



VIRGINIA'S NEW WORKPLACE LAWS

WHAT'S COMING AND WHEN?

Virginia Credit Union League

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Charlottesville | Lynchburg | Richmond | Roanoke

2019 EMPLOYMENT LEGISLATION RECAP

VA LEGISLATION: PERSONNEL RECORDS

Requires certain employment records be provided to EE within 30 days of receipt of a written request

- Failure to comply may result in a court order
- If a court finds ER “willfully refused to comply,” may award damages

VA LEGISLATION: PAYSTUBS

ERs required to provide paystubs on each regular payday

- Effective January 1, 2020
- Must include
 - ER's name & address
 - Hours worked
 - Rate of pay
 - Gross wages
 - Amount & purpose of all deductions
- Public & agricultural ER exceptions

2020 EMPLOYMENT LAWS: NEW DISCRIMINATION PROTECTIONS

CURRENT CLASSES PROTECTED BY VA LAW

- Race
- Color
- National origin
- Religion
- Sex (including pregnancy, childbirth, and related medical conditions)
- Disability
- Age
- Genetic information
- Marital status

Several cities in the U.S. have their own laws protecting additional characteristics or extending protection to more EEs.

WHAT VA EMPLOYERS ARE INCLUDED?

Most protected classes:

- ERs with 6 - 14 EEs
 - Federal discrimination laws apply to ERs with 15+ EEs

Age discrimination:

- ERs with 6 – 19 EEs
 - Federal laws apply to ERs with 20+ EEs

VIRGINIA VALUES ACT

Effective July 1, 2020

- Expands Virginia Human Rights Act
- Creates protections for LGBT residents
 - Public accommodations
 - Housing
 - Credit applications
 - Employment



Photo credit: Human Rights Campaign

VA first southern state to enact such protections

LITIGATION TIMING AND COSTS

Law changes how cases against ERs may be brought

	Old Law	New Law
When Plaintiff Can File Suit	After being terminated	Before or after termination
Cap on Damages	12 months of back pay + 25% attorney's fees	None

EFFECT ON LITIGATION

- Before law, most discrimination claims heard in federal courts
- State courts will begin hearing more workplace discrimination suits
- Obtaining summary judgment in VA courts more difficult
- Going to trial increases costs for defending discrimination suits

ACTIONS TO TAKE

- 1. Update handbooks to include sexual orientation and gender identity as protected classes**
- 2. Train entire workforce on harassment, diversity, inclusion, and implicit bias**
- 3. Train supervisors and managers on their special role in compliance**

PREGNANCY DISCRIMINATION

Effective July 1, 2020

Amends Virginia Human Rights Act to prohibit discrimination in employment on the basis of pregnancy, childbirth, or related medical conditions

- Requires ERs to engage in an interactive process to determine whether reasonable accommodation is possible for limitations related to pregnancy, childbirth, or related medical conditions.
- ERs specifically prohibited from requiring EE to take leave if another reasonable accommodation can be provided

REQUIRED ACTIONS

- ER must post and include in any EE handbook information about the prohibition against unlawful pregnancy discrimination and EE's rights to reasonable accommodation
- This information must be provided to new EEs and any EE within 10 days of informing ER of a pregnancy

HAIR DISCRIMINATION

Effective July 1, 2020

Bans discrimination on the basis of physical traits associated with race

- Includes “hair texture, hair type, and protective hairstyles such as braids, locks and twists”
- Bans of hairstyles historically associated with race re-enforce discriminatory stereotype that black hair is unprofessional, unkempt, or disruptive
- Recommend reviewing your EE handbook and training
 - Especially dress code and anti-discrimination policies



OTHER EMPLOYMENT LAW CHANGES

MINIMUM WAGE INCREASES

\$9.50 - May 1, 2021

\$11.00 - January 1, 2022

\$12.00 - January 1, 2023

\$13.50 - January 1, 2025

\$15.00 - January 1, 2026

NON-PAYMENT OF WAGES

Effective July 1, 2020

- EEs can sue their ERs in state court for improper withholding of wages or nonpayment of wages owed
- EE has 3 years from the date the action occurred to sue
- EEs can also bring a class action lawsuit
- Before now, VA provided limited options for EEs, who either had to make a Fair Labor Standards Act claim, a breach of contract claim, or file an administrative complaint with VA's Department of Labor

PENALTIES FOR WAGE NON-PAYMENT

Criminal penalties:

- ER who willfully & with intent to defraud fails or refuses to pay wages:
 - Class 1 misdemeanor if the value of the wages is <\$10,000
 - Class 6 felony if the value of the wages is \$10,000+

Civil penalties:

- ERs can be fined \$1,000 p/violation
- Reimburse wages due plus 8% annual interest
- May be liable for 3x wages due and reasonable attorney fees and costs

WORKER MISCLASSIFICATION

Effective July 1, 2020

- Misclassified EEs can bring civil actions (including for retaliation for reporting the misclassification) for lost wages, benefits, and attorney's fees
- Burden of proof is on ER to show the relationship was an independent contract and not employment

MISCLASSIFICATION PENALTIES

Effective January 1, 2021

- VA Dept. of Taxation can investigate ERs for misclassifications
- Penalties up to \$5,000 p/misclassified EE for repeat offenders
- Bar ERs from winning VA public contracts for up to 3 years

EMPLOYEE OR INDEPENDENT CONTRACTOR?

New law adopts IRS guidance:

1. Do you control or have the right to control the work & how it's done?
2. Do you control business aspects of the job (e.g. how they are paid, whether expenses are reimbursed, who provides the tools for the job)?
3. Do you have a written contract?
4. Do you pay the person benefits?
5. Is the relationship continuing?
6. Is the work performed a key aspect of your business?

The more trappings of an employment relationship, the less likely the person is a contractor.

NON-COMPETE CONTRACTS

Effective July 1, 2020

- Low-wage EEs can sue ERs seeking to enforce a non-compete
 - “Low-wage” determined by guidelines from VA Worker’s Comp. Comm.
 - \$1,137/wk. or \$59,124/yr. as of July 1
- Covered by this law: Interns, students, apprentices, and trainees, paid or unpaid, & employed to gain work or educational experience
- Excluded: EEs whose earnings come wholly or mostly from sales commissions, incentives, or bonuses

NON-COMPETE CONTRACTS (cont.)

- EEs can win an injunction, liquidated damages, lost compensation, attorney's fees, expert witness fees
- Retaliation is prohibited against EEs who bring an action
- Must post a copy of this law near OSHA, other similar posters

COLLECTIVE BARGAINING

Effective May 1, 2021

Allows local-level public sector EEs to engage in collective bargaining

- Local govts. may vote to allow or not allow collective bargaining
 - Vote required w/in 120 days of receiving notice from majority of EEs
- Public Employees Relations Board to be created
 - Determines appropriate bargaining units
 - Certification/decertification of elections for exclusive bargaining reps.
- “Right to work” laws kept in place

WOODS ROGERS HR HOTLINE FOR VACUL MEMBERS



TOP HOTLINE ISSUES

1. Vetting discipline/discharge decisions
2. Revoking offers of employment
3. Handling of harassment complaints
4. Handling of member complaints
5. Wage discrimination
6. Evaluation of FLSA Issues
7. Background checks, EEO, and FCRA
8. ADA, FMLA, WC Issues

OFF-HOTLINE WORK

- Drafting contracts
- Drafting / revising handbooks, applications
- On-site training
- Reorganization plans/RIFs
- Representation before state/federal agencies and courts (EEOC, DOL, etc.)
- Severance Agreements

Q&A



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