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June 4, 2018

Andy Gallagher, Executive Director
West Virginia Housing Institute
P.O. Box 2182
Charleston, WV 25328

Re: Employer Provided Property

Dear Andy:

This letter is to provide the Association and its members two documents: (1) a cover letter to use at the time of employee separation, when applicable, and (2) an agreement to use which is consistent with amended code West Virginia Code §21-5-1 and -4. Specifically, this enclosed agreement allows an employer to deduct from an employee's final paycheck the replacement cost of "employer provided property" if the property is not returned by the employee.

I do wish to point out a few items about the new statute. Specifically, this form, and the law, only applies to employer provided property that has a value in excess of \$100.00. Consequently, if the property provided does not have value in excess of \$100.00, you cannot deduct any amount from the final paycheck. The statute is ambiguous as to whether the \$100.00 is per piece of property or a combined total of \$100.00.

Generally, this agreement must be signed at the time the property is provided to the employee. If different pieces of employer provided equipment is provided over the course of the employee's tenure, I would recommend using separate forms listing that particular item(s) provided. The statute does allow for this agreement to be used to cover property which has already been provided to the employee.

Although not specifically defined in the enclosed cover letter or the form, the term "employer provided property," means "all property provided to an employee for use in the employer's business, including, but not limited to, equipment, phone, computer, supplies, or uniforms. The term "replacement cost" means actual cost paid by the employee for the employer provided property, or for the same or similar property, if the original employer provided property

no longer exists. In calculating this replacement cost, any vendor discounts should be taken into consideration.

If the employee objects to the amount of the replacement cost being deducted, the employer must hold the amount in dispute in an interest bearing escrow account. If a civil action or equitable relief is not brought by the employee for this claimed amount within three (3) months, then the employee forfeits the amount in the escrow account and such money reverts to the employer.

This new section does not limit any other legal remedy available to the employer for the employee's failure to return the employer provided property.

Importantly, the legislative changes did not change the timing of the last paycheck. If an employee is terminated, the statute still states that the employer must pay the employee by the next regular payday in which the wages would otherwise be due and payable. This can be potentially problematic if the employee only returns the employer provided property on that last day and the employer is trying to determine the correct amount for the last paycheck.

Consequently, the employer is going to be required to exercise some flexibility on how this transfer back of employer provided property is handled in order to meet the employer requirement to pay the employee by the next regular payday. I would recommend a practice that when the employee is terminated, quits or resigns, that arrangements are made for the equipment to be returned as soon as possible to allow the employer sufficient time to determine the proper amounts to include on the last pay check.

Please note that payments on the last regular payday may be made in any matter permissible through regular pay channels, or if requested by the employee, by mail. If the employee requests his last pay check to be made by mail, the payment shall have been considered to have been made on the date that the mail payment is postmarked. I have seen issues arise in which an employee receives direct deposit, but for some reason, a final paycheck is mailed and litigation can result on whether the employee was timely paid. If an employee requests their final payment by mail, confirm in writing or have the employee draft a short note stating the same.

The letter attached is to be provided to the employee at the time of discharge or resignation either by personal service, or via certified mail, with return receipt requested. Consequently, this should be done at the time of meeting with the employee to be discharged or separating employment. This will allow sufficient time for the employer to determine the proper amount for a final paycheck

Andy Gallagher, Executive Director

June 4, 2018

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I am sure our members will have questions and I encourage you to have them call me to clarify.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Johnnie E. Brown". The signature is fluid and cursive, with a long horizontal stroke at the end.

JOHNNIE E. BROWN

JEB/kep

Enclosures