Insights, News & Events

3 NEW LAWS FOR VIRGINIA EMPLOYERS WENT INTO EFFECT ON JULY 1: ARE YOU PREPARED?

Insights
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July 1 marked the effective date for three new laws that will create new rights for workers and new obligations for employers in Virginia:

- **Expansion of Non-Compete Ban** – Virginia employers are now prohibited from entering into or renewing non-compete agreements with employees entitled to overtime pay under the federal Fair Labor Standards Act (FLSA). This latest change is in addition to the existing ban protecting "low-wage" employees.
- **New Protections for Children in Online Content** – For certain online and social media video content that includes the likeness, name, or photograph of a child under age 16, the content creator must now compensate the child and set aside content earnings in a trust account for the child's benefit.
- **Workplace Safety Plan Mandate for Hospitals** – Virginia hospitals are now required to establish a workplace violence incident reporting system to document, track, and analyze any incident of workplace violence reported.

What Do Virginia Employers Need to Know About the Expansion of the Non-Compete Ban?

Under HB 330, "low wage employees" is a bit of a misnomer, as it refers to a much larger group than employers might otherwise assume. As of 2020, the ban applied to any employee whose earnings were less than the average weekly wage in Virginia.

Related People

R. Bryan Holbrook
Partner
704.778.4173

Mary Grace Miller
Partner
704.778.4191

- In 2020, that amount was approximately $62,000 per year.
- As of 2025, the "low wage employee" threshold has increased to $1,463.10 per week, or **$76,081.14** per year.

In many parts of the Commonwealth, most people would not call those "low wages." Rather, they would say "that's good money." Regardless, that is the new threshold for entering into a non-compete in Virginia.

As of July 1, SB 1218 expanded Virginia's non-compete ban even further to cover all employees entitled to receive overtime under the Fair Labor Standards Act (FLSA). These employees are commonly referred to as "non-exempt."

The expanded version of the law effectively precludes non-compete agreements with all "non-exempt" employees, as it applies to any worker eligible for overtime under 29 U.S.C. § 207, regardless of the worker's average weekly earnings.

Employers should also be mindful of the other requirements and penalties for non-compliance that remain in place:

- The law continues to require employers to post a current copy of the non-compete ban in the workplace, along with other state and federal posters. This can be accomplished by posting a copy of the statute or any summary approved by the Department of Labor and Industry. Employers can be fined for failing to post the law, and, in our experience, a lack of postings tends to prompt further audit/investigation by the Department. This is a "layup" that employers should not and cannot miss.
- Under SB 1218, employers remain subject to civil penalties of up to $10,000 per unlawful agreement. They also still face potential lawsuits from employees seeking damages in the form of lost wages/compensation, liquidated damages, injunctive relief (including a declaration from the court that the agreement is unlawful/unenforceable), and attorneys' fees.

Luckily, the law does not apply to or operate to invalidate agreements that were entered into or renewed before July 1, 2025.

What Should You Do?

Alex West

Partner

704.778.4174

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While existing non-competes remain valid, Virginia employers should promptly update their posters, along with any offer letters, handbooks, severance agreements, or other documents containing restrictive covenants.

What Do Virginia Employers Need to Know About the New Protections for Children in Online Content?

House Bill 2401/Senate Bill 998 create specific protections for children under 16 years of age who are engaged in the work of content creation.

- Under the law, content creators whose content regularly involves a child, or their likeness, must maintain records related to the child's appearance in the content and the compensation generated from it.
- A percentage of gross earnings on any content involving a qualifying child must also be set aside into a trust account accessible to that child once they reach 18 years of age.
- Children involved in content creation are also prohibited from being exposed to any hazards capable of causing serious harm or using any hazardous equipment and must be under the direct supervision of an adult who ensures compliance with all applicable safety requirements.

A child under the age of 16 is considered to be engaged in the work of content creation if at least 30% of the content creator's compensated video content produced within a 30-day period includes the likeness, name, or photograph of the child. The new law requires all content creators whose content features a child under the age of 16 engaged in the work of content creation to maintain records related to:

- the name and documentary proof of the age of the child engaged in the work of content creation;
- the number of that generated compensation;
- number of minutes the video content that content creator received compensation for during the reporting period;
- the number of minutes each child was featured in the video content during the reporting period;
- the total compensation generated from video content featuring a child during the reporting period; and

- the amount deposited into the trust account for the child during the reporting period.

Importantly, if a content creator fails to maintain these records, the child, or the parent or guardian on behalf of such child, may commence a civil action to enforce the child's rights under this law. The statute of limitations to commence the civil action is no more than two years after the date on which the child engaged in the work of content creation attained 18 years of age.

What Should You Do?

If you are a business that creates content for any social media platforms, you should be aware of these changes and take steps to maintain the appropriate records and place sufficient funds in a trust account for any children under 16 who are featured in your content creation.

What Do Virginia Hospitals Need to Know About the New Workplace Safety Plan Mandates?

Workplace violence in healthcare is a hot-button enforcement issue for the Occupational Safety and Health Administration (OSHA) – and state lawmakers in Virginia are now in on the action too.

- With the passage of HB 2269, all hospitals in Virginia must take steps by July 1 to **annually notify state health regulators** regarding incidents of workplace violence, and make policy improvements towards prevention.

- Throughout the year, hospitals must **keep track of and analyze** actual and threatened violent incidents. The new law says these analyses "shall be used to make improvements in preventing workplace violence." The Virginia Department of Health (VDH) is instructed to issue regulations to flesh out these requirements, but the improvements must at least include continuing education in "targeted areas" such as de-escalation, risk identification, and violence prevention planning. Unfortunately, the public will get little to no input on these regulations, as the legislature exempted them from notice and comment requirements.

A reportable incident can be violence perpetrated not only by patients, but by visitors or even employees. Hospitals must track whether the assailant used a weapon and

whether the incident involved a sexual assault. Even mere threats of violence are reportable. The law also contains an anti-retaliation provision for employees bringing incidents to the attention of the hospital or the government, and the reporting system must be communicated to employees through orientation and other training.

While this new law focuses on VDH, OSHA has in recent years focused on enforcement of workplace violence using the general duty clause. The current nominee for the head of OSHA, David Keeling, said in recent Congressional confirmation testimony that he intends to lead the agency toward rulemaking on the subject.

In addition to these new reporting requirements to the VDH, certain workplace injuries must still be reported to OSHA, or in the case of employers in Virginia, the Virginia Department of Labor and Industry's VOSH program within hours of the occurrence. These include work-related incidents resulting in fatalities (eight hours), and inpatient hospitalizations of employees, amputations, or the loss of an eye (24 hours). With several news-making incidents of workplace violence in Virginia over the last few years, VOSH is also focusing upon enforcement relating to these hazards in industries (like healthcare and late-night retail) where workplace violence exposures are more prevalent.

What Should Hospital Employers Do Now?

- Develop and implement a compliant workplace violence reporting policy as a component of a broader written violence prevention program.
- Implement employee training in de-escalation, risk identification, and violence prevention through planning.
- Assess workplace hazards involving patient, visitor, or employee violence.
- Develop a plan of action for responding to workplace incidents, and ensure your leadership is trained on the plan. This should include how to interact with regulators like VOSH and VDH, keeping in mind that one size does not fit all.
- Seek legal advice before the deadline about reportable incidents to VOSH, as they almost always will result in an onsite inspection.

Conclusion

If you have any questions, contact your Fisher Phillips attorney, the authors of this insight, or any member of our Workplace Safety and Catastrophe Management Practice Group or Healthcare Industry Team for guidance. Make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information on workplace safety issues.