



## VIRGINIA GENERAL ASSEMBLY 2020: What Virginia Employers Need to Know

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### General Overview

The 2020 General Assembly session adjourned *sine die* (Latin for adjourning with no appointed day for resumption) on March 12th – five days after originally planned. This was the first legislative session in 20+ years that the House of Delegates, the Senate and the Executive Branch were all under democratic control. This resulted in many bills passing that, in prior years, were killed the by Republican majorities. These bills have either been signed by the Governor or are awaiting the Governor's action.

With a Democratic majority, the 2020 Session of the Virginia General Assembly saw the passage of several pro-employee bills. Perhaps most notably, lawmakers passed sweeping changes to the Commonwealth's minimum wage requirements, expanded the scope of an employer's duty to protect employees from harassment and discrimination, and limited the use of non-compete agreements. Employers will also be impacted by upcoming changes in employer liability for misclassification and nonpayment of wages. Virginia employers should take notice because, unless otherwise specified in the legislation, these and other important employment-related laws are set to go into effect **July 1, 2020**.

### Summary of Employment-Related Bills

#### Expansion of Non-Discrimination Laws in Private Employment

This year, Virginia will join 21 other states and the District of Columbia in prohibiting discrimination in private employment on the basis of sexual orientation and gender identity, as well as in housing, public accommodation, public contracting, apprenticeship programs, banking, credit and insurance. Additional changes to the Virginia Human Rights Act will provide for non-discrimination and reasonable accommodation in employment on the basis of pregnancy, childbirth and related medical conditions; and others add language to clarify that, in Virginia, discrimination on the basis of race includes discrimination because of an individual's hair style, type or texture. The new amendments include private causes of action for aggrieved individuals.

New legislation also directs the Division of Human Rights to analyze and report on findings regarding the gender pay gap in Virginia, with recommendations to be made to the Governor and General Assembly no later than November 30, 2020.

Bills passed this session extend protections for workers who volunteer as electoral board members or

assistant general registrars on election day or at a meeting following the election to discuss its results. Currently, the law only prohibits discrimination on the basis of election day service and applies solely to election officers.

### **(Gradual) Increases to Minimum Wage**

In a compromise between the House and Senate, the General Assembly resolved to make significant changes to the Virginia Minimum Wage Act. Having held fast with the federal minimum wage of \$7.25 per hour for a decade, Virginia will increase its minimum to \$9.50 per hour by May 1, 2021; to \$11.00 per hour by July 1, 2022; and to \$12.00 per hour by July 1, 2023. Thereafter, yearly increases would be indexed to the wage region with the highest median household income. The change applies to public and private employees.

Related bills would eliminate the exception from the Virginia Minimum Wage Act for employees providing domestic service as well as void a previous exemption from minimum wage for workers who are paid based on “the amount of work done” (i.e. by the job).

### **Changes to Enforceability of Non-Competes**

The 2020 General Assembly session also saw the passage of a bill banning all non-competition agreements that are entered into on or after July 1, 2020 as applicable to “low-wage employees,” which are defined as employees who earn less than the average weekly wage of the Commonwealth – currently estimated at \$1,107/week – and independent contractors who are compensated for services at an hourly rate less than the median hourly wage for all occupations as set by the U.S. Bureau of Labor Statistics (\$19.63 per hour as of 2019). Employers can access current data at [www.bls.gov](http://www.bls.gov). Under the law, “low-wage workers” does not include those persons whose bonuses and commissions are the predominant component of their pay, as opposed to a base salary or hourly rate.

In addition, there are new restrictions on what constitutes a permissible provision restricting the solicitation of customers. The bill does not seek to limit agreements that prohibit the disclosure of confidential information and trade secrets. This new law also provides a private right of action for low-wage employees if employers attempt to bind them to an impermissible non-compete agreement.

### **Nonpayment of Wages**

Lawmakers this Session passed legislation that would increase the potential penalties to be imposed on employers who fail to pay proper wages. The law allows the employee to sue for the amount of wages due, plus 8% interest and reasonable attorney’s fees. Moreover, if the employer *knowingly* fails to pay the employee correctly, the law allows for a recovery of three times the amount of wages owed, plus 8% interest and fees.

Related passed bills authorize the Commissioner of Labor and Industry to launch an investigation into an employer’s pay practices for other employees, if the Commissioner finds information during an investigation of a complaint of an employer’s failure to pay wages that creates a reasonable belief that other employees of the same employer may not have been paid properly. Retaliation against an employee who has filed a complaint related to the nonpayment of wages is to be prohibited under the changes.

The laws will also require pay statements to clearly reflect the number of hours worked if the employee is paid either on an hourly basis or based on a salary that does not meet the salary level threshold for an exempt employee under the Fair Labor Standards Act (currently \$684.00/week).

## **Misclassification of Employees**

New changes this year prohibit employers from classifying workers as “tipped employees” if the worker is prohibited from soliciting tips. Enrolled bills create causes of action for employees who have been misclassified; protect employees or independent contractors from retaliation for reporting misclassification; and authorize the Virginia Department of Taxation to investigate misclassification of independent contractors. The new misclassification laws create a private cause of action for individuals to bring claims against employers.

## **Updates to Employment Commission Guidelines**

The General Assembly made further changes to the regulation of unemployment benefits. In response to COVID-19 and the federal CARES Act, lawmakers added a work-sharing program to Virginia’s unemployment compensation laws for workers whose hours have been reduced. The goal of this short-term compensation program is to avert layoffs and to encourage employers to retain employees on reduced hours (i.e. “work sharing”). Under these new changes, workers who have reduced hours will be eligible for partial unemployment insurance benefits where they were ineligible before.

Under other new amendments to Virginia’s unemployment guidelines, cafeteria plan benefits are not considered wages for the purposes of an individual’s unemployment benefit. Furthermore, all employers (not only those with 100 or more employees) must establish an account on the Virginia Employment Commission’s website and must timely file quarterly reports online.

## **Collective Bargaining**

Bills passed this year include repeals of prior prohibitions on collective bargaining by public employees and also create the Public Employees Relations Board, tasked with the determination of appropriate bargaining units and the certification or decertification of elections for exclusive bargaining representatives. However, the General Assembly again declined to repeal so-called “right to work” laws that prohibit any agreement between employers and labor unions whereby nonmembers are denied the right to work.

# **Conclusion**

Virginia employers should look at their human resources and payroll policies and procedures to ensure that they are ready when these new laws go into effect. Many of these new laws provide employees with a private right of action. Although this is a brief summary of the legislation, it does not contain the details of any bill. You may obtain the exact text of any bill by going to the State Legislative Information System site [here](#).

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## **Related Services**

- Labor, Employment & Immigration

- Government Relations