

# Virginia AG's New Office of Civil Rights Will Scrutinize Business Activities in 2021

## WRITTEN BY

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On January 5, Virginia Attorney General Mark R. Herring announced the creation of a new Office of Civil Rights, which will expand and replace the existing Division of Human Rights within the office of the attorney general. The new division is a prime example of state regulators' expanded scrutiny of workplace activities occurring [nationwide](#), particularly in light of recent federal rollbacks, for which all businesses must remain cognizant.

The new office will protect Virginians' civil rights through increased investigative and enforcement capabilities, particularly specialized investigations into LGBTQ and gender-based discrimination, housing discrimination, discrimination in employment and places of public accommodation, and protecting the rights of expectant and new mothers. According to a [press release](#) from Attorney General Herring, the new division will also work with the General Assembly to launch legislative civil rights initiatives, including greater protections for disabled Virginians, tools to combat health care discrimination, voter protection, and education equity.

As the new Office of Civil Rights takes shape, Virginia businesses should prepare themselves to articulate and defend their policies regarding civil rights, discrimination, and equal opportunities for employees, customers, tenants, and clients.

Moreover, the expanded capacity of this office (growing from three to 13 staff members) provides opportunities for businesses to obtain clarity — through whitepapers and individual conversations — about the requirements necessary to maintain compliance with Virginia law.

In light of this new delegation within the AG's office, Virginia businesses — especially fast-growing entities that lack the time or resources to consider the many facets that go into civil rights compliance — may want to take steps to ensure they do not run afoul of state regulators in the commonwealth or nationwide. These include:

- To the extent a business may not be in compliance with significant regulations and laws — or to the extent compliance has been a secondary consideration — businesses should work to ensure compliance with all applicable regulations and laws, including those recently passed by the General Assembly. This likely requires a dedicated initiative, including designated personnel capable of interpreting and applying the law.
- Businesses should be prepared to answer detailed questions about internal practices. The new Office of Civil Rights has the authority to inquire about any aspect of business practices related to potential discrimination. Initial inquiries may not lead to penalties or even an official investigation, but they must be taken seriously. Businesses should be prepared to provide detailed responses and related documentation if required.
- To that end, businesses should maintain excellent records, including documentation of relevant policies and initiatives, a system for documenting complaints, and remediation plans.

- Finally, businesses should be proactive in their efforts. The Office of Civil Rights exists to uphold the most essential of laws — those protecting human rights. Businesses should embrace this opportunity to go well beyond compliance and to carefully review their anti-discrimination initiatives. There has never been a better time to proactively address civil rights and discrimination in the business community, and Virginia businesses would benefit greatly from using the Office of Civil Rights' creation as motivation for introspection and innovation.

With the help of Delegate Charniele Herring, Attorney General Herring also plans to propose legislation in the Virginia General Assembly that would make the Office of Civil Rights a permanent entity within the AG's office. Democratic majorities in both the Virginia House of Delegates and the Virginia Senate passed several bills in 2020 that expand the AG's duties, including a [ban on income discrimination](#), amendments to Virginia's [fair housing laws](#), protections for [transgender students](#), and expanding the definition of [hate crimes](#). The General Assembly also directed the AG's office to develop recommendations for proactively enforcing provisions of the Code of Virginia requiring [equal pay irrespective of sex and race](#).

The announcement comes as Herring seeks a third term and readies himself to take on a primary challenger later this year in Delegate Jay Jones, who similarly proposed a dedicated civil rights office as part of his campaign. The election results, which may alter the balance of partisan power in both the AG's office and the Virginia House of Delegates, may have implications for the Office of Civil Rights as well.

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