

Several Important Virginia Employment Laws Took Effect on July 1, 2021

July 2, 2021

WHAT: Virginia enhanced legal protections for workers in the Commonwealth with several laws that took effect on July 1, 2021.

Virginia Overtime Wage Act

Governor Ralph Northam signed the Virginia Overtime Wage Act, Va. Code 40.1-29.2, into law on March 31, 2021. The Overtime Wage Act is the Commonwealth's equivalent of the Fair Labor Standards Act (FLSA), and it obligates employers to pay one and one-half times an employee's regular rate of pay for hours worked over 40 in a given workweek. The Overtime Wage Act is not an exact replica of the FLSA. Key differences include the potential damages available to claimants, a longer statute of limitations for filing claims, and a different calculation method for workers' regular rate of pay than under the FLSA.

Virginia Human Rights Act

New Rights for Disabled Workers

Among the matters taken up by lawmakers in the 2021 Virginia General Assembly Special Session was House Bill 1848, which amended the Virginia Human Rights Act (VHRA) to make it an unlawful employment practice to discriminate against a worker based on disability and to require employers to make reasonable accommodations for persons with disabilities. Employer obligations under the VHRA as amended effectively mirror those under the Americans with Disabilities Act.

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Practice Areas

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Expanded Rights for Members of the Military and Certain Immediate Family Members

House Bill 2161 represents Virginia's effort to create state law protections for active-duty military, veterans, and their spouses and children. The law extends multiple employment discrimination laws in the Commonwealth, including the VHRA, and makes it unlawful for employers to discriminate against workers based on their "military status."

Enhanced Investigation and Enforcement of Discrimination

House Bill 2147, which makes the Office of Civil Rights a permanent part of the Office of the Attorney General, also took effect on July 1. The stated mission of the Office of Civil Rights is to investigate and combat discrimination based on the classes and traits protected under the VHRA and other Commonwealth civil rights laws. Attorney General Mark Herring has indicated that the Office of Civil Rights will focus its attention on conducting investigations to identify and eliminate patterns or practices of discrimination, discrimination in public accommodations, protecting new and expectant mothers, and combating discrimination against members of the LGBTQ community.

Legalization of Cannabis

The conundrum of dealing with employees who lawfully use cannabis officially begins on July 1 for Virginia employers. Senate Bill 1406 and House Bill 2312 effectively legalized possession and use of small amounts of cannabis for individuals 21-years of age and older, and House Bill 1862 prohibits employers from discharging, disciplining, or discriminating against workers who lawfully use cannabis-based on a practitioner's treatment recommendation. Employers may still discipline employees who use or possess cannabis during work hours. Employers, especially those in the federal government contracting space, should be heartened to know that the new law does not require them to ignore federal law, regulations, or contract requirements.

TAKEAWAYS: Virginia has been active in implementing progressive and ostensibly pro-worker legislation in the past few years. The new laws and changes that went into effect on July 1 continue that trend. The recent changes likely won't require a considerable departure from the norm for most Virginia employers. That said, all employers need to review their current policies and procedures in light of the changes and consult with legal counsel as necessary to ensure that they are responding appropriately.