

An Update on the Changing Employment Laws in the DMV

June 9, 2020



Polsinelli COVID-19 Resources



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Presenters



Connie Bertram
Shareholder
202-777-8921
cbertram@polsinelli.com



Tony W. Torain, II
Shareholder
202-626-8378
twtorain@polsinelli.com



Jack Blum
Senior Associate
202-772-8283
jack.blum@polsinelli.com

Agenda

Virginia

- **Virginia Values Act**
- **Wage Payment Act**
- **Whistleblower Retaliation**
- **Independent Contractor Misclassification Claim**
- **Minimum Wage Increase**
- **Non-Competes with Low Wage Employees**

Maryland

- **Prohibition Against Wage History Inquiries**
- **Mandatory Mini-WARN Act**
- **Prohibition on use of Facial Technology**
- **Discrimination based on hairstyle**

District of Columbia

- **DC Universal Paid Leave**
- **DC Minimum Wage Increase**



A Major Shift In Virginia

Virginia Values Act

The Virginia Values Act amends the Virginia Human Rights Act – effective July 1, 2020

Changes Under The Values Act

Employees can now file suit under the VHRA against employers that are covered by Title VII.

The Values Act Prohibits Discrimination on the basis of **sexual orientation and gender identity and veteran status**.

The statute allows for the recovery of unlimited compensatory and punitive damages, reinstatement, and attorneys fees.

Virginia's New Wage Payment Act

- **Wage Payment Act:** previously, employees could only file an FLSA action, file a claim with the Virginia Department of Labor and Industry or file a claim for breach of contract.
- Effective July 1, 2020, employees can now file a suit in court to recover:
 - Unpaid wages
 - Liquidated damages
 - Prejudgment interest of 8%
 - Attorney's fees

Virginia Whistleblower Retaliation Claim

- Protected activity:
 - Reporting violation of any federal or state law to supervisor, governmental body, or law enforcement official;
 - Submitting to request to participate in government investigation, hearing, or inquiry or providing testimony;
 - Refusing to engage in criminal act; and
 - Refusing to perform act that violates federal or state law.
- Injunctive relief, back and front pay and reasonable fees.
- Becomes effective July 1, 2020.

Independent Contractor Misclassification

- Effective July 1, 2020, independent contractors can file claims for employee misclassification.
- There is a rebuttable presumption of employee status if an individual performs work for remuneration.
- **What you should do:** Review all contractors and ensure that independent contractor relationships are appropriately established under the IRS test.

Virginia Minimum Wage Increases

Automatic increases from 2021 to 2023

\$9.50 effective
March 1, 2021

\$11.00 effective
January 1, 2022

\$12.00 effective
January 1, 2023

Non-Competes for Low Wage Employees

- Effective July 1, 2020, employers cannot enter into non-compete agreements with low wage employees.
- **Low wage earner** - an intern, student or other trainee earning less than the average weekly wage of the Commonwealth.
- Employers may enter into non-disclosure and confidentiality agreements with low wage earners to protect trade secrets.
- Employers who violate the law could face a \$10,000 fine per violation, and the law gives employees a private right of action.

The background of the slide is a dense field of 3D cubes in various shades of red. The cubes are arranged in a somewhat chaotic pattern, with some appearing to be stacked or overlapping, creating a sense of depth and texture. The overall color palette is monochromatic, focusing on different tones of red.

Changes in Maryland

Prohibition on Use of Wage History Inquiries

Effective October 1, 2020, employers may not rely on an applicant's wage information during screening or as a factor when considering an applicant for employment.

The Act
also
prohibits:

Refusing to interview, hire or employ an applicant because the applicant requested the wage range for a position or otherwise refused to provide their own wage history.

Considering an applicant's wage history to determine an initial compensation offer

Relying on an applicant's wage information during screening or as a factor when considering an applicant for employment

Seeking the wage history of an applicant for employment orally, in writing, through an employee or an agent, or from a current or former employer prior to initial offer.

Maryland's Mandatory Mini-WARN Act

Employers implementing a reduction in force must draft written notice at least 60 days prior to the initiation of the reduction.

- **The act defines “reduction” as:**

- The relocation of a part of an employer’s operation from one workplace to another site; OR
- The closing down of a workplace, or of a portion of a workplace, that reduces the number of employees by the greater of 25 percent of the workforce or 15 employees over a three month period.

Violators of the law can face civil penalties of up to \$10,000 per day.

The act does not provide a private right of action for employees.

Effective October 1, 2020

Prohibition against discrimination based on hairstyles

Title 20 of Human Relations Article now includes protection for hairstyles

Expands the definition of race

“Protective Hairstyle” includes: “braids, twists, and locks.”

Effective October 1, 2020

Prohibition on the Use of Face Technologies

- Effective October 1, 2020, employers cannot use facial recognition software during interviews without an applicant's prior consent.
- The consent must be obtained through a written waiver, drafted in "plain language," and state:
 - The applicant's name;
 - The date of the interview;
 - That the applicant consents to the use of the facial recognition during the interview; and
 - Whether the applicant read the consent waiver.

D.C. Employment Changes

DC Universal Paid Leave

Beginning July 1, 2020, employers must provide paid leave to D.C. employees:

- Up to 8 weeks per year to bond with a new child.
- Up to 6 weeks per year to care for a family member with a serious health condition.
- Up to 2 weeks per year to care for the employee's own serious health condition.

Employees must provide 10 days' notice if the leave foreseeable. They must provide 48 hours' notice in emergency situations.

DC MINIMUM WAGE ACT

Effective July 1, 2020, the DC Minimum Wage will increase to \$15, \$5 for tipped employees.

COVID-19 Laws

COVID-19 Laws in DC, MD and VA

DC COVID-19 Response Emergency Act

- Applies to employers of all sizes
- DCFMLA leave (16 weeks) regardless of how long the employee has worked
- COVID-19 related leave
- Expires July 9, 2020

DC COVID-19 Response Supplemental Emergency Amendment Act

- Employers with 50-499 employees
- 2 weeks of paid leave in addition to leave under FFRCA
- Same qualifying reasons as FFCRA
- COVID-19 related leave
- Expires June 15, 2020

DC Shelter in Place Status

- Phase One reopening on May 29, 2020
- Restaurants allowed to have open seating with tables 6 ft. apart
- Parks, dog parks, golf courses, tennis courts, and track and field spaces are open.

COVID-19 Laws in DC, MD and VA

Maryland Shelter in Place Status

- Phase One reopening on May 29, 2020
- Restaurants and social organizations can open public dining. Youth sports and day camps can start with limited group sizes. Outdoor pools can open with 25% capacity.

Maryland Bulk Unemployment Claims

- If 25 or more Maryland employees will be affected by a coronavirus-related layoff or shutdown, the employer must provide 48 hours notice to Maryland DLLR.

Virginia Shelter in Place Status

- Restaurant and beverage businesses can operate with outdoor seating at 50% capacity, if they have permits for outdoor seating.
- Non-essential retailers can operate at 50% capacity



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