

Virginia Enacts Sweeping Changes to Overtime Laws, Increasing Compliance Challenges and Employer Penalties

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On March 31, Governor Northam drastically changed the landscape of Virginia overtime laws and expanded the rights of employees by signing the Virginia Overtime Wage Act (VOWA) into law. Effective July 1, the VOWA will establish a new set of state-based overtime rules that employers must follow, which will supplement the federal Fair Labor Standards Act (FLSA). The VOWA also includes stiff penalties for violations, which greatly exceed currently available federal remedies.

Highlights

- **Certain FLSA Exemptions Do Not Apply.** Certain employers and employees exempted under the FLSA will not be exempt under the VOWA, including taxicab drivers, car salesmen, movie theatre employees, and derivative air carriers.
- **Employees' 'Regular Rate' is Calculated Differently.** As in the FLSA, nonexempt hourly employees must be paid one and a half times their regular hourly rate for each hour worked after working 40 hours in a given workweek. However, nonexempt employees paid on a salaried basis will be paid overtime (for all hours worked over 40) at a rate equal to 1/40 of their weekly wages for that workweek. The VOWA appears to prohibit paying employees based on the fluctuating work week method.
- **Increased Damages for Violations.** The VOWA provides for the same damages recovery as the Virginia Wage Theft Law, which went into effect in July 2020. Thus, available damages will include recovery of the unpaid wages plus automatic liquidated damages equal to the amount of unpaid wages, *i.e.*, double damages. However, liquidated damages are increased to three times the amount of unpaid wages if the court finds that the employer knowingly violated the VOWA. Employees may also recover prejudgment interest at an annualized rate of 8% plus reasonable attorney's fees and costs.
- **Employees May Sue in a Collective Action.** The VOWA allows employees to sue their employer on behalf of similarly situated individuals in a collective action, using the collective action process established under the FLSA. The Virginia Wage Theft Law previously established this right of collective action to recover wrongfully withheld wages, so the expansion of collective actions to encompass VOWA violations as well will likely result in employees bringing collective action lawsuits to recover unpaid straight time and unpaid overtime under Virginia law.
- **Extended Time Limits to File Lawsuit.** Unlike the FLSA's two-year limitations period (extended to three years for willful violations), the VOWA provides a fixed, three-year limitations period for employees to file a lawsuit.

The VOWA is the latest of a series of pro-employee laws, which have radically changed the employment law landscape in Virginia. [Troutman Pepper's team of Virginia employment attorneys](#) look forward to assisting our clients in their efforts to comply with these new laws and avoiding litigation before it happens.

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