



Human Resources Legal Fact Sheet: West Virginia

Updated December 2023

Disclaimer: This factsheet 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 factsheet 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 factsheet does not include all legal requirements for dairies. It was created in December 2023, 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 factsheet 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 factsheet you understand that there is no attorney-client relationship between you and the attorneys who were involved in developing the factsheet. This factsheet should not be used as a substitute for competent legal advice from a licensed attorney.

Are there West Virginia state laws for dairy farms about the following?

Hiring

Topic	Answer	Summary
Notice of Payday / Pay Rate ¹	YES	Employers must 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.
Reporting ²	YES	New hires and rehires must be reported to the West Virginia New Hire Reporting Center within 14 days after the employee is hired, rehired, or returns to work. Employers must also report within 14 days the hiring or rehiring of all independent contractors who receive compensation or execute a contract for services performed when payment for services equals or exceeds \$2,500.00 in any year, whichever is earlier.

Wages

Topic	Answer	Summary
Payday ³	YES	An employer must pay employees at least twice a month, with no more than 19 days between paydays, unless granted a special agreement by the Commissioner of Labor to pay less frequently. 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 discharged or who have resigned 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. Those employees who are not employed in agriculture, as defined by the Fair Labor Standards Act (“FLSA”), are entitled to a minimum wage of \$8.75 per hour so long as there are six or more non-exempt employees at any one separate, distinct and permanent work location.
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



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		<p>of his or her employer and any work not requested but allowed or permitted to be performed. However, there are certain exceptions and employers are required to pay employees for:</p> <ul style="list-style-type: none"> • time an employee spends changing clothes or washing, when such activities are required by law or by the employer for safety, decontamination or production reasons; • time spent on-call or where the employee is engaged to wait by employer (see reporting time section below); • time spent attending or preparing for employer required training sessions, meetings, or lectures, including travel time.
Reporting Time Pay ⁸	YES	If an employee has been engaged to wait by an employer, the employer shall include the time the employee is engaged to wait as compensable time.
Pay Stub ⁹	YES	Employers must give employees an itemized statement for each pay period that includes the employee's hourly rate of pay or salary, the number of hours for which the employee is being paid, the overtime rate of pay, if applicable, bonus and incentive pay, if applicable, and itemized deductions.
Taxes and Withholding ¹⁰	YES	<p>West Virginia law requires employers to withhold state income taxes from the wages of residents and certain nonresidents. 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>Employees who reside in Kentucky, Maryland, Ohio, Pennsylvania, Virginia or who are a Military Spouse exempt from income tax on wages are not subject to West Virginia withholding if they file Form IT-104, Certificate of Nonresidence, with their employer.</p> <p>Agricultural employers must pay unemployment insurance taxes if the employer:</p> <ol style="list-style-type: none"> 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 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
Deductions and Allowances ¹¹	YES	<p>An employer may not withhold or deduct an employee's wages unless required to do so by law or court order or agreed to by the employee. If agreed to by the employee, employers must obtain the employee's written notarized consent before taking any other type of payroll withholdings. The employee's consent must include a completed "Assignment of Future Wages Form," which is available on the West Virginia Division of Labor website.</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>



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		<p>Permissible deductions include payments authorized by the employee for:</p> <ul style="list-style-type: none"> • Union or club dues • Pension plans • Payroll savings plans • Credit unions • Charities • Hospitalization or medical insurance <p>When permissible by law, an employer may withhold, deduct, or divert an employee's final wages to recover the replacement costs of non-returned employer provided property without use of a wage assignment form.</p>
Bonuses ¹²	YES	<p>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.</p>

Recordkeeping

Topic	Answer	Summary
Payroll ¹³	YES	<p>State law requires an employer to keep and preserve at its place of business for a period of two years, a written payroll record or records for each employee that include the name and address of each employee, rate of pay, hours of employment, payroll deductions, amount of net pay for each pay period, and documentation of employee's legal status of authorization to work for at least two years.</p> <p>Note, FLSA requires employer to keep payroll records that include additional information for at least three years.</p>
Personnel File – Employee Access	NO	<p>West Virginia does not have a law on access to personnel files that applies to private employers.</p> <p>Note, EEOC Regulations require that employers keep all personnel or employment records for one year. If an employee is involuntarily terminated, their personnel records must be retained for one year from the date of termination.</p>
Unemployment Insurance ¹⁴	YES	<p>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.</p>
Workers' Compensation ¹⁵	YES	<p>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</p>



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		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	West Virginia has incorporated the federal standard for OSHA recordkeeping and reporting. Refer to the federal factsheet.
Federal	YES / NO	There are numerous federal rules about recordkeeping. Employers should review the federal factsheet.

Working Conditions

Topic	Answer	Summary
Bathrooms ¹⁶	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 ¹⁷	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. West Virginia law does not require rest breaks. If, however, an employer allows employees to take rest breaks, those breaks must be paid unless they are more than 20 minutes long.
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.
Paid Sick and Vacation Leave	NO	West Virginia law does not require paid sick or vacation leave . However, when an employer chooses to provide such benefits that employer is responsible for establishing a written policy outlining how those benefits are earned and paid.
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 factsheet.
Pregnancy Accommodations and Leave ¹⁸	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.



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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 factsheet.
Military and other Service Leave ¹⁹	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 factsheet. Employers must provide up to a maximum of ten days per calendar year of unpaid Civil Air Patrol leave to an employee training for an emergency mission and up to a maximum thirty days per calendar year of leave to an employee responding to an emergency mission.
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 ²⁰	YES	Employers must excuse employees for the day(s) they are on jury duty . 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 ²¹	YES	Employees may take paid 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. However, an employee will not be eligible for paid voting leave if he or she has three or more hours of non-work time when the polls are open (although an employer may choose to provide the employee with unpaid time to vote).
School Activity Leave	NO	West Virginia law does not address leave for private sector employees to attend a child's school activity.
Volunteer Firefighter and Emergency Medical Service Leave ²²	YES	An employer may not terminate or discipline an employee who is a member of a volunteer fire department or is an emergency medical service attendant for being late or absent from work due to responding to an emergency. Time missed from work is unpaid unless the employee requests use of available accumulated leave. An employer also may not terminate an employee who is a member of an emergency medical service who misses work time due to responding to an emergency. Time missed from work is unpaid. In both cases, employers may request documentation for the emergency leave.

Human Rights

Topic	Answer	Summary
Employment Discrimination ²³	YES	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



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		<p>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>
<p>Harassment / Sexual Harassment²⁴</p>	<p>YES</p>	<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"> • 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. • Submission to or rejection of that conduct by an individual is used as a basis for employment decisions affecting that individual. <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>
<p>Forced Labor²⁵</p>	<p>YES</p>	<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> <ol style="list-style-type: none"> A. 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; B. Physically restraining or threatening to physically restrain a person; C. Abuse or threatened abuse of the legal process; or D. 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: <p>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.</p>



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“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.

Employers should ensure they are carefully following all visa requirements or work agreements to avoid any inadvertent violations.

Child Labor

Topic	Answer	Summary
Child Labor ²⁶	YES	A child under fourteen years of age is not permitted to work agriculture and horticulture jobs which have not been declared hazardous by the secretary of the United States department of labor. Federal rules apply; refer to the federal factsheet.

Health and Safety

Topic	Answer	Summary
Workers Compensation ²⁷	YES	Agricultural employers with more than 5 employees must have workers' compensation coverage . 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. More information and links to forms.
OSHA	YES	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.

¹ West Virginia Code §21-5-9

² West Virginia Code §48-18-125

³ West Virginia Code §21-5-3; West Virginia Code State R. §§42-5-7, 42-5-8.

⁴ West Virginia Code §21-5-4.

⁵ West Virginia Code §21-5C-1 (f)(11); 29 Federal Code of Regulations §780 *et al.*

⁶ West Virginia Code §21-5C-1 (f)(11); FLSA §13(a)(6); ; 29 Federal Code of Regulations §780.300.

⁷ West Virginia Code §21-5C-1(h); West Virginia Code State R.§ 42-8-11.

⁸ West Virginia Code State R.§ 42-8-11.6

⁹ West Virginia Code §21-5-9; West Virginia Code State R. § 42-5-7



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¹⁰ West Virginia Code § 11-21-3 *et seq.*; West Virginia. Code § 21A-1A-1 *et seq.*

¹¹ West Virginia Code §21-5-1, §21-5-3.

¹² West Virginia Code §21-5-1.

¹³ West Virginia Code §21-5C-5; West Virginia Code State R.§ 42-5-5

¹⁴ West Virginia Code § 21A-1-1, *et. seq.*

¹⁵ West Virginia Code § 23-2C-15(c)

¹⁶ West Virginia Code §19-11A-1.

¹⁷ West Virginia Code. §21-3-10a; West Virginia Code State R.§ 42-8-11.

¹⁸ West Virginia Code §5-11B-2; West Virginia C.S.R. §77-10-2

¹⁹ West Virginia Code §15-1K-5.

²⁰ West Virginia Code §52-3-1; §61-5-25a

²¹ West Virginia Code §3-1-42

²² West Virginia Code §21-5-17.

²³ West Virginia Code §5-11-2; §5-11-3; and §5-11-9; §21-3-19(a)

²⁴ West Virginia Code §5-11-2; §5-11-9; West Virginia Code State R. §77-4-1; §77-4-2; §77-4-2.2; §77-4-2.5.

²⁵ West Virginia Code §61-14-1

²⁶ West Virginia Code § 21-6-1 *et seq.*

²⁷ West Virginia. Code State R. § 85-8-1 *et. seq.*