

2024 POCKET GUIDE

Virginia Employment Law

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Labor & Employment Team



Virginia Employment Law

The following sections summarize key Virginia employment statutes and principles of employment law. The summaries are not intended to be a comprehensive analysis of the laws and/or their judicial interpretations. When no reference to a statute is provided, federal law or common law may apply. The materials in this Pocket Guide reflect the statutes in effect on July 1, 2024, unless otherwise noted.

Brian G. Muse, *Editor*

→ Classification of Employees Versus Independent Contractors

Worker misclassification is a priority enforcement area in Virginia. In any such proceeding, individuals performing services for remuneration for an employer are presumed to be employees and not independent contractors. To be classified as an independent contractor, the employer must establish, in accordance with the IRS guidelines, that the individual can be classified as one. Employers who misclassify employees are subject to civil penalties and debarment from contracts with public bodies.

Individuals now have a private right to file lawsuits against their employers for misclassification and recover damages to include lost wages, employment benefits, including expenses incurred that would have been covered by insurance, reasonable attorney's fees, and costs. Employers are prohibited from retaliating or taking adverse action against an employee or independent contractor who in good faith plans to or reports a misclassification. Violations are subject to

a civil penalty. A general contractor is deemed jointly liable with its subcontractors for failure or refusal to pay wages owed to employees. Additionally, the Board of Contractors may sanction any construction contractor that misclassifies its employees.

Va. Code §§ 58.1-1900 et seq.; 40.1-28.7:7; 40.1-33.1; 11-4.6; & 54.1-1102.

→ Confidentiality/ Nondisclosure Agreements

Employers cannot require an employee or prospective employee, as a condition of employment, to execute or renew any provision in a confidentiality or nondisclosure agreement, including provisions related to non-disparagement, that has the purpose or effect of concealing details relating to a sexual assault claim.

Va. Code § 40.1-28.01.

→ Court Appearances

An employer cannot take any adverse action against an employee who is required in writing by a court to appear for a court appearance, including jury duty. This does not apply to a criminal defendant. The employee cannot be required to use sick or vacation leave for such absence. The employee must give reasonable notice to the employer when summoned to court. If required service involves more than four hours, including travel time, there are restrictions on when the employer can require the employee to return to work. A violation of this statute is a misdemeanor.

Va. Code § 18.2-465.1.

→ Criminal Background Checks

Virginia law prohibits state agencies and localities from requesting or seeking information concerning criminal arrests and convictions prior to a staff interview of the candidate. Limited exceptions exist for positions that impact law enforcement, schools, or health and safety. Several Virginia localities have also adopted “ban the box” ordinances, which prohibit private employers from inquiring about an applicant's criminal history

prior to the employer extending a conditional offer of employment. Employers are also prohibited from requiring job applicants from disclosing information concerning any arrest, criminal charge, or conviction for simple possession of marijuana.

Va. Code § 2.2-2812.1; § 15.2-1505.3; § 19.2-389.3.

→ **Discharge for Excessive Absenteeism**

An employer cannot discharge an employee for excessive absenteeism if the absenteeism was because of a compensable Workers' Compensation injury. Such absences, however, could be calculated into an employee's work record for purposes of discharge after all steps of the excessive absenteeism policy have been exhausted. Further, if the employee's absence exceeds six months, or if the employer's circumstances have changed during the employee's absence making it impossible or unreasonable to retain the employee, the discharge could be permissible.

Va. Code § 40.1-27.1.

→ **Employee Records for Use as Evidence**

When requested in writing by a current or former employee or the employee's attorney, an employer must furnish copies of records reflecting the employee's employment dates, wages or salary, job description and job title, and any injuries sustained by the employee while employed. Employers must respond within thirty days of receipt of the request but may notify the requester that an additional thirty days may be needed to respond. Responses can be in hard copy format or electronically if kept electronically. The employer may charge a reasonable fee for compliance. A court may award damages if it finds that an employer willfully failed to comply with its legal obligations. Upon failure of an employer to comply with a written request for records, the employee or his attorney may cause a subpoena duces tecum to be issued.

→ **Employee Safety**

Every employer must comply with all applicable occupational safety and health rules and regulations and must provide safe employment to each employee and a workplace that is free from recognized hazards that are likely to cause serious injury or death. All serious injuries or deaths occurring at work must be reported within eight (8) hours to the Virginia Department of Labor and Industry, which is charged with enforcing the Virginia Safety and Health Code.

Va. Code § 40.1-51.1.

→ **Employment At Will**

All employment in Virginia is "at will" unless an employee has a contract that establishes a definite term for the employment relationship. "At-will" employment means that both the employee and the employer have the right to terminate the employment relationship at any time, with or without notice, for any reason not otherwise prohibited by law. A state or federal statute providing specific protections and remedies to employees in their employment are direct exceptions to the "at will" doctrine. The federal Age Discrimination Act and the Virginia Human Rights Act are two examples of explicit statutory exceptions. Additionally, the Virginia courts have recognized three exceptions to employment at will, including when 1) an employer violates a policy that enables the exercise of an employee's statutorily created rights under Virginia law; 2) when the public policy violated by the employer is explicitly expressed in a Virginia statute and the employee was clearly a member of that class of persons directly entitled to the protection enunciated by the public policy; or 3) an employee is discharged for refusing to engage in criminal conduct.

→ **Employment of Children**

No child under the age of 16 can be employed except under such hours and conditions as the Virginia Department of Labor and Industry may set. Children under the age of 16 may be employed in limited occupations—e.g., housework in the child's home,

babysitting, newspaper delivery, farm labor, page service in the General Assembly, and volunteer work. For other types of work, a certificate of employment issued by the Virginia Department of Labor and Industry is necessary for a child under 16 to work, even in a work-study program. The employer must retain a copy of the certificate for three years or for as long as the child is employed, whichever is longer.

Va. Code §§ 40.1-78 through 40.1-116.

→ Garnishment of Wages

An employer may not discharge an employee based on the fact that the employee's earnings have been garnished for a single indebtedness.

Va. Code § 34-29.

→ Health Coverage Continuation *Mini-COBRA Law*

Small employers, those with fewer than 20 employees who are not subject to the federal Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), and who offer group health insurance coverage must offer continuation of such coverage for 12 months to an employee who has lost eligibility due to, termination of employment or otherwise. Continuation coverage is available only to employees who have been continuously insured under the employer's group policy for the preceding three months. Employers must provide written notice of the availability of coverage continuation within 14 days of learning the employee is no longer eligible. The employee then has 31 days to elect coverage and begin paying the premium. Continuation is not available for an employee whose eligibility for coverage under the group policy ceased because the employee was discharged from employment for gross misconduct.

Va. Code § 38.2-3541.

→ Health Record Privacy

The privacy of an employee's health record is protected under Virginia law and federal law. When a health record is released to an employer, the employer may not

reveal the health record or redisclose the information it contains without first obtaining the employee's specific authorization for such disclosure. The employer's use of the information shall only be for the purpose(s) for which the employee originally made the disclosure.

Va. Code § 32.1-127.1:03.

→ Privacy of Social Security Numbers

Employers may not use an employee's social security number "or any derivative thereof" as a form of identification, such as for an employee identification badge or card. Violations of this statute can result in a fine of up to \$100 per violation.

Va Code § 40.1-28.7:10

→ Interference with Future Employment

It is a crime for an employer to willfully and maliciously prevent or attempt to prevent a former employee from obtaining employment with anyone else. This law does not prohibit an employer from giving a truthful statement of the reason for termination of the employment relationship or a truthful statement concerning the character, industry, and ability of an employee who has voluntarily left unless specific authorization is obtained from the employee for such additional disclosure.

Va. Code § 40.1-27.

→ Marijuana

Persons 21 years of age or older may possess up to one ounce of marijuana within the Commonwealth of Virginia. Possession of more than one ounce, but less than four ounces, is punishable by a civil penalty of \$25.00. Possession of more than four ounces, but less than one pound, is punishable as a Class 3 misdemeanor and, for a second offense, a Class 2 misdemeanor. Possession of more than one pound is punishable as a felony offense. Public consumption of

marijuana remains illegal. The General Assembly has not reenacted the legislative framework for creating a retail market for the purchase of marijuana. Until such legislation is passed, there will be no retail market for marijuana in Virginia. If such legislation is passed, the commercial sale of marijuana will be overseen by the newly formed Virginia Cannabis Control Authority. Employers are prohibited from requiring job applicants from disclosing information concerning any arrest, criminal charge, or conviction for simple possession of marijuana. Employers are also prohibited from discharging, disciplining, or discriminating against employees who use cannabis oil under the laws of the Commonwealth pursuant to a valid certification from a medical practitioner unless such prohibition would violate federal law or result in the loss of a federal contract or federal funding. Beginning on July 1, 2024, this protection extends to public employees, with the exception of law-enforcement officers. Employers may take an adverse employment action against an employee who possesses and/or is impaired by cannabis oil during work hours.

Va. Code §§ 4.1-600 through 4.1-1503; § 19.2-389.3(B); § 40.1-27.4.

→ Medical and Genetic Testing

An employer cannot require genetic testing as a condition of employment or use such information when making an employment decision. If a medical test is required for employment, the employer must pay for the examination, including the costs incurred by the employee to obtain medical records needed by the employer.

Va. Code §§ 40.1-28.7:1 & 40.1-28.

→ Military Leave

An employer cannot deny a member of the Virginia National Guard, Virginia Defense Force, or the National Guard of another state initial employment, reemployment, retention in employment, promotion, or any benefit of employment based on the basis of such membership, application for such membership, performance of service, application for service, or obligation.

A person employed in Virginia who is called to active duty or military duty as a member of the Virginia National Guard or the Virginia Defense Force, or who is called to active duty by the National Guard of another state is entitled to leave without pay for the period of active service. The employee cannot be forced to use or exhaust any accrued paid leave, although the employee may choose to do so. If honorably released from duty, the employee can request reinstatement in writing to the former employer. This request must be within 14 days after release from duty (or from hospitalization) and only if the absence did not exceed 180 days; if the absence exceeded 180 days, the request must be made no later than 90 days after release from duty (or hospitalization). Upon such a request, an employer must restore the employee to the position held when the employee was ordered to duty. If the original position has been eliminated or abolished, the employee must be restored to a similar position with like seniority, status, and pay, or to a comparable vacant position, unless doing so would be unreasonable. This law does not apply where the cumulative length of the employee's absence for military service exceeds five years.

Va. Code §§ 44-93.2 through 44-93.5.

→ Minimum Wage

The minimum wage in Virginia is currently \$12.00. If reenacted by the General Assembly prior to July 1, 2024, the minimum wage will increase to \$13.50 on January 1, 2025 and to \$15.00 on January 1, 2026. Thereafter, the minimum wage will be adjusted annually based on the previous year's increase to the United States Average Consumer Price Index. There are 16 classes of workers who are not deemed employees under Virginia law. An employee who has made a successful claim for unpaid wages can recover the back wages owed, plus interest and attorney's fees.

Va. Code §§ 40.1-28.8 through 40.1-28.12.

→ Negligent Hiring, Supervision, Retention, and Training

An employer can be liable for harm to third parties caused by its employees if the employer was negligent in hiring or retaining the employee. To avoid liability, an employer should reasonably investigate the background of an employee before hiring, including making inquiries into and verifying any information that is pertinent to the job. Likewise, after employment, an employer should investigate complaints about an employee that have been brought, or actions observed, that could cause harm to another. Virginia courts do not recognize a claim of negligent supervision or negligent training.

→ Polygraph Testing

Except in the case of a convicted sex offender, it is unlawful for an employer to require a prospective employee, as a condition of employment, to answer questions on a polygraph test relating to sexual activities unless such sexual activity of the prospective employee has resulted in a conviction of a violation of the criminal laws of this Commonwealth. After it is read, the results of a polygraph test must be destroyed or kept in a confidential file and only reviewed with the consent of the employee. Violation of this rule constitutes a Class 1 misdemeanor.

Va. Code §§ 40.1-51.4:3 & 40.1-51.4:4.

→ Pregnancy and Childbirth Accommodation

As of July 1, 2020, the Virginia Human Rights Act provides a private cause of action (with no administrative exhaustion requirement) against employers with five or more employees for claims of discrimination and retaliation on the “basis of pregnancy, childbirth, or related medical conditions, including lactation.” In addition to providing protection against discrimination, employers must provide reasonable accommodations to employees for circumstances related to pregnancy and childbirth. Although an employer need not provide an accommodation that creates an undue hardship, the

law recognizes that certain accommodations, including allowing an employee breaks and an appropriate space to express breast milk, are generally deemed reasonable in most circumstances. A failure to provide an appropriate accommodation can give rise to a claim for discrimination.

Employers must notify employees of these non-discrimination and accommodation requirements in their employee handbooks and by posting these requirements in a conspicuous location. Additionally, employers must specifically provide this information within ten days to any employee who provides notice of pregnancy.

Va. Code §§ 2.2-3900 et seq.

→ Privacy of Employee Information and Use of Image

Virginia law mandates the protection of an employee’s “personal identifying information,” which is defined as an employee’s home telephone number, mobile telephone number, email address, shift times, or work schedule. By statute, employers shall not be required to release, communicate, or distribute any current or former employee’s personal identifying information to a third party, unless required by a federal or state law that overrides this statute, court order, judicial warrant, a subpoena in a civil or criminal case, or discovery in a civil case.

Va. Code § 40.1-28.7:4.

Personal information should be encrypted or redacted. If unencrypted or unredacted information is accessed such that it will likely cause or has caused identity theft or fraud, the employer must provide notice of the breach to the Office of the Attorney General and personal notice to each person whose information was breached. “Personal information” for purposes of the breach notification statute means the name of the employee in combination with the employee’s social security number; driver’s license or state identification card number; or financial account number, credit or debit card number in combination with any security code, access code, or password that would permit access to the employee’s financial accounts, passport number, or military identification number. Civil

→ penalties up to \$150,000 for a single breach may be imposed by the Virginia Attorney General for neglecting to comply with these requirements. An individual may recover direct economic damages caused by a violation of the statute.

Va. Code § 18.2-186.6.

Virginia law also prohibits a person or business from using someone's name or picture for the purposes of trade or advertising without obtaining prior written consent. This law applies to an employer using employee pictures or images for marketing or advertising purposes. An aggrieved party may sue for injunctive relief and damages, including punitive damages.

Va. Code § 8.01-40.

→ References

An employer of any size has immunity when responding to inquiries from another current or prospective employer about a former employee. The employer can provide information on professional conduct, the reasons for separation, and job performance (including information contained in any written performance evaluations), provided that, when giving the information, the employer does not act in bad faith. If found to have acted in bad faith, an employer may be held liable for damages, including punitive damages.

Va. Code § 8.01-46.1.

→ Restrictive Covenants in Employment Contracts

Employment covenants that restrict an employee's right to work are not favored and, by a law passed in 2020 that applies to covenants entered into after July 1, 2020, are prohibited for low-wage employees (defined as employees whose wage is less than the average weekly wage in Virginia). Restrictive covenants are only enforceable if they protect the employer's legitimate business interests, do not unduly burden the employee's ability to earn a living, and do not violate public policy. A restrictive covenant must be reasonable in all respects. It should be limited to 1) the geographic area in which the employer does business; 2) the types

of businesses that are in direct competition; and 3) the types of functional activities previously performed by the employee and reasonable in duration. Each of these factors are weighed to determine if the restriction is reasonable.

Va. Code § 40.1-28.7:8.

→ Retaliation for Reporting Employment Law Violations

The Virginia Fraud and Abuse Whistleblower Protection Act prohibits retaliation of any kind against an employee for any of the following actions: 1) reporting to a supervisor or a government official a suspected violation of any federal or state law or regulation; 2) being requested by a governmental body or law enforcement official to participate in an investigation, hearing or inquiry; 3) refusing to engage in a criminal act that would subject the employee to criminal liability; 4) refusal of an employer's order to perform an action that violates the law and the employee has told the employer that the order is being refused for that reason; and 5) providing information or testimony to a governmental body or law enforcement official conducting an investigation, hearing or inquiry into an alleged violation of the law by the employer.

Retaliation includes any disciplinary action, including termination, taken against that employee for reporting the suspected violation. The employee must report in good faith and cannot disclose any information that is protected by privilege. Employees may bring retaliation claims against their employers in state courts within one year of the alleged retaliatory action. If successful, the employee can obtain injunctive relief, be reinstated, get money damages for lost wages and benefits, and recoup attorney's fees.

Va. Code § 40.1-27.3.

→ Right to Work and Collective Bargaining for Public Employees

The Virginia right to work law provides that "the right of persons to work shall not be denied or abridged on account of membership or non-membership in

any labor union or labor organization.” An employer violates this law if the employer requires a person to 1) join a union, 2) refrain from joining a union, 3) resign from a union, or 4) remain in a union as a condition of employment or as a condition of continued employment. An employer also violates this law if the employer requires the payment of dues or fees of any kind to a union. Lockouts, layoffs, work stoppages, picketing, threats, intimidation, and other concerted activities that interfere with the right to work are also illegal.

Effective May 1, 2021, collective bargaining by counties, cities, towns, and school boards is permitted with employee organizations over the terms and conditions of employment. Local government entities may adopt ordinances or resolutions under which they may recognize a labor union or other employee organization as the exclusive “bargaining agent” for units of their public officers and employees with the purpose of entering into collective bargaining agreements that govern “any matter relating to [the employees] or their employment or service.” The decision to permit collective bargaining is within the discretion of the governing body or school board; however, these entities are not required by law to allow collective bargaining. If a locality or school board has not adopted an ordinance or resolution permitting bargaining, it must vote on whether to adopt one upon a showing that a sufficient number of its employees in a would-be bargaining unit desire representation. Local constitutional officers, i.e., Commonwealth’s attorneys, sheriffs, treasurers, commissioners of the revenue, and circuit court clerks, are not authorized by the statute to permit collective bargaining by their employees.

Va. Code §§ 40.1-57.2 and 40.1-58 et seq.

→ Social Media Accounts

An employer cannot require a current or prospective employee to: 1) provide his or her username and password to any personal social media account; 2) add the employer to any contact lists; or 3) accept a “friend request.” An employer may not use any employee login information, inadvertently received, to access the employee’s social media account(s). Employers cannot threaten or take adverse action against a current

employee or prospective employee who elects to protect this login information. If, however, the employer reasonably believes social media activity is relevant to a formal investigation or related proceeding concerning the employer’s written policies, employers may obtain an employee’s personal social media login information. Employer violations are subject to civil monetary penalties by the Virginia Safety and Health Commission.

Va. Code § 40.1-28.7:5.

→ Unemployment Compensation

To be eligible to receive unemployment benefits, an employee must have worked at least 240 hours or have worked at least 30 days for the employer. An employee will be disqualified from these benefits if the employee: 1) voluntarily quit without good cause, 2) refused suitable work, 3) made a false statement to the Virginia Employment Commission while seeking benefits, 4) is incarcerated, or 5) was discharged for misconduct in connection with work. Misconduct requires a violation of a known rule or policy and includes: 1) chronic absenteeism, tardiness, unauthorized absences; 2) willful or deliberate violation of a standard or rule; 3) intentional or misleading statements on an application relating to criminal conviction(s); and 4) testing positive for illegal or non-prescribed drugs.

Any severance payments made to a discharged employee may disqualify the employee for benefits on a dollar-for-dollar basis during the week such severance is paid. As of 2021, the Commission may use email or other electronic means to send communications. And as of 2022, employers must submit separation reports, claims and related forms electronically unless granted a waiver.

Va. Code §§ 60.2-100 et seq.

→ Unpaid Leave

Employees are entitled to up to 60 days of unpaid leave in any 12-month period when serving as an organ donor and up to 30 days of unpaid leave in any 12-month period to serve as a bone marrow donor. This law also prohibits retaliation against employees who exercise rights under this statute.

Va. Code § 40.1-33.8

→ Virginia Equal Pay Act

The Virginia Equal Pay Act prohibits pay differentials based on sex — it requires equal pay for equal work. An employee has two years to bring an action and may recover twice the amount of the wage differential. This law applies to all Virginia employers regardless of size.

Va. Code § 40.1-28.6.

→ Virginia Human Rights Act and Virginia Values Act

The Virginia Human Rights Act (VHRA), as amended by the 2020 Virginia Values Act (VVA), prohibits discrimination on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical condition, age, marital status, sexual orientation, gender identity, disability, or military status. The Office of Civil Rights (OCR) of the Office of the Attorney General has the authority to receive, investigate, conciliate, refer to another agency, and make findings and recommendations upon complaints alleging unlawful discriminatory practices. Va. Code §§ 2.2-3900 *et seq.* As of 2022, the VHRA defines religion as “any outward expression of religious faith, including adherence to religious dressing and grooming practices and the carrying or display of religious items or symbols.”

OCR can refer claims to local human rights agencies that have the authority to investigate and resolve issues of discrimination. OCR can also refer claims to the EEOC or ask the Attorney General to investigate and seek redress on the employee’s behalf. The VHRA also enables an employee to sue a Virginia employer for discriminatory employment practices including discharge based on the employee’s protected class. Effective July 1, 2024, discrimination claims that are exhausted before the EEOC can be used as the basis for an employee to initiate a lawsuit under the VHRA, even if the employee has not lodged their claim with the OCR. For private employers with five or more employees, most of these protections will generally apply; public employers may have sovereign immunity, however. Effective March 31, 2021, the VHRA also applies to employers of one or more domestic workers.

Employees have 300 days from the act of discrimination to file a discrimination claim, and after the EEOC or OCR exhausts their investigation, after which the employee can bring suit in federal or state court within 90 days after receiving a notice of right to sue from the investigating agency..

Va. Code §§ 2.2-3900 *et seq.*

→ Virginia Overtime Wage Act (VOWA)

Legislation effective July 1, 2022, replaced the then-current provisions of the VOWA with a provision stating that any employer that violates the overtime wage requirements of the federal Fair Labor Standards Act (FLSA), and any related laws and regulations, will be liable to its employees for applicable remedies or other relief under the FLSA. The statute further provides that the terms “employer” and “employee” have the same meanings ascribed to them under the FLSA and all applicable exemptions, overtime calculation methods, methods of overtime payment, or other overtime provisions within the FLSA shall apply.

Va. Code §§ 40.1-29.2 and 40.1-29.3.

→ Virginians with Disabilities Act

The Virginians with Disabilities Act (VDA) prohibits discrimination in employment against disabled applicants and employees. The claimant must be “otherwise qualified” (a person with a physical or mental impairment who is qualified to perform the duties of the job). If an employer knows that an otherwise-qualified disabled person needs accommodations to perform the job, such accommodations must be provided, if reasonable. An accommodation is not reasonable if it imposes an undue burden on the employer, which requires an analysis of multiple factors: hardship on the employer’s business, facility size, nature and cost of accommodations needed, the possibility that the same accommodation may be used by other employees, and safety and health considerations of the claimant, other employees, and the public.

The protections afforded under the VDA are similar to those provided under the federal Americans with Disabilities Act (ADA) with two notable exceptions: 1) the VDA applies to all employers no matter their size, and 2) an employee must prove that the discrimination was due solely to the disability. Discrimination based on disability is also prohibited under the Virginia Human Rights Act, as amended by the Virginia Values Act.

Va. Code § 51.5-41.

→ Wage Payments - Virginia Wage Payment Act (VWPA)

Private employers must establish regular pay periods (at least monthly for salaried employees and bimonthly or every two weeks for wage employees) and rates of pay, except for executive personnel. Wages must be paid on payday. Wage payments must be made in cash, by check payable at full value, or by direct deposit or as a credit to a prepaid debit card with the written consent of the employee. For employees hired after January 1, 2010, the employer can make wage payments to a prepaid debit card or by direct deposit without the written consent of the employee, provided certain conditions are met.

An employer cannot require an employee to forfeit wages for time worked. Deductions from wages cannot be made without the employee's contemporaneous written consent. On each regular pay date, employers must provide employees with an online or paper paystub that includes the employer's name and address, the hours worked, the rate of pay, the gross wages, and a description of any deductions. Certain violations of the VWPA involving the failure to make wage payments can result in a criminal conviction and/or a civil penalty of \$1,000 for each violation, plus attorney's fees.

Employees can file suit against an employer for failing to pay wages owing and due. There is no administrative exhaustion requirement. Affected employees can bring suit individually, jointly with other affected employees or on behalf of similarly situated employees as a collective action consistent with the collective action procedures of the Fair Labor Standards Act. If a violation is found, the court must award employees their wages that are owed plus liquidated damages,

prejudgment interest, reasonable attorneys fees and costs. If the violation is a knowing violation (defined as acting with actual knowledge, deliberate indifference, or reckless disregard to the relevant information) the court must award treble damages. These claims have a three-year statute of limitations.

Va. Code § 40.1-29; see also Virginia Wage Payment Act & Virginia Overtime Wage Act.



Whistleblower Protections

In addition to providing employees protection against retaliation for reporting employment law violations (see previous section on this topic), multiple statutes provide employees with so-called "whistleblower" protections:

Virginia Fraud Against Taxpayers Act (VFATA)

VFATA protects employees who have opposed a prohibited practice or who have initiated, assisted, or participated in any manner in any investigation under the Act. An employee who is discharged, threatened, harassed, or in any other manner discriminated against by an employer because of engaging in such protected activity is entitled to all relief necessary to make the employee whole, including reinstatement with the same seniority status, two times the amount of back pay owed, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees.

Va. Code §§ 8.01-216.1 et seq.

Virginia Occupational Safety and Health Act (VOSHA)

Under VOSHA, an employee who files a safety or health complaint with the Virginia Occupational Safety and Health program of the Virginia Department of Labor and Industry (VDOLI) is protected from discrimination and/or retaliation. Also, an employee who, in good faith with reasonable cause and without malice, truthfully reports threatening conduct by a person employed at the same workplace is granted immunity from any civil liability that might otherwise result from making such a report.

Va. Code §§ 40.1-51.2:1 and 40.1-51.4:5.

Employees who believe they have been retaliated against by employers for filing wage payment lawsuits,

participating in investigations about, or reporting to authorities their concerns about unpaid wages and benefits, may also file a claim with VDOLI. Remedies may include reinstatement and lost wages, which may be doubled as liquidated damages.

Va. Code §§ 40.1-33.1 to 40.1-33.2.

This guide is provided for informational purposes and includes both legal requirements and generally recommended best practices. It is not intended to be legal advice. An attorney should be consulted when developing policies and procedures for your organization.

Sands Anderson PC Employment Practice

Sands Anderson PC attorneys have extensive experience in the fields of employment counseling and litigation. Our clients include corporations, partnerships, sole proprietors, executives, and tax-exempt organizations from a variety of industries, as well as local governments and agencies. Our attorneys provide common sense strategies and solutions for challenging human resource issues and, when necessary, can be aggressive in litigation while being conscious of your bottom line.

We are prompt in meeting our clients' needs, whether we are engaged in the review and crafting of employment policies and contracts, advising on the administration of personnel policies, including employee benefits issues, or providing legal representation in state and federal courts and administrative agencies such as the Virginia Office of Civil Rights, Virginia Employment Commission, Virginia Department of Labor and Industry, Equal Employment Opportunity Commission, the federal Department of Labor, National Labor Relations Board, and Office of Federal Contract Compliance Programs.

We serve as experienced counsel to insurers and insureds, providing defense under employment practices liability (EPL) policies. Our attorneys conduct staff training and are frequently invited to speak at the meetings of professional associations.

Before Making Key Employment Decisions, Consider:

- Wage and hour laws (FLSA, VWPA, VOWA)
- Employee versus Independent Contractor status
- Collective Bargaining Rights
- Labor laws and protected concerted activity (NLRA)
- Non-discrimination laws
 - Virginia Human Rights Act and the Virginia Values Act
 - Race | Color | Genetics
 - National origin | Religion | Political affiliation
 - Sexual harassment
 - Citizenship | Age | Marital status
 - Disability (perceived/associated)
 - Equal pay/pay discrimination
 - Pregnancy Accommodation and Right to Nurse
- Retaliation
- Health and safety issues (OSHA; VOSHA; COVID-19)
- Worker's compensation
- Leave
 - Medical leave (FMLA; ADA)
 - Military leave (USERRA)
- Whistleblower protections (VFAWPA; VFATA; VOSHA; Sarbanes-Oxley; Dodd-Frank)
- COBRA; Va. Mini-COBRA
- Affordable Care Act (ACA)
- ERISA (health/retirement)
- Termination rights
 - WARN Act
 - State law claims
 - » Emotional distress
 - » Assault and Battery
 - » Negligent supervision/hire/retention
 - » Contract or at-will
 - » Non-compete/Non-solicitation
 - » Wrongful termination
 - » Defamation
 - » Religious intimidation
 - » Public Employee Grievance and Due Process Rights
- Municipality and industry-specific rules and regulations
- Unlicensed software on your system

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