

VIRGINIA COMPLIANCE ALERT: 7 KEY LEGISLATIVE CHANGES EMPLOYERS CAN'T IGNORE

Insights
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Virginia Compliance Alert: 7 Key Legislative Changes Employers Can't Ignore

Keeping up with employment law changes is a constant challenge for employers, especially as states continue to expand and refine workplace requirements. Virginia is no exception, and under its new governor, the state legislature has passed a host of changes that impact employers. We'll break down the new requirements and offer practical takeaways to help you get ready.

1. Recap of Expanded Paid Sick Leave Law (HB 5 & SB 199)

Prior to this legislative session, Virginia's paid sick leave covered only narrowly defined home health workers. In keeping with other legislative [changes to paid sick leave laws across the country](#) in recent years, the state has now expanded this mandate to cover all eligible employees, regardless of company size.

Application and Eligibility

Virginia's paid sick leave law covers all private employers in the state, but with staggered effective dates based on total employer size:

- July 1, 2027: 50+ employees
- January 1, 2028: 25+ employees
- January 1, 2029: one or more employees

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All Virginia-based employees will be eligible for sick leave under the new law, without regard to full or part-time status or exempt/non-exempt status.

Amount of Sick Leave and Usage

- Under the expanded law, all employees will receive one hour of paid sick leave for every 30 hours worked, up to a maximum of 40 hours accrued per year. Employers may frontload 40 hours of sick leave each year to meet these requirements.
- Unused accrued leave carries over year to year.
- Employers can limit usage of sick leave to 40 hours per year.
- Sick leave may be used in one-hour increments.
- Exempt employees are presumed to work 40 hours in a workweek for the accrual calculation.

Employees may use sick leave for their own illness or conditions and medical appointments, as well as for that of a family member. The law also provides a safe leave component. Employees who are victims of domestic violence, sexual assault, or stalking may use paid sick leave to relocate, access medical or mental health services, obtain legal assistance, or connect with victim advocacy resources.

Your Current Paid Leave Policy May Not Be Enough

Employers with existing paid leave programs should not assume they are already covered. The law allows employers with existing paid leave policies that provide enough leave must ensure the policy also:

- permits use for all the same purposes the statute covers; and
- does so under the same conditions.

In addition, employers should be mindful of the law's anti-retaliation provision. A policy that falls short on any of these aspects will need to be supplemented or revised before the applicable effective date.

Penalties for Non-Compliance



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Employers need to be aware of the penalties for failing to comply:

- The law provides a private cause of action, meaning that any employee who experiences a violation may sue their employer. A successful plaintiff is entitled to twice the value of the withheld leave plus additional available remedies.
- Employees may also file a complaint with the Virginia Commissioner of Labor and Industry, who can investigate and assess civil fines of up to \$500 per violation.

2. Paid Family and Medical Leave (HB 1207 & SB 2)

Virginia joins its DMV neighbors in enacting a new Paid Family Medical Leave Insurance (“PFMLI”) program. The Virginia PFMLI program provides two main benefits: up to 12 workweeks of job-protected leave for certain qualifying reasons and a partial wage replacement benefit during that leave.

Contributions

Virginia’s PFMLI program will be administered by the Virginia Employment Commission and financed through a payroll-funded insurance model, with contributions split between employers and their employees. How much an employer must contribute depends on company size:

- Employers with more than 10 employees may withhold up to 50% of the required contribution from employee wages, with the employer responsible for the balance.
- Employers with 10 or fewer employees are only required to collect and remit 50% of the contribution rate that applies to larger employers – no additional employer contribution is owed.
- PFMLI leave runs concurrently with any applicable federal FMLA leave as well as leave entitlements under a collective bargaining agreement.

Mark these dates on your calendar: contribution collection begins April 1, 2028, and the program starts paying benefits on December 1, 2028.

Eligibility for Benefits

Benefits under the PFMLI will be available for covered employees who are authorized to work in the United States and who take leave for the following reasons:

- to care for a new child, whether through birth, adoption, or foster care in the first year;
- because of the employee's own serious health condition;
- to care for a family member with a serious health condition;
- for reasons related to a family member's military service; or
- to seek safety services for the employee or a family member.

Leave may be taken intermittently and runs concurrently with federal FMLA where applicable. Employees who have been employed for at least 120 days prior to the start of their PFMLI leave are entitled to their position (or its equivalent) upon return from leave. Employers must maintain any healthcare benefits during any period of leave taken under this law.

Amount of Benefits

- Benefits are available for up to 12 weeks in a 52-week period, but leave for safety services are capped at four weeks of wages in a benefit year.
- The weekly benefit is equal to 80% of the employee's average weekly wage, subject to a maximum cap of 100% of the statewide average weekly wage. The statewide average weekly wage will be updated each year.

Private Plan Option

Employers that prefer not to participate in the state program may apply for a Commission-approved private insurance plan opt-out. To qualify, the private plan must provide benefits that are at least equivalent to the state program and must not cost employees more than they would pay under the state plan. This option gives employers more flexibility over plan design and administration but requires Commission approval.

3. VA Human Rights Expansion (SB637)

Virginia has also expanded its human rights law to cover all employers with five or more employees, down from fifteen. The law also extends the time for an employee to file a complaint with the Office of the Attorney General alleging unlawful discrimination from 300 days to two (2) years.

4. Minimum Wage Increase (HB1 & SB1)

The minimum wage in Virginia will increase incrementally to \$15 per hour by January 1, 2028. Here is what employers need to know:

- The law codifies the adjusted state hourly minimum wage of \$12.77 per hour that became effective as of January 1, 2026.
- The minimum rate will increase to \$13.75 per hour effective January 1, 2027
- The minimum rate will increase to \$15.00 per hour effective January 1, 2028
- Effective January 1, 2029, and annually thereafter, the minimum will be adjusted to reflect increases in the consumer price index.

The law applies broadly to most employees, regardless of employer size. While there is some time before the next wage increase goes into effect, employers with minimum-wage workers need to be prepared to comply with these annual increases. This may include an audit of current wages to ensure preparedness, as well as consideration of whether increases for employees who already make above the minimum wage are appropriate to maintain internal pay equity.

5. Overtime for Domestic Workers (HB 27/SB 28)

In keeping with the theme, this legislation adds domestic workers – defined to include childcare providers, housekeepers, caregivers, cooks, and gardeners in private homes, among others – to Virginia's overtime law. This includes hourly and salaried employees, independent contractors, and full- or part-time workers who provide services for one or more employers. This is a very broad definition that is likely to implicate both employers and individuals who engage domestic workers directly.

Under the new requirements, covered workers must receive 1.5 times their regular pay for hours worked over forty (40) in a workweek. Questions remain as to how exactly this law will work practically, especially for independent contractors who typically set their own hours.

This law has a delayed implementation but will go into effect July 1, 2027.

6. Salary History and Wage Transparency (HB 636/SB 215)

Following a nationwide trend, Virginia's new salary history and wage transparency law is intended to combat discrimination and improve wage transparency, particularly addressing how reliance on past salary can perpetuate wage gaps.

Under the new law, employers are prohibited from asking about a job applicant's past wages or salary history or using an applicant's past salary to evaluate candidates or set starting pay. If an applicant voluntarily discloses their pay history, the employer may only use it after making an initial job offer and only for the purpose of justifying a higher salary.

The law also includes anti-retaliation provisions that prohibit employers from penalizing applicants or employees for refusing to disclose their pay history or asking about the pay range for a position. Employers are also now required to set a salary or wage range in both external job postings and internal promotion or transfer opportunities.

The law creates a private right of action with violations resulting in up to \$10,000 in statutory damages or actual damages, as well as attorneys' fees. The law will go into effect January 1, 2027.

Employers are advised to immediately begin training interviewers and review all hiring procedures and policies, as well as application materials, to ensure compliance with this law. Training staff who make hiring decisions will be key, as this law is a departure from a relatively routine applicant inquiry, which could lead to accidental non-compliance.

7. Heat Illness Prevention Standards (HB1092)

Virginia is set to become the next state to adopt its own unique heat illness prevention standards. HB1092 requires the regulatory body that writes state safety and health rules

to pass a standard addressing heat illness in the workplace no later than May 1, 2028.

While the law does not yet create any new requirements for Virginia employers, it signals that a future standard is on the way that will address indoor and outdoor occupational heat exposures. The rule will likely be modeled after a prior Virginia proposal, standards passed in other states, and consensus body guidelines from NIOSH and ACGIH.

While employers nationwide await the long-anticipated final rule on heat from federal OSHA, employers in Virginia should begin developing a plan for addressing heat exposures, including issues like acclimatization, water, access to shade, and training. Stay tuned, as the rulemaking process will shed more light on the agency's intentions and give employers an opportunity to weigh in on a proposed rule.

What Should Employers Do Now?

Virginia employers have time to prepare, but shouldn't delay. Here are four steps you should consider taking now:

- **Review your existing leave policies against the new paid sick leave standard.** Your current PTO or sick leave program will only satisfy the new law if it provides sufficient leave for all of the same purposes, under the same conditions the statute requires. Conduct that audit now and close any gaps before the appropriate effective date for your company.
- **Get your written policies in place and distributed.** Draft or update new policies and make sure they reach your employees before these laws go into effect.
- **Start planning your PFML payroll infrastructure today.** The April 2028 contribution start date will arrive faster than you think. Work with your payroll team or vendor now to build the required deduction and remittance structure. If a private plan opt-out is appealing, begin evaluating commercial insurance options and the Commission approval process well in advance.
- **Update your payroll to reflect minimum wage and overtime increases.** For employees who will see their wages increase under the minimum wage update, ensure your overtime calculations for regular rate of pay reflect the new pay rate.

Future Changes to Track

While these new laws will significantly change the landscape for employers in Virginia, it is possible this is not the end of employment-related legislation. Several notable bills did not pass this legislative session or were rejected by the Governor including:

- HB1514 which would prohibit the use of artificial intelligence in employment decisions;
- HB1451 which would create additional protections for warehouse workers;
- HB1173 and SB258 which would have required accommodations for employees experiencing perimenopause and menopause; and
- HB949 which would further curtail the use of non-compete agreements in the state.

Versions of these bills were introduced under Governor Spanberger's predecessor, and it is likely they will be re-introduced in the future.

Conclusion

We will continue to monitor these developments and provide updates as the laws near their effective dates, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to receive the most current information directly to your inbox. If you have questions, please contact your Fisher Phillips attorney, the authors of this Insight, or any of our [Virginia-licensed attorneys](#).