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**MEMORANDUM**

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**From:** Mark Hanna  
Adam Breihan

**Date:** May 1, 2020

**Re:** **Workers’ Rights Victories in Virginia’s 2020 Legislative Session**

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The Virginia General Assembly’s 2020 session delivered many historic victories for workers’ rights. After years of lagging behind other states in terms of workplace protections and benefits, Virginia took a tremendous leap forward by adding new private rights of action, raising the minimum wage, creating new prohibitions against workplace discrimination and retaliation, strengthening enforcement mechanisms, and expanding collective bargaining rights, among other things. As a result, Virginia workers will soon have a host of new rights and remedies at their disposal.

This memorandum is intended to provide an overview of these legislative developments. Due to the volume and breadth of labor and employment legislation in the 2020 session, an exhaustive discussion of each individual act is not practical. Instead, this memorandum outlines the key provisions of each work-related measure<sup>1</sup> and, in some instances, highlights areas that could be improved in future sessions.

**Table of Contents**

I. Wage and Hour Enforcement .....	2
II. Minimum Wage.....	7
III. Prevailing Wages .....	10
IV. Misclassification.....	11
V. Workplace Discrimination .....	16
VI. Whistleblower Protection.....	27
VII. Labor Law .....	29

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<sup>1</sup> N.B. As this session’s legislation still needs to be codified by the Virginia Code Commission, some of the information in this memorandum is subject to change.

**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 2

VIII. Worker Safety .....	31
IX. Workers' Compensation.....	32
X. Unemployment Insurance .....	36
XI. Public Sector Employee Rights.....	38
XII. Other Pro-Worker Acts .....	42

**I. Wage and Hour Enforcement**

**[House Bill 123](#) & [Senate Bill 838](#)**

**Creating a Private Right of Action for Nonpayment of Wages**

Sponsors: Delegate Jennifer Carrol Foy (D-2)  
Senator Adam P. Ebbin (D-30)

Effective Date: July 1, 2020

Virginia Code: Both acts amend Virginia Code § 40.1-29. SB 838 also adds § 11-4.6, which concerns general contractor liability.

Acts of Assembly: Chapters 868 and 1038

Key provisions from both HB 123 and SB 838:

- Adds a private right of action to Virginia's wage payment statute. § 40.1-29(J).
- No administrative exhaustion requirement. § 40.1-29(J).
- Aggrieved workers can sue "individually, jointly, with other aggrieved employees, or on behalf of similarly situated employees as a collective action consistent with the collective action procedures of the Fair Labor Standards Act, 29 U.S.C. § 216(b)." § 40.1-29(J).
- If a violation is proven, the court *shall* award the aggrieved workers the wages they are owed, plus liquidated damages, prejudgment interest accruing at an eight percent annual rate from the time the wages were due, reasonable attorneys' fees, and costs. § 40.1-29(J).

**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 3

- In the case of a knowing violation, the court *shall* award treble damages and reasonable attorneys' fees and costs. § 40.1-29(J).
  - "Knowingly" is defined as having "actual knowledge," "deliberate ignorance," or "reckless disregard" with respect to the relevant information. Proof of specific intent to defraud is not required. § 40.1-29(K).
- An action must be commenced within three years of the cause of action accruing. § 40.1-29(L).
- Filing period is tolled upon the filing of an administrative complaint until the action is resolved or the complaint is withdrawn, whichever happens first. § 40.1-29(L).
- Adds liquidated damages to the remedies available through an administrative action. § 40.1-29(G).

Additional provisions from SB 838:

- Any construction contract entered into after July 1, 2020, is deemed to include a provision holding the general contractor and the subcontractor at any tier jointly and severally liable for the subcontractor's employees' wages at either the agreed-upon rate or the rate required by law, whichever is greater. § 11-4.6(B).
- The general contractor shall be deemed the employer of the subcontractor's employees for purposes of § 40.1-29 and will be jointly and severally liable with the subcontractor under those provisions. § 11-4.6(C).
- The subcontractor shall indemnify the general contractor for damages, penalties, etc., owed as a result of the subcontractor's failure to pay its workers, unless the failure is due to the general contractor's failure to pay moneys owed to the subcontractor. § 11-4.6(D).
- Three threshold showings are required: (1) the general contractor knew or should have known that the subcontractor was not paying its employees all wages owed; (2) the relevant construction contract is for something other than a single family residential project; and (3) "the value of the project, or an

**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 4

aggregate of projects under one construction contract, is greater than \$500,000." § 11-4.6(E).

**[House Bill 336](#) & [Senate Bill 49](#)**

**Expanding the Department of Labor and Industry's Authority to Investigate Wage Theft**

Sponsors: Delegate Marcia S. "Cia" Price (D-95)  
Senator Lionell Spruill, Sr. (D-5)

Effective Date: July 1, 2020

Virginia Code: Adds § 40.1-29.1 to Title 40.1

Acts of Assembly: Chapters 205 and 206

Key Provisions:

- Acts are identical.
- Gives the Commissioner of the Department of Labor and Industry (DOLI) authority to expand the scope of a wage theft investigation if s/he acquires information while investigating a complaint that creates a reasonable belief that other employees of the same employer have had wages unlawfully withheld. § 40.1-29.1.
- Authorizes the DOLI Commissioner to institute § 40.1-29 proceedings against the employer on behalf of any employee where a violation is identified, even without a written complaint or the employee's written and signed consent. § 40.1-29.1.

**[House Bill 337](#) & [Senate Bill 48](#)**

**Prohibiting Retaliation for Reporting Wage Theft**

Sponsors: Delegate Marcia S. "Cia" Price (D-95)  
Senator Lionell Spruill, Sr. (D-5)

Effective Date: July 1, 2020

**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 5

Virginia Code: Adds § 40.1-33.1 to Title 40.1

Acts of Assembly: Chapters 950 and 951

Key Provisions:

- Acts are identical.
- It is unlawful for employers to “discharge or in any other manner discriminate against an employee because such employee [1] has filed any complaint or instituted or caused to be instituted any proceeding under § 40.1-29, or [2] has testified or is about to testify in any such proceeding.” § 40.1-33.1(A).
- An employee who experiences such retaliation can file a complaint with the Commissioner of the Department of Labor and Industry, and the Commissioner, with the employee’s consent, can institute proceedings on the employee’s behalf seeking appropriate remedies, which may include reinstatement, lost wages, and/or liquidated damages. § 40.1-33.1(B).
- No private right of action.

Future Improvements:

- § 40.1-33.1 could be strengthened by adding a private right of action and providing for the recovery of reasonable attorneys’ fees and costs.

**[House Bill 30, Item 120](#)**

**Adding More Enforcement Staff to the Labor and Employment Law  
Division of the Department of Labor and Industry**

Sponsor: Delegate Paul Krizek (D-44) sponsored [Item 120 Amendment #1h](#), which passed the House before being amended by [Item 120 Amendment #1c](#) in conference.

Effective Date: July 1, 2020

Virginia Code: Item 120 of the uncodified 2020-22 Budget Bill

**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 6

Acts of Assembly: Reenrolled on April 22 but not yet added to the Acts of Assembly

Key Provisions:

- As a result of Amendment #1c, Item 120 of the reenrolled Budget Bill includes \$596,794 in FY 2021 and \$1,343,732 in FY 2022 “to support additional positions within the Labor and Employment Division, including one attorney, one supervisor, one administrative staff, and ten investigators.”
- Due to the COVID-19 crisis, the Governor recommended cutting many areas of new spending from the budget, but these proposed amendments did not include any changes to Item 120. On April 22, the Assembly adopted many of the Governor’s recommendations and reenrolled the Budget Bill with the new Labor and Employment Division funds intact.

**House Bill 689**

**Clarifying Last Session’s Wage Statement Requirements**

Sponsor: Delegate Lashrecse D. Aird (D-63)

Effective Date: March 10, 2020

Virginia Code: Amends § 40.1-29(C)

Acts of Assembly: Chapter 202

Key Provisions:

- Clarifies that wage statements must include the number of hours worked *if* the employee is paid based on hours worked or is paid a salary below the federal overtime exemption threshold. § 40.1-29(C).
- Further mandates that wage statements must include enough information for an employee to be able to determine how gross and net pay were calculated. § 40.1-29(C).
- Contains an emergency clause permitting the Act to take effect immediately upon passage.

**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 7

**II. Minimum Wage**

**House Bill 395 & Senate Bill 7  
Raising the Minimum Wage**

Sponsors: Delegate Jeion A. Ward (D-92)  
Senator Richard L. Saslaw (D-35)

Effective Date: The first minimum wage increase takes effect on May 1, 2021, per the Governor's recommendation, which the Assembly approved on April 22, 2020. Other terms become effective on July 1, 2020, except where specified.

Virginia Code: Amends §§ 40.1-28.9 and 40.1-28.10 of Title 40.1

Acts of Assembly: Chapters 1204 and 1242

Key Provisions:

- Gradually increases the Virginia minimum wage from the current federal level of \$7.25 per hour to:
  - \$9.50 per hour on May 1, 2021, § 40.1-28.10(B);
  - \$11.00 per hour on January 1, 2022, § 40.1-28.10(C);
  - \$12.00 per hour on January 1, 2023, § 40.1-28.10(D);
  - \$13.50 per hour on January 1, 2025 (if reenacted by July 1, 2024), § 40.1-28.10(E);
  - \$15.00 per hour on January 1, 2026 (if reenacted by July 1, 2024), § 40.1-28.10(F).
- Requires the DOLI Commissioner to annually establish an adjusted state hourly minimum wage based on any increase in the Consumer Price Index over the previous year. If subsections E and F above are reenacted by July 1, 2024, the adjusted state hourly minimum wage requirement begins October 1, 2026, to set the minimum wage for January 1, 2027. If subsections E and F are not reenacted, the requirement begins October 1, 2024, to set the minimum wage for January 1, 2025. § 40.1-28.10(H) and § 3 of SB 7 and HB 395.

**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 8

- Permits employers to pay a training wage of either 75 percent of the minimum wage or the federal minimum wage, whichever is greater, to employees enrolled in an established employer on-the-job training program for a period of no more than 90 days. § 40.1-28.10(A)(2).
- Expands Virginia minimum wage coverage
  - Covered employees now include workers covered by the Fair Labor Standards Act, home care providers, domestic workers, piece-rate workers, workers at small businesses (fewer than four employees), and minors who are under juvenile and domestic relations district court orders. § 40.1-28.9(A).
  - Persons with impaired earning capacity due to “physical deficiency, mental illness, or intellectual disability” are no longer excluded from minimum wage coverage, unless they are paid pursuant to a 29 U.S.C. § 214(c) certificate. § 40.1-28.9(A).
  - New exemptions for au pairs covered by 22 C.F.R. § 62.31, temporary foreign workers under 20 C.F.R. Part 655, and workers exempt under 29 U.S.C. § 213(a)(3). § 40.1-28.9(A).
  - “Employer” now includes “the Commonwealth, any of its agencies, institutions, or political subdivisions, and any public body.” § 40.1-28.9(A).
  - Adds definitions for tipped employees (as set forth in HB 56) and home care providers. § 40.1-28.9(A).
- Requires the Virginia Department of Housing and Community Development, the Virginia Economic Development Partnership Authority, and the Virginia Economic Commission to jointly review the feasibility and potential impact of regional minimum wages, the effects of the minimum wage increases, the options for utilizing a minimum wage in Virginia, and the equity of the farm laborer exemption, among other things. This review must begin by January 1, 2022 and conclude by December 1, 2023. § 2 of HB 395 and SB 7.

Future Improvements:

- Expand the definition of “employee” to include agricultural workers.



**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 9

- Reenact § 40.1-28.10(E) & (F) next session so that the 2024 and 2025 minimum wage increases do not expire.

**Senate Bill 78**

**Removing Minimum Wage Exemption for Piece-Rate Workers**

Sponsor: Senator Janet D. Howell (D-32)

Effective Date: July 1, 2020

Virginia Code: Amends § 40.1-28.9

Acts of Assembly: Chapter 1146

Key Provisions:

- Eliminates exemption for persons who are paid based on the amount of work they perform (*i.e.* piece-rate workers).

**Senate Bill 804**

**Removing Minimum Wage Exemption for Domestic Workers**

Sponsor: Senator Jennifer L. McClellan (D-9)

Effective Date: July 1, 2020

Virginia Code: Amends § 40.1-28.9 of Title 40.1

Acts of Assembly: Chapter 1147

Key Provisions:

- Removes exemption for domestic service workers. § 40.1-28.9(A)(2).
- Defines “domestic service,” a term that will no longer appear in Article 1.1 after the changes in HB 395 and SB 7 are codified. § 40.1-28.9(A).
- Orders the formation of a work group to make statutory and regulatory recommendations for improving workplace protections for domestic workers.

**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 10

The work group must report its findings and recommendations by November 1, 2020. § 2 of SB 804.

**III. Prevailing Wages**

**House Bill 833 & Senate Bill 8  
Requiring Prevailing Wages for Public Works Contracts**

Sponsors: Delegate Jennifer Carroll Foy (D-2)  
Senator Richard L. Saslaw (D-35)

Effective Date: May 1, 2021, per the Governor's recommendation and the General Assembly's April 22, 2020, concurrence.

Virginia Code: Amends § 40.1-6 concerning the duties of the Commissioner and adds § 2.2-4321.3 requiring contractors to pay prevailing wages for public contracts and imposing penalties for non-compliance.

Acts of Assembly: Chapters 1216 and 1243

Key Provisions:

- Acts are identical.
- Requires contractors and subcontractors under any public contract for public works exceeding \$250,000 with a state agency or a participating locality (i.e., a locality that has passed a prevailing wage ordinance) to pay prevailing wages, salaries, benefits, and other remuneration, as determined by the DOLI Commissioner based on the U.S. Department of Labor's Davis-Bacon Act rates, to all mechanics, laborers, or workers employed, retained, or otherwise hired to perform services in connection with the project. § 2.2-4321.3(B), (J).
- Requires a provision in every public contract for public works by a state agency or a locality with a prevailing wage ordinance mandating prevailing rates for any individual performing work on the contract. § 2.2-4321.3(B)-(C).
- Permits localities to adopt prevailing wage ordinances. § 2.2-4321.3(C).

**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 11

- Requires that any contractor or subcontractor who pays below the prevailing wage rate (i) be held liable for all wages owed plus 8% interest and (ii) be disqualified from bidding on public contracts with any public body until full restitution is paid. A contractor or subcontractor who willfully violates the prevailing wage requirement is guilty of a Class I misdemeanor. § 2.2-4321.3(D).
- Permits interested parties to challenge bid specifications or public contracts that violate this section. Interested parties shall be entitled to injunctive relief to prevent a violation, as well as reasonable attorneys' fees and costs for bringing a successful action. § 2.2-4321.3(E).
- Requires the prevailing contractor, upon the award of a public contract, to certify, under oath, the pay scale for each craft or trade to be employed on the project by the contractor and its subcontractors. § 2.2-4321.3(G).
- Requires employers to maintain and preserve wage and hour records and occupation schedules for at least six years, to post prevailing wage rates in a conspicuous place at the worksite, and to certify that the required postings occurred. § 2.2-4321.3(H)-(I).
- Empowers the DOLI Commissioner to determine prevailing wage rates based on the U.S. Secretary of Labor's determinations under the Davis-Bacon Act. § 40.1-6(6).

**IV. Misclassification**

**[House Bill 984](#) & [Senate Bill 894](#)**

**Private Right of Action for Misclassified Workers**

Sponsors: Delegate Karrie K. Delaney (D-67)  
Senator Richard L. Saslaw (D-35)

Effective Date: July 1, 2020

Virginia Code: Adds § 40.1-28.7:7 to Article 1 of Chapter 3 of Title 40.1.

Acts of Assembly: Chapters 203 and 381



**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 13

Effective Date: January 1, 2021

Virginia Code: Amends §§ 2.2-4321, 2.2-4343, 58.1-1821, and 58.1-1825 of the Virginia Code; adds § 58.1-3.4 and Chapter 19, §§ 58.1-1900 *et seq.*, to Title 58.1.

Acts of Assembly: Chapters 681 and 682

Key Provisions:

- Establishes an employee presumption for the purposes of Titles 40.1, 58.1, 60.2, and 65.2. “[I]f an individual performs services for an employer for remuneration, that individual shall be considered an employee of the party that pays that remuneration unless such individual or his employer demonstrates that such individual is an independent contractor” under IRS guidelines. § 58.1-1900(A).
- Imposes civil penalties on employers that fail to properly classify employees and fail to pay taxes, benefits, and other required contributions: up to \$1,000 per misclassified individual for a first offense, up to \$2,500 per misclassified individual for a second offense, and up to \$5,000 per misclassified individual for a third or subsequent offense. § 58.1-1901. All misclassifications made by the same employer at the same time or within the same 72-hour period are considered a single offense. § 58.1-1900(C).
- Empowers the Tax Commissioner to debar prospective contractors from contracting with public bodies and institutions for up to one year after a second offense and up to three years after a third or subsequent offense. §§ 58.1-1902(B), 2.2-4321(B). Debarred contractors can apply for relief under §§ 58.1-1821 and 58.1-1825. The Department of Taxation must also inform all public bodies, after notice to the employer, whenever it determines that an employer has misclassified workers. § 58.1-1902(A).
- Forbids agreements resulting in the misclassification of a worker or mischaracterizing a worker’s relationship with his/her employer. § 58.1-1903.
- Prohibits retaliation for exercising rights protected under the newly created Chapter 19, e.g., for refusing to sign an agreement that results in misclassification. § 58.1-1904.

**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 14

- Authorizes the Tax Commissioner to collaborate and share information with DOLI, the Virginia Employment Commission, and other agencies to identify employers who misclassify workers, and requires other agencies to inform the Department of Taxation of suspected violations. § 58.1-3.4. Requires the Department of Taxation to report annually to the Governor. § 58.1-1905.

Future Improvements:

- The protections in Chapter 19 (§§ 58.1-1900 *et seq.*) would be stronger if there were remedies available for violations of the unlawful agreement (§ 58.1-1903) and anti-retaliation (§ 58.1-1904) provisions.

**[House Bill 1199](#) & [Senate Bill 662](#)**

**Protecting Workers Who Report Misclassification**

Sponsors: Delegate Kathy K.L. Tran (D-42)  
Senator Jennifer B. Boysko (D-33)

Effective Date: July 1, 2020

Virginia Code: Adds § 40.1-33.1 to Article 2 of Chapter 3 of Title 40.1

Acts of Assembly: Chapters 204 and 271

Key Provisions:

- Acts are identical.
- Prohibits employers from discharging, disciplining, threatening, discriminating against, or penalizing an employee or independent contractor, or taking other retaliatory action with respect to a worker's "compensation, terms, conditions, location, or privileges of employment" because the worker:
  - Reported or plans to report to "an appropriate authority" that the employer failed properly classify a worker as an employee and failed to pay required benefits, § 40.1-33.1(A)(1),
  - Is requested or subpoenaed by "an appropriate authority" to participate in an investigation, hearing, inquiry, or court action. § 40.1-33.1(A)(2).

**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 15

- To be entitled to protection, a worker's disclosure must be made in good faith and upon a reasonable belief. Reckless, knowingly false, legally confidential, or malicious disclosures are not protected. § 40.1-33.1(B).
- A worker who experiences retaliation can file a complaint with the DOLI Commissioner, who can institute proceedings against the employer with the worker's consent. Available remedies include reinstatement and recovery of lost wages. § 40.1-33.1(C).
- Employers that are found to have engaged in retaliatory action will be subject to a civil penalty up to the value of the aggrieved worker's lost wages. § 40.1-33.1(D).

Future Improvements:

- Adding a private right of action, liquidated damages, and attorneys' fees and costs would likely lead to greater enforcement of these provisions.

**[House Bill 1646](#)**

**Sanctioning Contractors Who Misclassify Workers**

Sponsor: Delegate Paul E. Krizek (D-44)

Effective Date: July 1, 2020

Virginia Code: Amends § 54.1-1102(B)

Acts of Assembly: Chapter 685

Key Provisions:

- Directs the Board of Contractors to require that contractors properly classify all workers as employees or independent contractors. § 54.1-1102(B).
- Authorizes the Board of Contractors to sanction contractors who are found to have intentionally misclassified workers. § 54.1-1102(B).

**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 16

**House Bill 56**

**Prohibiting Misclassification of Tipped Workers**

Sponsor: Delegate Lee J. Carter (D-50)

Effective Date: July 1, 2020

Virginia Code: Amends § 40.1-28.9

Acts of Assembly: Chapter 1145

Key Provisions:

- Defines a “tipped employee” as “an employee who in the course of employment customarily and regularly receives more than \$30 each month from persons other than the employee’s employer.” § 40.1-28.9 (A)(18).
- Prohibits employers from classifying workers as “tipped employees” if they cannot solicit tips under applicable federal or state law or regulation. § 40.1-28.9 (B).

**V. Workplace Discrimination**

**Senate Bill 868 (Virginia Values Act)**

**Adding a Private Right of Action to the Virginia Human Rights Act and Expanding Coverage**

Sponsor: Senator Adam P. Ebbin (D-30)

Effective Date: July 1, 2020

Virginia Code: Amends §§ 2.2-520, 2.2-3004, 2.2-3900, 2.2-3901, 2.2-3902, 6.2-501, 15.2-853, 15.2-854, 15.2-965, 15.2-1507, 15.2-1604, 22.1-306, 36-96.1 through 36-96.3, 36-96.4, 36-96.6, and 55.1-1310; adds § 2.2-2901.1, Chapter 39 of Title 2.2, and §§ 15.2-1500.1 and 22.1-295.2; and repeals § 2.2-3903

Acts of Assembly: Chapter 1140



**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 17

Key Employment Provisions:

- Creates two causes of action for challenging unlawful discrimination under the Virginia Human Rights Act—one is reserved for the Attorney General, § 2.2-3906, and the other is available to private individuals after administrative remedies are exhausted. § 2.2-3908. The latter greatly expands the narrow private right of action that currently exists under the Virginia Human Rights Act. § 2.2-3903 (repealed as of July 1, 2020).
  - Action by the Attorney General
    - The Attorney General may commence an action whenever s/he has reasonable cause to believe that a person is engaged in a pattern or practice of resisting the full enjoyment of rights under the Virginia Human Rights Act or whenever there is a denial of rights that “raises an issue of general public importance.” § 2.2-3906(A).
    - Potential remedies (the court *may* grant them) for an action brought by the Attorney General include: preventive injunctive relief, civil penalties (not to exceed \$50,000 for a first offense and not to exceed \$100,000 for a second offense), compensatory and/or punitive damages to the aggrieved person(s), and reasonable attorneys’ fees and costs. § 2.2-3906(B)-(C).
    - An aggrieved person may intervene in such an action. § 2.2-3906(D).
  - Private right of action
    - A private individual seeking to sue an employer for discrimination must first file a complaint with the Division of Human Rights. §§ 2.2-3908(A) & 2.2-3907(A). Once a complaint is perfected, the Division will serve a charge on the respondent. § 2.2-3907(B). The parties then have the option of submitting to mediation. § 2.2-3907(C). If they do not, the Division shall investigate “to determine whether there is reasonable cause to believe the alleged discrimination occurred.” § 2.2-3907(D).

Workers' Rights in Virginia's 2020 Session

May 1, 2020

Page 18

- If the Division determines that there is no reasonable cause, it will dismiss the charge and issue a right-to-sue letter, triggering the 90-day window for filing in court. § 2.2-3907(E). If reasonable cause is found, the Division must notify the parties and “shall immediately endeavor to eliminate any alleged unlawful discriminatory practice by informal methods.” § 2.2-3907(F). If resolution is unworkable, the complainant will be given a right-to-sue letter. *Id.* The Division will also issue a right-to-sue letter upon request if 180 days have passed since the filing of the complaint or if the investigation is unlikely to conclude within 180 days. § 2.2-3907(H). The Division or complainant may also ask a court for certain temporary relief, pending final determination of the administrative proceedings. § 2.2-3907(G). Any regulations concerning the administrative process “shall, so far as practicable, conform to the practices and timelines of the Equal Employment Opportunity Commission with respect to analogous federal laws and regulations, for the purpose of maintaining a workshare agreement with that agency.” § 3 of SB 868.
  - A prevailing private individual *may* be awarded compensatory and punitive damages, temporary or permanent injunctive relief, reasonable attorneys’ fees, and costs. § 2.2-3908(B). There is no cap on compensatory damages. Punitive damages are capped at \$350,000 under Virginia Code § 8.01-38.1.
  - The Attorney General may intervene in a private case if it is of “general public importance.” § 2.2-3908(C).
- Codifies current prohibitions on discrimination in public employment on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, disability, or status as a veteran. §§ 2.2-2901.1 (state government), 15.2-1500.1 (local government), 22.1-295.2 (school board).
  - Provides that any “[c]onduct that violates any Virginia or federal statute or regulation governing discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, marital status, pregnancy, childbirth or related medical conditions including lactation, age, status as a veteran, or

**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 19

national origin is an unlawful discriminatory practice” under the Virginia Human Rights Act. § 2.2-3902.

- Prohibits much of the same discriminatory conduct by employers, employment agencies, labor organizations, and apprenticeship programs that Title VII forbids, but expands protections to classes not covered under Title VII. § 2.2-3905(B).
- Like Title VII, includes exceptions for BFOQs, religious educational institutions, bona fide seniority or merit systems, ability tests, and national security interests. § 2.2-3905(C).
- Adopts a motivating factor causation standard, except where otherwise provided. § 2.2-3905(B)(6).
- Prohibits retaliation for opposing unlawful practices or for filing a complaint or participating in an investigation. § 2.2-3905(B)(7).
- Defines “employer” as “a person employing 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person,” except in cases of unlawful discharge where the threshold is 5 employees (or 5-20 employees for age discrimination). § 2.2-3905(A).

**Future Improvements:**

- Both causes of action could be strengthened by making compensatory damages, attorneys’ fees, and costs non-discretionary, i.e., replacing the permissive “may” with the mandatory “shall.”
- The employee threshold for covered employers could be lowered to five employees for all provisions.
- § 2.2-3905(B)(7)’s protected activities could be expanded to include employee opposition to practices reasonably believed to be unlawful, employee participation in an employer investigation, and any perceived engagement in in protected activities.

**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 20

**[House Bill 827](#) & **[Senate Bill 712](#)****

**Prohibiting Pregnancy Discrimination, Requiring Reasonable Accommodations, and Creating a Private Right of Action**

Sponsors: Delegate Jennifer Carroll Foy (D-2)  
Senator Jennifer McClellan (D-9)

Effective Date: July 1, 2020

Virginia Code: Amends §§ 2.2-3901 and 2.2-3903 of the Virginia Human Rights Act and adds § 2.2-3904 creating a cause of action for unlawful discrimination related to pregnancy, childbirth, or related medical conditions.

Acts of Assembly: Chapters 1138 and 1139

Key Provisions:

- Acts are identical.
- Prohibits employers, defined as employing five or more employees, from:
  - Failing or refusing to hire, discharging, or otherwise discriminating against an individual with respect to compensation, terms, conditions, and privileges of employment on the basis of pregnancy, childbirth, or related medical conditions. § 2.2-3904(B)(1).
  - Refusing to make a reasonable accommodation, as defined, to a person's known limitations related to pregnancy, childbirth, or related medical conditions, "unless the employer can demonstrate that the accommodation would impose an undue hardship on the employer." § 2.2-3904(B)(2).
    - "Reasonable accommodation" includes "more frequent or longer bathroom breaks, breaks to express breast milk, access to a private location other than a bathroom for the expression of breast milk, acquisition or modification of equipment or access to or modification of employee seating, a temporary transfer to a less strenuous or hazardous position, assistance with manual labor, job restructuring, a modified work schedule, light duty

**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 21

assignments, and leave to recover from childbirth.” § 2.2-3904(A).

- An undue hardship analysis shall consider: (1) hardship on the conduct of the employer’s business; (2) nature and size of the employer’s business; and (3) the nature and cost of the accommodations needed. § 2.2-3904(B)(2)(a).
- If similar accommodations would be available to other classes of employees, there is a rebuttable presumption that the accommodation does not impose an undue hardship. § 2.2-3904(B)(2)(b).
- Taking adverse action against an employee for requesting a reasonable accommodation. An adverse action may include failing to reinstate the employee to the same or equivalent position after the accommodation period expires. § 2.2-3904(B)(3).
- Denying employment or promotion opportunities to qualified persons because reasonable accommodations will be necessary. § 2.2-3904(B)(4).
- Requiring an employee to take leave if another reasonable accommodation can be provided. § 2.2-3904(B)(5).
- Requires employers to engage in a “timely, good faith interactive process” with a requesting employee to determine if the requested accommodation is reasonable, and if not, to identify alternatives. § 2.2-3904(C).
- Employers are required to provide employees with information about these protections by posting in a conspicuous place, by publishing in the employee handbook, and by furnishing notices to employees at the start of employment, within ten days of receiving notice of pregnancy, and within 120 days of July 1, 2020. § 2.2-3904(D).
- Creates a private right of action for any employee who is denied rights under subsection B. § 2.2-3904(E).
  - Two-year limitations period.

**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 22

- No exhaustion requirement, but if an administrative complaint is filed within two years of the unlawful act, the employee can bring an action in court within 90 days of the administrative agency's final disposition.
- If the employee prevails, the court *may* award compensatory damages, back pay, equitable relief, including any permanent or temporary injunction or restraining order, and reasonable attorneys' fees and costs.

Future improvements:

- The private right of action could be strengthened by making compensatory damages, attorneys' fees, and costs non-discretionary, i.e., replacing the permissive "may" with the mandatory "shall."

**House Bill 1049**

**Prohibiting Discrimination Based on Sexual Orientation and Gender Identity**

Sponsors: Delegate Mark H. Levine (D-45)

Effective Date: July 1, 2020

Virginia Code: Amends §§ 2.2-2203.3, 2.2-3004, 2.2-3900 through 2.2-3903, 2.2-4200, 2.2-4310, 2.2-4343.1, 4.1-101.05, 6.2-501, 15.2-853, 15.2-854, 15.2-965, 15.2-1131, 15.2-1507, 15.2-1604, 15.2-6314.1, 22.1-212.6:1, 22.1-306, 22.1-349.3, 23.1-1009, 23.1-1017, 23.1-2213, 23.1-2312, 23.1-2405, 23.1-2415, 23.1-3011, 23.1-3138, 36-55.26, 36-96.1 through 36-96.3, 36-96.4, 36-96.6, 37.2-707, 38.2-508.2, 38.2-2114, 38.2-2115, 38.2-2212, 38.2-2213, 38.2-3407.10, 40.1-121, 46.2-1503.2, 51.1-124.27, 51.5-166, 51.5-170, 55.1-1310, 58.1-3651, 58.1-4024, 62.1-129.1, and 63.2-608; adds §§ 2.2-2901.1, 15.2-1500.1, and 22.1-295.2.

Acts of Assembly: Chapter 1137

Key Provisions:

**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 23

- Adds gender identity and sexual orientation to the list of protected characteristics covered by various anti-discrimination statutes relating to employment, public accommodation, housing, public contracting, and so on.
- Adds § 2.2-2901.1 to prohibit state agencies and institutions from discriminating in employment on the basis of sexual orientation or gender identity.
- Adds § 15.2-1500.1 to prohibit local governments from discriminating in employment on the basis of sexual orientation or gender identity.
- Adds § 22.1-295.2 to prohibit school boards discriminating in employment on the basis of sexual orientation or gender identity.

**House Bill 1252**

**Prohibiting Discrimination in Apprenticeship Programs**

Sponsors: Delegate Don L. Scott (D-80)

Effective Date: July 1, 2020

Virginia Code: Amends § 40.1-121 and adds § 40.1-120.1

Acts of Assembly: Chapter 1228

**Key Provisions:**

- Prohibits a sponsor of a registered apprenticeship program from discriminating against an apprentice or applicant on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, age (if older than 40), genetic information, or disability. § 40.1-120.1(A).
- Provides that it is not unlawful to fail or refuse to hire or accept an individual if:
  - the position is subject to national security requirements, § 40.1-120.1(B)(1),
  - the individual has not fulfilled or no longer fulfills a requirement. § 40.1-120.1(B)(2).

**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 24

- Provides that the sole remedy for a violation of § 40.1-120.1(A) is in § 40.1-125(B)(5), which permits the DOLI Commissioner to initiate deregistration proceedings against the apprenticeship program. § 40.1-120.1(C).
- Requires a statement in every apprentice agreement that the apprentice will be accorded equal opportunity as provided in § 40.1-120.1. § 40.1-121(10).

**House Bill 196**

**Prohibiting Employment Discrimination Against Local Election Officials**

Sponsors: Delegate Wendy W. Gooditis (D-10)

Effective Date: July 1, 2020

Virginia Code: Adds § 24.2-119.1 and repeals § 24.2-118.1

Acts of Assembly: Chapter 838

**Key Provisions:**

- Prohibits employers from discharging, taking any adverse personnel action against, or requiring the use of sick leave or vacation time by any person who serves as a member of a local electoral board, an assistant general registrar, or an officer of election for absences due to election day or subsequent election board duties, provided that the employer was given reasonable notice. § 24.2-119.1.
- Employers cannot require such persons who worked four or more hours on election duties (including travel time) to work a shift that begins on or after 5PM on the day of service or begins before 3AM the following day. § 24.2-119.1.
- Any employer who violates these requirements is guilty of a Class 3 misdemeanor. § 24.2-119.1.



**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 25

**House Bill 696**

**Adding Sexual Orientation and Gender Identity to the Protected Classes Covered by the Local Anti-Discrimination Ordinance Authorizing Statute**

Sponsors: Delegate Danica A. Roem (D-13)

Effective Date: July 1, 2020

Virginia Code: Amends § 15.2-965

Acts of Assembly: Chapter 131

Key Provisions:

- Adds sexual orientation and gender identity to the list of characteristics that localities may enact ordinances to protect. § 15.2-965(A).
- Defines “gender identity” as “the gender-related identity, appearance, or other gender-related characteristics of an individual, without regard to the individual's designated sex at birth.” § 15.2-965(C).
- Defines “sexual orientation” as “a person’s actual or perceived heterosexuality, bisexuality, or homosexuality.” § 15.2-965(C).

**House Bill 1228**

**Requiring Contractors to Provide Annual Sexual Harassment Trainings**

Sponsors: Delegate Kathy K.L. Tran (D-42)

Effective Date: July 1, 2020

Virginia Code: Amends § 2.2-4201

Acts of Assembly: Chapter 859

Key Provisions:

- Requires contractors employing more than five employees (i) to provide annual training on their sexual harassment policy to all supervisors and employees working in Virginia (unless otherwise required to complete a

**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 26

Department of Human Resource Management training) and (ii) to conspicuously post the policy in all their buildings in Virginia and in their employee handbooks. § 2.2-4201(3).

- Directs the Department of Human Resource Management to develop procedures (i) for determining whether contractor employees spend significant time working near state employees and (ii) for requiring those contractor employees who work closely with state employees to complete state employee harassment training as well. § 2 of HB 1228.

**[House Bill 1514](#) & [Senate Bill 50](#)**

**Defining “Because of Race” in the Virginia Human Rights Act**

Sponsors: Delegate Delores L. McQuinn (D-70)  
Senator Lionell Spruill, Sr. (D-5)

Effective Date: July 1, 2020

Virginia Code: Amends § 2.2-3901

Acts of Assembly: Chapters 107 and 152

**Key Provisions:**

- Acts are identical.
- Provides that the terms “because of race,” “on the basis of race,” and terms of similar import include “because of or on the basis of traits historically associated with race, including hair texture, hair type, and protective hairstyles such as braids, locks, and twists.” 2.2-3901(C).
- In other words, to discriminate against someone for a trait closely tied to race like hairstyle or hair texture is to discriminate on the basis of race.

**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 27

**VI. Whistleblower Protection**

**House Bill 798**

**Whistleblower Protection Law**

Sponsor: Delegate Karrie K. Delaney (D-67)

Effective Date: July 1, 2020

Virginia Code: Adds § 40.1-27.3 to Title 40.1

Acts of Assembly: Chapter 1136

**Key Provisions:**

- Prohibits employers from discharging, disciplining, threatening, discriminating against, or penalizing an employee, or from taking other retaliatory action with respect to the employee's compensation, terms, conditions, location, or privileges of employment, because the employee engages in protected activity. § 40.1-27.3(A).
- Protected activities under the Act include:
  - Reporting *in good faith* (or causing another to report in good faith on the employee's behalf) a violation of *any federal or state law or regulation* either internally to a supervisor or to any governmental body or law-enforcement official, § 40.1-27.3(A)(1);
  - Being asked by a governmental body or law-enforcement agency to participate in an investigation, hearing, or inquiry, § 40.1-27.3(A)(2);
  - Refusing to engage in a criminal act that would expose the employee to criminal liability, § 40.1-27.3(A)(3);
  - Refusing an employer's order to perform an action that would violate any federal or state law or regulation, provided that the employee informs the employer that the order is being refused for that reason, § 40.1-27.3(A)(4);

Workers' Rights in Virginia's 2020 Session

May 1, 2020

Page 28

- Providing information to or testifying before any governmental body or law-enforcement official in connection with an investigation into the employer's unlawful conduct. § 40.1-27.3(A)(5).
- Does not authorize employees to:
  - Disclose data otherwise protected by law or privilege, § 40.1-27.3(B)(1);
  - Make statements or disclosures knowing that they are false or in reckless disregard of the truth, § 40.1-27.3(B)(2);
  - Make disclosures that would violate federal or state law or diminish or impair the rights of any person to the continued protection of confidentiality of communications provided by common law. § 40.1-27.3(B)(3).
- Creates a private right of action for employees who allege a violation of the statute.
  - Action must be brought within one year of the prohibited retaliatory conduct. § 40.1-27.3(C).
  - A court *may* remedy a violation by ordering: (i) an injunction to stop the violation, (ii) reinstatement of the aggrieved employee to the same or equivalent position held before the retaliation, (iii) compensation for lost wages, benefits, and other remuneration, together with interest thereon, as well as reasonable attorneys' fees and costs. § 40.1-27.3(C).

Future Improvements:

- Clarify that internal reporting to someone other than an immediate supervisor is protected.
- Insert an explicit reasonable belief standard into § 40.1-27.3(A)(1). [As others have argued](#), the inclusion of "in good faith" may already excuse a plaintiff from demonstrating that there was an *actual* violation of law, but this could be clarified in the statute.
- Extend the limitations period beyond one year.

**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 29

- Make compensation for lost wages, benefits, and other remuneration, reasonable attorneys' fees, and costs non-discretionary.
- Add compensatory and punitive damages.

**VII. Labor Law**

**[House Bill 582](#) & [Senate Bill 939](#)**

**Permitting Localities to Collectively Bargain with Public Employees**

Sponsors: Delegate Elizabeth Guzman (D-31)  
Senate Majority Leader Richard L. Saslaw (D-35)

Effective Date: May 1, 2021, per the Governor's recommendation, which the General Assembly adopted on April 22, 2020.

Virginia Code: Amends §§ 40.1-57.2, 40.1-57.3, and 40.1-55

Acts of Assembly: Chapters 1209 and 1276

**Key Provisions:**

- Amends § 40.1-57.2, which previously banned public sector collective bargaining in Virginia, to allow for collective bargaining between counties, cities, towns, and school boards and their employees where the locality has provided for it in a local ordinance or resolution.
  - Any such ordinance or resolution must set forth certification and decertification procedures, including reasonable public notice and opportunity for labor organizations to intervene in the proceedings. § 40.1-57.2(A).
  - Does not restrict a local governing body's ability to establish a budget or appropriate funds. § 40.1-57.2(B).
  - A governing body that does not pass a collective bargaining ordinance *sua sponte* will be required to take a vote on whether to adopt such an ordinance "within 120 days of receiving certification from a majority of public employees in a unit considered by such employees to be appropriate for the purposes of collective bargaining." § 40.1-57.2(C).

**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 30

- Governing bodies are not required to authorize collective bargaining. § 40.1-57.2(C).
- Local executive officers are not vested with authority to recognize or collectively bargain with labor organizations. § 40.1-57.2(D).
- Amends § 40.1-57.3 to include collective bargaining among the permitted activities for public employees where the locality has adopted a collective bargaining ordinance.
- Amends § 40.1-55 to clarify that Virginia's prohibition on public sector strikes still applies to county, city, town, or school board employees who are authorized by ordinance or resolution to collectively bargain. In other words, any employee who engages in strike activity will still be terminated and deemed ineligible for public employment for twelve months.

**Future Improvements:**

- Remove or restrict local government discretion over engaging in collective bargaining.
- Expand collective bargaining to all public sector workers, including state employees.
- Relax the prohibition on strikes for certain public sector workers.

**[House Bill 358](#) & [Senate Bill 182](#)**

**Authorizing State and Local Authorities to Require Project Labor Agreements**

Sponsors: Delegate Alfonso H. Lopez (D-49)  
Senator Richard L. Saslaw (D-35)

Effective Date: May 1, 2021, per the Governor's recommendation, which the General Assembly adopted on April 22, 2020.

Virginia Code: Amends § 2.2-4321.2

Acts of Assembly: Chapters 1203 and 1251

**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 31

Key Provisions:

- Authorizes any public body, including state and local governments, when engaged in procuring or contracting for construction, manufacture, maintenance, or operation of public works, to require bidders, contractors, and subcontractors to enter into and adhere to project labor agreements with one or more labor organization(s) on public works projects. § 2.2-4321.2(B).
- “Project labor agreement” is defined as “a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific public works project.” § 2.2-4321.2(A).
- Eliminates provisions in § 2.2-4321.2 that prohibited state agencies from discriminating against bidders, contractors, and subcontractors for refusing to sign labor agreements and that permitted interested parties to challenge bid specifications.

**VIII. Worker Safety**

**[House Bill 1201](#) & [Senate Bill 380](#)**

**Permitting Localities to Impose Safety-Related Bidding Criteria for Contractors**

Sponsors: Delegate Kathy K.L. Tran (D-42)  
Senator Jeremy S. McPike (D-29)

Effective Date: July 1, 2020

Virginia Code: Amends §§ 2.2-4302.1 and 2.2-4359

Acts of Assembly: Chapters 1089 and 176

Key Provisions:

- Acts are identical.
- Allows localities to include criteria in invitations to bid that can be used to determine whether a bidder who is not prequalified by the Virginia Department of Transportation is a responsible bidder. § 2.2-4302.1(1).

**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 32

- Criteria can include proof or good faith assurances that the bidder and any potential subcontractors (i) have completed Occupational Safety and Health Administration (OSHA) safety programs, (ii) have participated in apprenticeship training programs that are approved by the Department of Labor or state agencies, and (iii) have maintained records of compliance with local, state, and federal laws. § 2.2-4302.1(1).
- A determination that a low bidder is “not responsible” based on the invitation to bid criteria is presumptively considered an honest exercise of discretion. § 2.2-4359(E).

**IX. Workers' Compensation**

**House Bill 46**

**Requiring Employer Notification of Intent to Accept or Deny Workers' Compensation Claims**

Sponsor: Delegate Lee J. Carter (D-50)

Effective Date: July 1, 2020

Virginia Code: Adds § 65.2-601.2 to Title 65.2.

Acts of Assembly: Chapter 1086

Key Provisions:

- Requires an employer whose employee has filed for workers' compensation to advise the employee whether it intends to accept or deny the claim or whether it lacks sufficient information to make a determination. § 65.2-601.2(A).
- The employer has 30 days from the time it receives notice of the claim to advise the employee. § 65.2-601.2(A).
- If the employer intends to deny the claim, it must provide reasons for the denial. § 65.2-601.2(A).



**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 33

- If the employer lacks information, it must identify in its notice to the employee what information it requires. § 65.2-601.2(A).

**[House Bill 169](#) & [Senate Bill 345](#)**

**Adding Correctional Officers and DMV Enforcement Officers to Public Safety Employees Entitled to Certain Occupational Disease Presumptions**

Sponsors: Delegate Roslyn C. Tyler (D-75)  
Senator John J. Bell (D-13)

Effective Date: July 1, 2020

Virginia Code: Amends § 65.2-402.1

Acts of Assembly: Chapters 1150 and 1152

Key Provisions:

- Adds correctional officers, as defined in § 53.1-1, and full-time sworn members of the enforcement division of the Department of Motor Vehicles to the list of public safety employees who are entitled to a presumption that certain infectious diseases, including hepatitis, meningococcal meningitis, tuberculosis, and HIV, that cause death or disability are compensable occupational diseases. § 65.2-402.1(A).
- SB 245 adds that the presumption shall not apply for correctional officers or DMV enforcement officers who were diagnosed with hepatitis, meningococcal meningitis, or HIV before July 1, 2020. § 65.2-402.1(A).

**[House Bill 438](#) & [Senate Bill 561](#)**

**Making Post-Traumatic Stress Disorder Compensable for Law Enforcement Officers and Firefighters**

Sponsors: Delegate Steve E. Heretick (D-79)  
Senator Jill Holtzman Vogel (R-27)

Effective Date: July 1, 2020

**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 34

Virginia Code: Amends §§ 9.1-102 and 9.1-203.1 and adds § 65.2-107 to Chapter 1 of Title 65.2.

Acts of Assembly: Chapters 1206 and 1262

Key Provisions:

- Acts are identical.
- Requires training for firefighters and law-enforcement officers in “managing stress, self-care techniques, and resiliency.” §§ 9.1-102(55), 9.1-203.1(A)(5).
- Makes post-traumatic stress disorder incurred by a law-enforcement officer or firefighter compensable if diagnosed by a mental health professional as a result of the individual undergoing a qualifying event (involving death, serious injury, threats to life, abuse, etc.) in the line of duty. The qualifying event must be a substantial factor and the primary cause of the PTSD, and the PTSD must not result from a disciplinary or personnel action. § 65.2-107(B).
- By January 1, 2021, employers of law-enforcement officers or firefighters must make peer support and mental health professional referrals available. § 65.2-107(D).

**[House Bill 617](#)**

**Authorizing a Study of Repetitive Motion Injuries**

Sponsor: Delegate Elizabeth R. Guzman (D-31)

Effective Date: July 1, 2020

Virginia Code: Uncodified

Acts of Assembly: Chapter 549

Key Provisions:

- Directs the Virginia Workers' Compensation Commission to engage the services and expertise of an independent research organization to study

**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 35

options for covering workers' repetitive motion injuries and to summarize key policy considerations to be presented to certain General Assembly committees by November 30, 2020.

- The study should consider the annual number of such injuries, other states' evidentiary requirements for proving such claims, necessary statutory changes in Virginia, and impacts on workers, employers, and insurers.

**[House Bill 783](#) & [Senate Bill 9](#)**

**Expanding Occupational Disease Presumptions for Workers' Compensation Claims**

Sponsors: Delegate Alex Askew (D-85)  
Senator Richard L. Saslaw (D-35)

Effective Date: July 1, 2020

Virginia Code: Amends § 65.2-402

Acts of Assembly: Chapters 498 and 499

Key Provisions:

- Adds cancers of the colon, brain, and testes to the list of cancers presumed to be covered occupational diseases for firefighters and certain other employees. § 65.2-402(C).
- Removes the requirement that an employee has had contact with a toxic substance in the line of duty for cancers to be presumed occupational diseases and reduces the service requirement from twelve years of continuous service to five years of service. § 65.2-402(C).
- Adds a five-year service requirement for a presumption that hypertension and heart disease are occupational diseases for firefighters and police officers. § 65.2-402(B).

**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 36

**[House Bill 1558](#)**

**Authorizing the Creation of a Workers' Compensation Ombudsman Program**

Sponsor: Delegate Terry G. Kilgore (R-1)

Effective Date: July 1, 2020

Virginia Code: Adds § 65.2-205 to Chapter 2 of Title 65.2

Acts of Assembly: Chapter 616

Key Provisions:

- Authorizes the Workers' Compensation Commission to create an Ombudsman program to provide neutral educational information and assistance to unrepresented persons. § 65.2-205(A).
- Authorizes the Commission to appoint an attorney in good standing to be an impartial ombudsman to administer such program. § 65.2-205(A).
- Ombudsman work product, case files, and communications with persons receiving assistance are confidential. They are inadmissible as evidence and are not subject to disclosure, except in certain narrow circumstances. § 65.2-205(B).
- Makes the ombudsman and program personnel immune from civil liability arising from the performance of their duties. § 65.2-205(C).

**X. Unemployment Insurance**

**[Senate Bill 548](#)**

**Amending Unemployment Insurance Procedures and Establishing a Work-Sharing Program**

Sponsor: Senator John S. Edwards (D-21)

Effective Date: July 1, 2020

**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 37

Virginia Code: Amends §§ 60.2-212, 60.2-229, 60.2-508, 60.2-512, 60.2-513, and 60.2-627 and adds §§ 60.2-711 through 60.2-716.

Acts of Assembly: Chapter 1261

Key Provisions:

- Amends various unemployment insurance procedures and standards:
  - Requires the Virginia Employment Commission to use the IRS standards for determining employee status. § 60.2-212(C).
  - Excludes certain cafeteria plan payments from being counted as “wages” for unemployment insurance purposes. § 60.2-229(B)(7).
  - Clarifies that each day a person fails to obey a subpoena or court order in an unemployment case counts as a separate offense. § 60.2-627(C).
  - Requires employing units to establish an account with the Commission by the end of the calendar quarter in which they become subject to unemployment compensation requirements. § 60.2-508.
  - Requires employers to submit required reports by the due date of the calendar quarter in which they initially become subject to liability. § 60.2-513(C).
  - Requires all employers to file their quarterly payroll and tax reports electronically beginning January 1, 2021. § 60.2-512(B).
- Requires the Virginia Employment Commission to establish and implement a short-time compensation program by January 1, 2021, contingent on adequate federal funding. § 60.2-712(A); § 3 of SB 548.
  - Employers wishing to participate will have to submit for the Commission's approval a work-sharing plan and an application, including information about the affected workers, work schedules, and required notices, along with certifications that benefits will be maintained and that work hour reductions are in lieu of layoffs, among other things. § 60.2-712 (B).

**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 38

- If approved, the work-sharing plan (which can last up to one year) shall allow eligible and covered employees to draw short-time compensation (the regular weekly unemployment compensation amount multiplied by the percentage of reduction in usual weekly hours) in any week (for up to 26 weeks unless receiving extended benefits) during the plan that the employee's compensation is reduced due to a reduction in hours. §§ 60.2-714, -715, -716.

**[House Bill 143](#)**

**Extending Unemployment Insurance Eligibility for Military Spouses**

Sponsor: Delegate R. Lee Ware (R-65)

Effective Date: July 1, 2020

Virginia Code: Uncodified

Acts of Assembly: Chapter 261

**Key Provisions:**

- Repeals the sunset provision for § 60.2-528(C)(9), which provides that good cause for leaving employment can exist where an employee voluntarily leaves a job to accompany his/her active duty military spouse to a new permanent military-related assignment from which the employee's place of employment is not reasonably accessible.

**XI. Public Sector Employee Rights**

**[House Bill 757](#)**

**Banning the Box for Most Public Sector Jobs**

Sponsor: Delegate Lashrecse D. Aird (D-63)

Effective Date: July 1, 2020

Virginia Code: Adds §§ 2.2-2812.1 and 15.2-1505.3

**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 39

Acts of Assembly: Chapter 422

Key Provisions:

- Prohibits state agencies and localities from asking in a pre-interview employment application whether the prospective employee has ever been arrested for, charged with, or convicted of any crime, except in applications for law-enforcement and related agencies, local school boards, certain “sensitive positions” as defined in § 2.2-1201.1 or § 15.2-1505.3(B)(1)-(3), or “state agencies that are expressly permitted to inquire into an individual’s criminal arrests or charges for employment purposes pursuant to any provision of federal or state law.” §§ 2.2-2812.1(B), (E), 15.2-1505.3(B).
- Prohibits asking a prospective employee if s/he has ever been arrested for, charged with, or convicted of any crime, unless the inquiry takes place during or after a staff interview of the prospective employee. §§ 2.2-2812.1(C)-(D), 15.2-1505.3(C)-(D).
- Codifies state policies adopted in 2015 pursuant to then Governor McAuliffe’s Executive Order 41.

Future Improvements:

- Expand these protections to the private sector.
- Add an enforcement mechanism and civil remedies.

**[House Bill 1385](#) & [Senate Bill 349](#)**

**Permitting Insurance Benefits for Political Subdivision Retirees**

Sponsors: Delegate James A. “Jay” Leftwich (R-78)  
Senator L. Louise Lucas (D-18)

Effective Date: July 1, 2020

Virginia Code: Amends § 15.2-1517

Acts of Assembly: Chapters 424 and 425

**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 40

Key Provisions:

- Acts are identical.
- Permits localities to extend group life, accident, and health insurance benefits to retired employees of boards, commissions, agencies, or authorities that are political subdivisions of the Commonwealth and work in close cooperation with such locality. § 15.2-1517(A).

**Senate Bill 377**

**Amending Teacher Grievance Procedures**

Sponsor: Senator John J. Bell (D-13)

Effective Date: July 1, 2020

Virginia Code: Amends §§ 22.1-311 and 22.1-313

Acts of Assembly: Chapter 875

Key Provisions:

- Authorizes a school board to conduct a teacher dismissal hearing before a three-member fact-finding panel. § 22.1-311(C).
- Fact-finding panels shall consist of one member selected by the teacher, one member selected by the division superintendent, and the third member, an impartial hearing officer, selected by the other panel members to serve as the chairperson. § 22.1-311(C).
- Requires a fact-finding panel to create a record of proceedings and to make a recommendation to the school board, with a copy to the teacher, within ten business days of the hearing, at which point the school board may make its own decision based on the record or may elect to conduct a further hearing within ten business days of receiving the initial hearing record. § 22.1-311(C).
- Removes the requirement that a hearing be held within 15 days of the teacher's request for one and extends the required hearing notice period from five to ten days. § 22.1-311(A).



**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 41

**[House Bill 570](#) & **[Senate Bill 167](#)****

**Eliminating the Definition of “Incompetency” from the Teacher Dismissal Statute**

Sponsors: Delegate Elizabeth Guzman (D-31)  
Senator Barbara Favola (D-31)

Effective Date: July 1, 2020

Virginia Code: Removes subsection B from § 22.1-307.

Acts of Assembly: Chapters 56 and 168

Key Provisions:

- Acts are identical.
- Removes the broad definition of “incompetency” for purposes of dismissing a teacher and instead leaves the term undefined.
- Under the old standard, a teacher could be deemed incompetent and dismissed for receiving one unsatisfactory performance evaluation.

**[House Bill 1443](#)**

**Requiring Biennial Review of Teacher Compensation Based on the National Average**

Sponsor: Delegate Schuyler T. VanValkenburg (D-72)

Effective Date: July 1, 2020

Virginia Code: Amends § 22.1-289.1

Acts of Assembly: Chapter 690

Key Provisions:

- Requires the Department of Education (instead of the Director of Human Resource Management) to conduct a biennial review of the compensation of teachers.

**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 42

- Removes the requirement that other occupations requiring similar education and training be included in the review.
- Requires the review to compare Virginia's compensation for teachers to the national average teacher salary (rather than to member states in the Southern Regional Education Board).

**House Bill 1344**

**Clarifying Teacher Licensure Procedures**

Sponsor: Delegate Alex Q. Askew (D-85)

Effective Date: July 1, 2020

Virginia Code: Amends §§ 22.1-298.1 and 22.1-304

Acts of Assembly: Chapter 513

**Key Provisions:**

- Requires the Board of Education to establish specific grounds in its disciplinary regulations for issuing written reprimands to license holders. § 22.1-298.1(B).
- Permits a local board of education or superintendent to suspend the license of a teacher who breaches his/her contract, as an alternative to the two currently available options—reprimand or revocation. § 22.1-304(C).

**XII. Other Pro-Worker Acts**

**House Bill 330 & Senate Bill 480**

**Prohibiting Non-Compete Agreements for Low-Wage Workers and Creating a Private Right of Action**

Sponsors: Delegate Schuyler T. VanValkenburg (D-72)  
Senator Bill DeSteph (R-8)

Effective Date: July 1, 2020

**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 43

Virginia Code: Adds § 40.1-28.7:7 to Title 40.1. This will have to be reconciled with House Bill 622, which seeks to add a provision to the same section of the Code.

Acts of Assembly: Chapters 948 and 949

Key Provisions:

- Acts are identical.
- Prohibits employers from entering into a covenant not to compete with any low-wage employee and from enforcing or threatening to enforce a covenant not to compete against a low-wage employee. § 40.1-28.7:7(B).
  - “Low-wage employee” is defined as an employee whose average weekly earnings are less than the average weekly wage of the Commonwealth as determined under § 65.2-500(B). This includes interns, students, apprentices, trainees, and independent contractors with earnings under the median hourly wage for the Commonwealth according to the Bureau of Labor Statistics. Employees paid largely by commissions, bonuses, or incentives are not included. § 40.1-28.7:7(A).
  - “Covenant not to compete” is defined as “a covenant or agreement, including a provision of a contract of employment, between an employer and employee that restrains, prohibits, or otherwise restricts an individual’s ability, following the termination of the individual’s employment, to compete with his former employer.” A covenant not to compete cannot restrict an employee from providing a service to a customer or client of the employer where the employee does not initiate contact. § 40.1-28.7:7(A).
- Does not limit the use of non-disclosure agreements with respect to trade secrets and proprietary or confidential information. § 40.1-28.7:7(C).
- Creates a private right of action for low-wage employees to sue former employers or other persons who attempt to enforce non-compete covenants in violation of the statute. § 40.1-28.7:7(D).

**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 44

- Action must be brought within two years of the covenant being signed, the employee learning of the covenant, the employee's termination, or the employer taking any step to enforce the covenant. § 40.1-28.7:7(D).
- A court has jurisdiction to void any unlawful covenant and to order all appropriate relief, including injunctive relief, liquidated damages, lost compensation, damages, and reasonable attorneys' fees and costs. § 40.1-28.7:7(D).
- If a court finds a violation, the plaintiff is entitled to recover reasonable costs, including costs and reasonable fees for expert witnesses, and attorneys' fees from the defendant. § 40.1-28.7:7(F).
- Retaliation for bringing a civil action is prohibited. § 40.1-28.7:7(D).
- Subjects employers who violate subsection B to a civil penalty of \$10,000 for each violation. § 40.1-28.7:7(E).
- Requires employers to post the statute or an approved summary and creates civil penalties for failing to post. § 40.1-28.7:7(G).
- Applies only to covenants not to compete entered into *on or after* July 1, 2020. § 2 of HB 330 and SB 480.

Future Improvements:

- Expand coverage by raising the threshold income for "low-wage employees" or by explicitly extending coverage beyond "low-wage employees."
- Make compensatory and liquidated damages non-discretionary like reasonable attorneys' fees and costs.

**[House Bill 622](#)**

**Prohibiting Retaliation Against Employees for Inquiring About or Discussing Wages or Other Compensation**

Sponsor: Delegate Chris Hurst (D-12)

Effective Date: July 1, 2020

**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 45

Virginia Code: Adds § 40.1-28.7:7 to Title 40.1. This will have to be reconciled with House Bill 330 and Senate Bill 480, which seek to add a provision to the same section of the Code.

Acts of Assembly: Chapter 1210

Key Provisions:

- Makes it unlawful to “discharge from employment or take other retaliatory action against an employee because the employee (i) inquired about or discussed with, or disclosed to, another employee any information about either the employee’s own wages or other compensation or about any other employees’ wages or other compensation or (ii) filed a complaint with the Department alleging a violation of this section.” § 40.1-28.7:7(A).
- Does not apply to employees who have access to employee compensation information as part of their essential job duties (i.e., human resources or payroll employees), unless the disclosure was consistent with a legal duty to furnish information. § 40.1-28.7:7(A).
- Employers who violate this section are subject to a \$100 civil penalty for each violation. The Commissioner must notify the employer of the allegation, and the employer can request an informal conference with the Commissioner. § 40.1-28.7:7(B).
- The Commissioner has “the right to petition a circuit court for injunctive or such other relief as may be necessary for enforcement of this section.” § 40.1-28.7:7(C).

**[House Bill 624](#)**

**Ordering Recommendations Concerning the Proactive Enforcement of Equal Pay Provisions**

Sponsor: Delegate Chris Hurst (D-12)

Effective Date: July 1, 2020 (recommendations due November 30, 2020)

Virginia Code: Uncodified

**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 46

Acts of Assembly: Chapter 901

Key Provisions:

- Directs the Division of Human Rights of the Department of Law to develop recommendations concerning the information and methodologies needed for proactive enforcement of the Commonwealth's current equal pay provisions in § 40.1-28.6, as well as a contemplated requirement for equal pay irrespective of race.
- Further directs the Division to develop recommendations regarding appropriate enforcement mechanisms, including causes of action and civil remedies, to address discrimination in compensation based on sex and race.

**Senate Bill 208**

**Creating a Civil Cause of Action for a General Contractor's or Subcontractor's Misuse of Funds**

Sponsor: Senator J. Chapman Petersen (D-34)

Effective Date: July 1, 2020

Virginia Code: Amends § 43-13

Acts of Assembly: Chapter 873

Key Provisions:

- Creates a civil cause of action for a party in contract with a general contractor or subcontractor where the general contractor or subcontractor has violated § 43-13 by retaining or using funds paid under the construction contract before paying all amounts due for labor performed or material furnished. § 43-13.
- Does not affect a general contractor's or subcontractor's right to withhold payment for failure to properly perform labor or furnish materials on a project. § 43-13.
- Voids contractual provisions allowing funds to be withheld on one contract for alleged claims or damages on another contract. § 43-13.

**Workers' Rights in Virginia's 2020 Session**

May 1, 2020

Page 47

**House Bill 55**

**Establishing Worker Cooperatives as a Category of Cooperative Associations**

Sponsor: Delegate Lee J. Carter (D-50)

Effective Date: July 1, 2020

Virginia Code: Amends §§ 13.1-301, 13.1-307, and 13.1-308 and adds Article 3 to Chapter 3 of Title 13.1.

Acts of Assembly: Chapter 673

**Key Provisions:**

- Establishes worker cooperatives as a permissible and legally recognized category of cooperative association under Virginia law. § 13.1-347(A).
- Provides that a “worker cooperative” is a type of stock corporation organized and conducted primarily for the mutual benefit of its members, who must be employed on a full-time or part-time basis by the cooperative at the time their membership is accepted. §§ 13.1-347(A)-(B), 13.1-351(B)(1).
- Sets forth various restrictions on the worker cooperative form like voting limitations (e.g., each member with a membership share gets one vote and only current employees have voting rights) and ownership caps (e.g., no person owns more than one membership share and at least 2/3 of employees must own membership shares). § 13.1-351(B), (D).
- Requires that net earnings declared as patronage allocations be paid or credited proportionally to each member based on his/her share of the work performed by all members in that period. § 13.1-353.
- Prohibits entities from using “worker cooperative” or “employee cooperative” in their name unless they are governed as a worker cooperative. § 13.1-348(B).