

# Virginia 2022 Legislative Update

## Key Updates:

The 2022 Virginia Legislative session produced the following legal changes that Virginia employers need to know:

- The Overtime Wage Act was amended to provide clarity;
- Employees have job protection for eviction proceedings in court;
- There is a seizure first aid posting requirement for employers of a certain size; and
- There are living donor insurance protections that must be provided in the future.

### **The Overtime Wage Act: Virginia Code §40.1-29.2-2; Effective July 1, 2022**

#### **The Current Version of the Statute:**

In 2021, the Virginia legislature enacted the Virginia Overtime Wage Act that established unique Virginia-specific rules relating to payment of overtime wages. The current version of this statute eliminates many exempt categories that industries have relied upon for years, such as the retail sales exemption and pay arrangements such as the flexible workweek. The original legislation even eliminated compensatory time for state employees until the legislature passed a quick fix in August 2021. Significantly, the current statute provides for enhanced remedies such as a three-year statute of limitation, treble damages, and allowed class and/or collective actions.

#### **The New Version of the Statute:**

The amended statute keeps in place the requirement to pay overtime and keeps a remedy in place for employees to file a state claim for employer overtime violations. However, rather than keep in place the more stringent Virginia-specific rules, it applies the overtime standard and rules from the Fair Labor Standards Act (“FLSA”) for exemptions and remedies, with one exception. It restores all FLSA exemptions except for derivative carriers in the airline and railway industry. In addition, it directs the Secretary of Labor to study the overtime act and report on further recommendations by November 1, 2022.

There is no retroactive application of the rule, therefore employee complaints about overtime that occur prior to July 1, 2022, must be evaluated against the current version of the statute.

**HR Tip:** *Employers should ensure that employee handbooks have a complaint mechanism for pay complaints.*

[Here is a link](#) to the bills that amend Va. Code §§ 40.1-29.1 and 40.1-29.2.

### **Protected Leave for Eviction Proceedings: Virginia Code §8.01-126; Effective July 1, 2022**

This amendment adds a new provision that prohibits employers from firing or taking “adverse personnel action” against employees who miss work to attend unlawful detainer (i.e., eviction) proceedings. The summonses will

now include a notice to the tenant-employee of this new protection. Employees must provide reasonable notice to the employer of the summons/need for the leave. Employer violations are punishable as Class 3 misdemeanors.

The new statute incorporates “adverse action” which includes:

- Discharge;
- Mandatory use of sick leave or vacation time; or
- Other adverse personnel action (which is not defined).

**HR Tip:** *This new statute is similar to the protection found in Va. Code §18.2-465.1 regarding jury duty and other court appearances (but not if the employee is the criminal defendant), and employers should update their employment handbooks to be consistent with the new statutory requirement and to require a copy of the summons.*

[Here is a link](#) to the bill that amends Va. Code § 8.01-126.

### **Seizure First Aid Posters; HB 1178; Effective July 1, 2022**

This legislation (this is an uncodified law and will not be given a code section) directs the Virginia Department of Labor & Industry to provide all employers and employees with an information poster about seizure first aid consistent with the guidelines of the Epilepsy Foundation of America. The foundation’s poster, available [here](#), is an example of the type of information VDOLI is being directed to require.

The legislation further directs that each employer of 25 or more employees in Virginia physically post the information in the workplace in a location visible to employees. Seizure first aid means procedures to “respond, attend, and provide comfort and safety to an individual suffering from a seizure.” It does not include training to medically treat such individuals.

**HR Tip:** *Post the poster with other required posters in a place where employees congregate. If you have first aid training, include seizure first aid training consistent with the law in the training session.*

[Here is a link](#) to HB 1178.

### **Living Donors – Insurance Benefits; Virginia Code §38.2-508; Effective January 1, 2023**

This amendment prohibits refusal to insure individuals based on status as a living organ donor and protects donors of organs and bone marrow. It will apply to life, disability and long-term care insurance plans that are new, amended, renewed, or extended as of January 1, 2023.

**HR Tip:** *Check with your broker about this provision when obtaining new insurance. Remember that changes were made to short-term disability insurance requirements regarding short-term pregnancy benefits effective July 1, 2021.*

[Here is a link](#) to the bill that amends Va. Code § 38.2-508.