Code of Virginia
Title 40.1. Labor and Employment
Chapter 3. Protection of Employees
Article 1.1. Virginia Minimum Wage Act

§ 40.1-28.8. Short title

This article shall be known as the Virginia Minimum Wage Act.

1975, c. 530.

§ 40.1-28.9. (Effective until January 1, 2027) Definitions; determining wage of tipped employee

A. As used in this article:

"Adjusted state hourly minimum wage" means the amount established by the Commissioner pursuant to subsection H of § 40.1-28.10.

"Domestic service" means services related to the care of an individual in a private home or the maintenance of a private home or its premises, on a permanent or temporary basis, including services performed by individuals such as companions, cooks, waiters, butlers, maids, valets, and chauffeurs.

"Employee" includes any individual employed by an employer. "Employee" includes a home care provider. "Employee" does not include the following:

1. Any person employed as a farm laborer or farm employee;

2. Any person engaged in the activities of an educational, charitable, religious, or nonprofit organization where the relationship of employer-employee does not, in fact, exist or where the services rendered to such organization are on a voluntary basis;

3. Caddies on golf courses;

4. Traveling salesmen or outside salesmen working on a commission basis; taxicab drivers and operators;

5. Any person under the age of 18 in the employ of his parent or legal guardian;

6. Any person confined in any penal or corrective institution of the Commonwealth or any of its political subdivisions or admitted to a state hospital or training center operated by the Department of Behavioral Health and Developmental Services;

7. Any person employed by a summer camp for boys, girls, or both boys and girls;

8. Any person under the age of 16, regardless of by whom employed;

9. Any individual with disabilities employed by an employer that was authorized, prior to July 1, 2023, to employ individuals with disabilities at a subminimum wage pursuant to a special certificate issued under 29 U.S.C. § 214(c) of the Fair Labor Standards Act of 1938, as amended, provided that such individual was employed by and paid a subminimum wage by such employer pursuant to 29 U.S.C. § 214(c) of the Fair Labor Standards Act of 1938, as amended, prior to July 1, 2023;

10. Students participating in a bona fide educational program;

11. Any person who is less than 18 years of age and who is currently enrolled on a full-time basis in any secondary school, institution of higher education, or trade school, provided that the person is not employed more than 20 hours per week;

12. Any person of any age who is currently enrolled on a full-time basis in any secondary school, institution of higher education, or trade school and is in a work-study program or its equivalent at the institution at which he is enrolled as a student;

13. Any person who works as a babysitter for fewer than 10 hours per week;

14. Any person participating as an au pair in the U.S. Department of State's Exchange Visitor Program governed by 22 C.F.R. § 62.31;

15. Any individual employed as a temporary foreign worker as governed by 20 C.F.R. Part 655; and

16. Any person who is exempt from the federal minimum wage pursuant to 29 U.S.C. § 213(a)(3).

"Employer" includes any individual, partnership, association, corporation, or business trust or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee. "Employer" includes the Commonwealth, any of its agencies, institutions, or political subdivisions, and any public body.

"Federal minimum wage" means the minimum wage or, if applicable, the federal training wage prescribed by the U.S. Fair Labor Standards Act, 29 U.S.C. § 201 et seq.

"Home care provider" means an individual who provides (i) home health services, including services provided by or under the direct supervision of any health care professional under a medical plan of care in a patient's residence on a visit or hourly basis to patients who have or are at risk of injury, illness, or a disabling condition and require short-term or long-term interventions, or (ii) personal care services, including assistance in personal care to include activities of a daily living provided in an individual's residence on a visit or hourly basis to individuals who have or are at risk of an illness, injury, or disabling condition.

"Tipped employee" means an employee who in the course of employment customarily and regularly receives tips totaling more than $30 each month from persons other than the employee's employer.

"Wages" means legal tender of the United States or checks or drafts on banks negotiable into cash on demand or upon acceptance at full value. "Wages" includes the reasonable cost to the employer of furnishing meals and lodging to an employee if such board or lodging is customarily furnished by the employer and used by the employee.

B. In determining the wage of a tipped employee, the amount paid such employee by his employer shall be deemed to be increased on account of tips by an amount determined by the employer, except in the case of an employee who establishes by clear and convincing evidence that the actual amount of tips received by him was less than the amount determined by the employer. In such case, the amount paid such employee by his employer shall be deemed to have been increased by such lesser amount. An employer shall not classify an individual as a tipped employee if the individual is prohibited by applicable federal or state law or regulation from soliciting tips.

1975, c. 530; 1976, c. 442; 1977, c. 432; 2007, cc. 816, 832;2012, cc. 476, 507;2014, c. 734;2019, cc. 330, 331;2020, cc. 1145, 1146, 1147, 1204, 1242;2023, c. 782.

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1. Any person engaged in the activities of an educational, charitable, religious, or nonprofit organization where the relationship of employer-employee does not, in fact, exist or where the services rendered to such organization are on a voluntary basis;

2. Caddies on golf courses;

3. Traveling salesmen or outside salesmen working on a commission basis; taxicab drivers and operators;

4. Any person under the age of 18 in the employ of his parent or legal guardian;

5. Any person confined in any penal or corrective institution of the Commonwealth or any of its political subdivisions or admitted to a state hospital or training center operated by the Department of Behavioral Health and Developmental Services;

6. Any person employed by a summer camp for boys, girls, or both boys and girls;

7. Any person under the age of 16, regardless of by whom employed;

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9. Students participating in a bona fide educational program;

10. Any person who is less than 18 years of age and who is currently enrolled on a full-time basis in any secondary school, institution of higher education, or trade school, provided that the person is not employed more than 20 hours per week;

11. Any person of any age who is currently enrolled on a full-time basis in any secondary school,

institution of higher education, or trade school and is in a work-study program or its equivalent at the institution at which he is enrolled as a student;

12. Any person who works as a babysitter for fewer than 10 hours per week;

13. Any person participating as an au pair in the U.S. Department of State's Exchange Visitor Program governed by 22 C.F.R. § 62.31;

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15. Any person who is exempt from the federal minimum wage pursuant to 29 U.S.C. § 213(a)(3).

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"Federal minimum wage" means the minimum wage or, if applicable, the federal training wage prescribed by the U.S. Fair Labor Standards Act, 29 U.S.C. § 201 et seq.

"Home care provider" means an individual who provides (i) home health services, including services provided by or under the direct supervision of any health care professional under a medical plan of care in a patient's residence on a visit or hourly basis to patients who have or are at risk of injury, illness, or a disabling condition and require short-term or long-term interventions, or (ii) personal care services, including assistance in personal care to include activities of a daily living provided in an individual's residence on a visit or hourly basis to individuals who have or are at risk of an illness, injury, or disabling condition.

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B. In determining the wage of a tipped employee, the amount paid such employee by his employer shall be deemed to be increased on account of tips by an amount determined by the employer, except in the case of an employee who establishes by clear and convincing evidence that the actual amount of tips received by him was less than the amount determined by the employer. In such case, the amount paid such employee by his employer shall be deemed to have been increased by such lesser amount. An employer shall not classify an individual as a tipped employee if the individual is prohibited by applicable federal or state law or regulation from soliciting tips.

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2. Caddies on golf courses;

3. Traveling salesmen or outside salesmen working on a commission basis; taxicab drivers and operators;

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Program governed by 22 C.F.R. § 62.31;

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B. In determining the wage of a tipped employee, the amount paid such employee by his employer shall be deemed to be increased on account of tips by an amount determined by the employer, except in the case of an employee who establishes by clear and convincing evidence that the actual amount of tips received by him was less than the amount determined by the employer. In such case, the amount paid such employee by his employer shall be deemed to have been increased by such lesser amount. An employer shall not classify an individual as a tipped employee if the individual is prohibited by applicable federal or state law or regulation from soliciting tips.

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§ 40.1-28.10. Minimum wages

A. 1. Prior to May 1, 2021, every employer shall pay to each of its employees wages at a rate not less than the federal minimum wage.

2. Beginning May 1, 2021, every employer shall pay to each of his employees at a rate not less than the federal minimum wage or 75 percent of the Virginia minimum wage provided for in this section, whichever is greater. For the purposes of this subdivision "employee" means any person or individual who is enrolled in an established employer on-the-job or other training program for a period not to exceed 90 days which meets standards set by regulations adopted by the Commissioner.

B. From January 1, 2026, until January 1, 2027, every employer shall pay to each of its employees wages at a rate not less than the greater of (i) $12.77 per hour or (ii) the federal minimum wage.

C. From January 1, 2027, until January 1, 2028, every employer shall pay to each of its employees wages at a rate not less than the greater of (i) $13.75 per hour or (ii) the federal minimum wage.

D. From January 1, 2028, until January 1, 2029, every employer shall pay to each of its employees wages at a rate not less than the greater of (i) $15.00 per hour or (ii) the federal minimum wage.

E. From and after January 1, 2029, every employer shall pay to each of his employees wages at a rate not less than the greater of (i) the adjusted state hourly minimum wage or (ii) the federal minimum wage.

F. By October 1, 2028, and annually thereafter, the Commissioner shall establish the adjusted state hourly minimum wage that shall be in effect during the 12-month period commencing on the following January 1. The Commissioner shall set the adjusted state hourly minimum wage at the sum of (i) the amount of the state hourly minimum wage rate that is in effect on the date such adjustment is made and (ii) a percentage of the amount described in clause (i) that is equal to the percentage by which the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of Labor, or a successor index as calculated by the U.S. Department of Labor, has increased during the most recent calendar year for which such information is available. The amount of each annual adjustment shall not be less than zero.

1975, c. 530; 1976, c. 736; 1978, c. 371; 1980, c. 532; 1991, cc. 547, 596; 1997, c. 544;2020, cc. 1204, 1242;2026, cc. 350, 351.

§ 40.1-28.11. Penalties

Whoever knowingly and intentionally violates any provisions of this article shall be punished by a fine of not less than $10 nor more than $200.

1975, c. 530.

§ 40.1-28.12. Employee's remedies

Any employer who violates any of the minimum wage requirements of this article shall be liable to the employee or employees affected for the applicable remedies, damages, or other relief available in an action brought pursuant to subsection K of § 40.1-29.

1975, c. 530; 2026, c. 1040.