

# Employment Claims in Release Agreements: West Virginia

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A Q&A guide to release of claims agreements for private employers in West Virginia. This Q&A addresses statutory and common law claims that may be released in a valid and enforceable written agreement, as well as employment claims or specific contract language that should be included or excluded. Federal, local, or municipal law may impose additional or different requirements. Answers to questions can be compared across a number of jurisdictions (see Employment Claims in Release Agreements: State Q&A Tool).

## Employment Claims That Should Be Released

### 1. What state-specific employment-based claims (statutory and common law) should be included in a release of claims agreement?

West Virginia law does not require a release of claims agreement to contain particular statutory or common law employment claims for the release to be effective for those claims.

A release of claims agreement in West Virginia generally includes a non-exhaustive list of specific types of claims released, including statutory and common law claims. Inclusion of any particular claim is a strategic decision based on the risk associated with each particular employer and employee.

### Common Law Claims

Common law claims frequently listed as examples of types of claims released include:

- Breach of implied or express contract.
- Breach of the implied covenant of good faith and fair dealing.
- Libel.
- Slander.

- Defamation.
- Invasion of privacy.
- Wrongful discharge or termination.
- Retaliatory discharge or termination in violation of public policy.
- Constructive discharge or termination.
- Intentional infliction of emotional distress or tort of outrage.
- Negligent infliction of emotional distress.

### Statutory Claims

The statutory claim most frequently listed as an example of claims released is a claim for violation of the West Virginia Human Rights Act (W. Va. Code §§ 5-11-1 to 5-11-20), which applies to employers with 12 or more employees and prohibits discrimination based on:

- Race.
- Color.
- Sex.
- Pregnancy, childbirth, and pregnancy-related conditions under the Pregnant Workers' Fairness Act (W. Va. Code § 5-11B-2(1)).
- Age (40 or older).
- Religion.
- National origin.

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- Ancestry.
- Blindness.
- Disability.

(W. Va. Code §§ 5-11-2, 5-11-3(d), and 5-11-9.)

Any release or waiver of claims under the West Virginia Human Rights Act must be knowing and voluntary (W. Va. C.S.R. § 77-6-3).

For a waiver of claims under the West Virginia Human Rights Act to be knowing and voluntary, all of these conditions must be met:

- The waiver is part of an agreement between the individual and the employer that is written:
  - in plain English; and
  - in a matter calculated to be understood by the average person with a similar educational and work background.
- The waiver:
  - specifically refers to rights or claims arising under the West Virginia Human Rights Act; and
  - does not extend to rights or claims arising after the waiver is executed.
- The individual:
  - waives a right only in exchange for consideration that is in addition to anything of value to which the individual is already entitled;
  - is advised in writing to consult with an attorney before executing the agreement, and receives the West Virginia State Bar Association's toll-free telephone number;
  - is given at least 21 days to consider the agreement; and
  - may revoke the agreement in writing for a period of at least seven days after execution, and the agreement does not become effective or enforceable until after the revocation period has expired.

(W. Va. C.S.R. § 77-6-3(3.2).)

If an individual who has filed a complaint under the West Virginia Human Rights Act enters into a release of claims with the direct assistance of an attorney who has entered an appearance on the individual's behalf, the release may be considered to be knowing and voluntary, without the requirement for the individual:

- To be advised in writing to consult with an attorney and receive the West Virginia Bar Association's telephone number.
- To have at least 21 days to consider the agreement.
- To have at least seven days to revoke the agreement in writing.

(W. Va. C.S.R. § 77-6-3(3.3).)

Other statutory claims that may be listed in a release of claims agreement include claims for violations of:

- The West Virginia Workers' Compensation Act Discriminatory Practices law, which prohibits employers from discriminating against current or former employees because of the receipt or attempted receipt of workers' compensation benefits. The law also requires reinstatement and preferential recall rights in certain situations. (W. Va. Code §§ 23-5A-1 to 23-5A-4.)
- W. Va. Code § 6-5-11, which prohibits discrimination based on legislative service.
- W. Va. Code § 21-3-19, which prohibits discrimination, refusal to hire, or discharge of an employee because of an employee's use of tobacco products off the employer's premises during non-working hours.
- The West Virginia Minimum Wage and Maximum Hours Act, which provides for the payment of minimum wages and overtime compensation (W. Va. Code §§ 21-5C-1 to 21-5C-11).
- The West Virginia Equal Pay for Equal Work Act, which prohibits wage discrimination based on sex and discrimination against employees for making complaints or testifying in proceedings under the Act, or both (W. Va. Code §§ 21-5B-1 to 21-5B-6).
- The West Virginia Consumer Credit and Protection Act, which prohibits an employer from discharging or retaliating against an employee because a creditor subjects or attempts to subject the employee's unpaid earnings to garnishment or like proceedings to pay a judgment arising from a consumer credit sale, consumer lease, or consumer loan (W. Va. Code § 46A-2-131).
- W. Va. Code § 52-3-1, which prohibits discrimination against an employee who receives a summons for jury duty, misses work to respond to a summons for jury duty, or serves on a jury.
- W. Va. Code § 21-5H-1, which prohibits employers from accessing an employee's or applicant's social media accounts.

### Employment Claims That Should Never Be Included in a Release Agreement

**2. Certain employment-based claims are never permitted to be released under law and can invalidate an otherwise valid release agreement if included. Please identify any of these claims in your state.**

In West Virginia, the three types of employment-based claims that cannot be released or waived by agreement are:

- Unemployment compensation benefits under the West Virginia Unemployment Compensation Act (W. Va. Code §§ 21A-1-1 to 21A-11-1). An employee cannot agree to waive, release, or diminish their rights under the Act (W. Va. Code § 21A-10-1).
- Rights under the West Virginia Wage Payment and Collection Act (W. Va. Code §§ 21-5-1 to 21-5-18). No agreement may waive, release, or contravene an employee's rights under this law (W. Va. Code § 21-5-10).
- Compensation under the West Virginia Workers' Compensation Act (W. Va. Code §§ 23-1-1 to 23-6-3). This law prohibits:
  - agreements to waive an employee's workers' compensation rights; and
  - final settlements of a claim for medical benefits for non-orthopedic occupational disease claims, when the claimant is not represented by legal counsel.(W. Va. Code §§ 23-2-7 and 23-5-7.)

Including these claims in a release agreement could invalidate an otherwise valid release.

### Employment Claims That May Be Included in a Release of Claims Agreement Under Certain Circumstances

**3. Certain employment claims may be included in a release of claims agreement without invalidating the agreement under certain circumstances (for example, Fair Labor Standards Act claims can be validly released if approved by the Department of Labor or a court). Please identify any of these claims in your state.**

In West Virginia, there are no specific employment claims that may only be released under certain circumstances.

### Waiver of Employment Agency Complaints

**4. Please identify any state governmental agencies in your state that oversee the administration of state employment laws and indicate whether complaints to those agencies may be validly waived in a release of claims agreement.**

The [West Virginia Department of Health and Human Resources](#), through the West Virginia Human Rights Commission, oversees the administration of the West Virginia Human Rights Act (W. Va. Code § 5-11-3(b)). There are no statutory provisions against waiving claims under the Act, but any waivers must be knowing and voluntary (W. Va. C.S.R. § 77-6-3; see Question 1: Statutory Claims).

The [West Virginia Workers' Compensation Board of Review](#) administers the West Virginia Workers' Compensation Act (W. Va. Code §§ 23-5-8a, 23-5-8b, and 23-5-11a(a); see Question 2).

[WorkForce West Virginia](#) oversees the administration of the West Virginia Unemployment Compensation Act (W. Va. Code § 21A-1-4; see Question 2).

The [West Virginia Division of Labor](#) administers the West Virginia:

- Wage Payment and Collection Act (W. Va. Code §§ 21-5-1(d) and 21-5-11(a); see Question 2).
- Minimum Wage and Maximum Hours Act (W. Va. Code §§ 21-5C-1(a) and 21-5C-6(a)).
- Equal Pay for Equal Work Act (W. Va. Code § 21-5B-2).

### Other Issues for Release Agreements

**5. Please describe any other issues particular to your state that should be considered when drafting an enforceable release agreement.**

There are no other issues particular to West Virginia that should be considered when drafting an enforceable release agreement in the employment context. In practice, counsel should include in any release agreement

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language advising the employee to contact an attorney and providing the phone number to the [West Virginia State Bar](#).

Some municipalities in West Virginia have ordinances prohibiting discrimination based on sexual orientation. An employer may want to include a waiver and release of a sexual orientation claim in its release agreements.

### State Claims Release Paragraph

**6. Please provide a paragraph that can be inserted into a separation and release of claims agreement identifying all state-specific claims (statutory and otherwise) that can be released in your jurisdiction.**

#### List of Claims

This is a list of West Virginia claims only. For jurisdiction-neutral release language, see [Standard Document, Separation and Release of Claims Agreement](#).

West Virginia Human Rights Act, West Virginia Workers' Compensation Act Discriminatory Practices law, West Virginia Code Sections 6-5-11 (prohibiting discrimination based on legislative service), 21-3-19 (prohibiting discrimination, refusal to hire, or discharge of an employee for tobacco product use), 21-5H-1 (prohibiting employer access to employee's social media accounts), and 52-3-1 (prohibiting discrimination and discharge for an employee responding to a jury summons), West Virginia Minimum Wage and Maximum Hours Act, West Virginia Equal Pay for Equal Work Act, West Virginia Consumer Credit and Protection Act, West Virginia Pregnant Workers' Fairness Act, breach of implied or express contract, breach of implied covenant of good faith and fair dealing, libel, slander, defamation, invasion of privacy, wrongful discharge or termination, retaliatory discharge or termination in violation of public policy, constructive discharge or termination, intentional infliction of emotional distress or tort of outrage, negligent infliction of emotional distress.

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