

VIRGINIA

Virginia Adopts New Overtime Wage Rules

On March 31, 2021, Virginia adopted the Virginia Overtime Wage Act (the Act). This new law becomes **effective July 1, 2021**, and, like its federal counterpart—the Fair Labor Standards Act (FLSA)—will require employers to compensate their non-exempt employees for overtime work at a rate of 1 ½ the employees' regular wage rate.

Wage Rate Calculation

The Act establishes a new formula to calculate an employee's regular wage rate. Under the FLSA, the regular wage rate is the sum of all remuneration paid for employment (less certain statutory exclusions) divided by the total number of hours worked during the workweek.

Under the Act, the regular wage rate formula depends on whether the employee receives a salary or an hourly wage, as follows:

- ☑ **For hourly employees:** Add all wages earned at the hourly wage rate and any other non-overtime wages paid or allocated for the workweek (less any items regularly excluded under the FLSA). Divide the sum by the total number of hours worked in the workweek.
- ☑ **For salaried employees:** The regular rate of pay is one-fortieth (0.025) of all wages paid for the workweek.

Additional Changes

The Act also enables employees to file claims for unpaid overtime wages up to three years after the event takes place, removes the good faith defense for employers that fail to pay overtime wages, and increases the penalties, costs and damages that employers may be required to pay for unpaid overtime wages.

Important Dates

March 31, 2021

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