employees may take voting leave for up to three hours between the opening and closing of the polls on election day, provided they have given 3 days' notice.
School Activity Leave	NO	West Virginia law does not address leave for private sector employees to attend a child's school activity.

CHILD LABOR

TOPIC	ANSWER	DETAILS
Child Labor	NO	West Virginia child labor laws do not apply to minors employed in agricultural work. Federal rules apply; refer to the federal fact sheet.

HUMAN RIGHTS

TOPIC	ANSWER	DETAILS
Employment Discrimination ²⁰	YES	<p>The West Virginia Human Rights Act (WVHRA) prohibits employment discrimination based on race, color, religion, sex, age 40 and above, national origin, ancestry, blindness, mental or familial status. Applies to employers with 12 or more employees in West Virginia for 20 or more calendar weeks in either the calendar year in which the discriminatory act took place or the preceding calendar year. The WVHRA establishes a cause of action against individual persons, including supervisors, who aid and abet in unlawful discrimination.</p> <p>West Virginia law also prohibits employers and their agents from refusing to hire an individual, discharging any employee, or otherwise disadvantaging or penalizing any employee regarding compensation, terms, conditions or privileges of employment solely because the individual uses tobacco products off the employer’s premises during nonworking hours.</p>
Harassment/ Sexual Harassment ²¹	YES	<p>The WVHRA prohibits harassment. It provides employees the right to work in an environment free from discriminatory intimidation, ridicule or insult. Harassment of a person because of their membership in any of the protected classes covered by the WVHRA, including sex, is unlawful.</p> <p>Sexual harassment is unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when either:</p> <ul style="list-style-type: none"> • <i>Submission to or rejection of that conduct is explicitly or implicitly a term or condition of an individual’s employment, or is exchanged for job benefits.</i> • <i>Submission to or rejection of that conduct by an individual is used as a basis for employment decisions affecting that individual.</i> <p>The conduct is intended to or does unreasonably interfere with an individual’s work performance, or creates an intimidating, hostile or offensive working environment.</p> <p>Other hostile or physically aggressive behavior based on gender may also constitute sexual harassment.</p>
Forced Labor ²²	YES	<p>Human trafficking is illegal in West Virginia. Trafficking for forced labor means labor or services that are performed or provided by another person and are obtained or maintained through the following:</p> <ul style="list-style-type: none"> • <i>Threat, either implicit or explicit, deception or fraud, scheme, plan or pattern or other action intended to cause a person to believe that, if the person did not perform or provide the labor or services, that person or another person would suffer serious bodily harm, physical restraint or deportation;</i> • <i>Physically restraining or threatening to physically restrain a person;</i> • <i>Abuse or threatened abuse of the legal process; or</i> • <i>Destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document of another person: Provided that “forced labor” does not mean labor or services required to be performed by a person in compliance with a court order or as a required condition of probation, parole, or imprisonment.</i> <p>“Human trafficking,” “trafficking,” or “traffics” means knowingly recruiting, transporting, transferring, harboring, receiving, providing, obtaining, isolating, maintaining or enticing an individual to engage in debt bondage, forced labor or sexual servitude.</p> <p>Employers should ensure they are carefully following all visa requirements or work agreements to avoid any inadvertent violations.</p>

HEALTH AND SAFETY

TOPIC	ANSWER	DETAILS
Workers' Compensation ²³	YES	<p>Agricultural employers with more than 5 employees must have <u>workers' compensation coverage</u>. The offices of Insurance Commissioner of West Virginia handles the rules of practice and procedure regarding workers' compensation. Every employer has a continuous and ongoing duty to maintain current information with its current private carrier about the employer's business activities, including all information that could affect the employer's payroll or premium. Each employer has a duty to report the entire payroll of all employees to its private carrier. The private carrier may make its own initial decision regarding the determination of all issues relevant to the classification of employees, rates and payroll.</p> <p>More information and links to forms.</p>
OSHA	YES/NO	West Virginia does not have an approved OSHA "state plan." West Virginia is under federal OSHA jurisdiction which covers most private sector workers within the state.
Housing	YES/NO	West Virginia law does not explicitly address standards for farm-provided permanent agricultural housing, though general landlord/tenant or public health laws may apply. Employers should follow best practices when providing housing – which includes, at minimum, a written housing agreement and properly maintaining the facilities. The FARM HR Manual has guidance around best practices for agricultural worker housing.

References

1. West Virginia Code §21-5-9
2. West Virginia Code §48-18-125
3. West Virginia Code §21-5-3.
4. West Virginia Code §21-5-4.
5. West Virginia Code §21-5C-1(f)(11)
6. West Virginia Code §21-5C-1(f)(11)
7. West Virginia Code §21-5C-1(h); West Virginia Admin. Code §21-2C-9.1-9.6.
8. West Virginia Code §21-5-9
9. West Virginia Code § 11-21-3 et seq.; W. Va. Code § 21A-1A-1 et seq.
10. West Virginia Code §21-5-1, §21-5-3.
11. West Virginia Code §21-5-1.
12. West Virginia Code §21-5C-5
13. West Virginia Code § 21A-1-1, et. seq.
14. West Virginia Code § 23-2C-15(c)
15. West Virginia Code §19-11A-1.
16. West Virginia Code Ann. §21-3-10a; West Virginia Code R.§42-8-11.
17. West Virginia Code §5-11B-2; §5-11B-2; West Virginia C.S.R. §77-10-2
18. West Virginia Code §52-3-1-1, §61-5-25a
19. West Virginia Code §3-1-42
20. West Virginia Code §5-11-2; §5-11-3; and §5-11-9; §21-3-19(a)
21. West Virginia Code §5-11-2; §5-11-9; W. V. C.S.R. §77-4-1; §77-4-2; §77-4-2.2; §77-4-2.5.
22. West Virginia Code §61-14-1
23. W. Va. Code St. R. § 85-8-1 et. seq.