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HOUSE BILL NO. 2098

Offered January 13, 2025

Prefiled January 7, 2025

A BILL to amend and reenact §§ 40.1-2, 40.1-2.1, and 40.1-29 of the Code of Virginia, relating to labor and employment provisions; application of law; payment of wages; definition of employer.

Patron—Maldonado

Referred to Committee on Labor and Commerce

Be it enacted by the General Assembly of Virginia:

1. That §§ 40.1-2, 40.1-2.1, and 40.1-29 of the Code of Virginia are amended and reenacted as follows:

§ 40.1-2. Definitions.

As used in this title, unless the context clearly requires otherwise, the following terms have the following meanings:

"Board" means the Safety and Health Codes Board.

"Business establishment" means any proprietorship, firm or corporation where people are employed, permitted or suffered to work, including agricultural employment on a farm.

"Commission" means the Safety and Health Codes Board.

"Commissioner" means the Commissioner of Labor and Industry. Except where the context clearly indicates the contrary, any reference to "Commissioner" shall include his authorized representatives.

"Department" means the Department of Labor and Industry.

"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. "Domestic service" does not include work that is irregular, uncertain, or incidental in nature and duration.

"Employ" shall include to permit or suffer to work.

"Employee" means any person who, in consideration of wages, salaries or commissions, may be permitted, required or directed by any employer to engage in any employment directly or indirectly.

"Employer" means an individual, partnership, association, corporation, legal representative, receiver, trustee, or trustee in bankruptcy doing business in or operating within this Commonwealth who employs another to work for wages, salaries, or on commission and shall include any similar entity acting directly or indirectly in the interest of an employer in relation to an employee.

"Female" or "woman" means a female 18 years of age or over.

"Machinery" means machines, belts, pulleys, motors, engines, gears, vats, pits, elevators, conveyors, shafts, tunnels, including machinery being operated on farms in connection with the production or harvesting of agricultural products.

"Public body" means any legislative, executive, or judicial body, agency, office, department, authority, post, commission, committee, institution, board, including any school board, or political subdivision created by law to exercise some sovereign power or to perform some governmental duty.

§ 40.1-2.1. Application of title to Commonwealth and its agencies, etc.; safety and health program for public employees.

The provisions of this title and any rules and regulations promulgated pursuant thereto shall not apply to the Commonwealth or any of its agencies, institutions, or political subdivisions, or any public body; ~~unless, and except (i) as expressly provided otherwise or (ii) to the extent that, coverage is extended by specific regulation of the Commissioner or the Board.~~ The Commissioner is authorized to establish and maintain an effective and comprehensive occupational safety and health program applicable to employees of the Commonwealth, its agencies, institutions, political subdivisions, or any public body. Such program shall be subject to any State plan submitted to the federal government for State enforcement of the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596), or any other regulation promulgated under Title 40.1. The Commissioner or the Board shall establish procedures and adopt regulations for enforcing the program that shall include provisions for ~~(i)~~ (a) the issuance of proposed penalties; ~~(ii)~~ (b) the payment of such penalties or a negotiated sum in lieu of such penalties; ~~(iii)~~ (c) the deposit of such payments into the general fund of the state treasury; ~~(iv)~~ (d) fair hearings, including judicial review; and ~~(v)~~ (e) other sanctions to be applied for violations.

§ 40.1-29. Time and medium of payment; withholding wages; written statement of earnings; agreement for forfeiture of wages; proceedings to enforce compliance; penalties.

A. All employers operating a business or engaging an individual to perform domestic service shall establish regular pay periods and rates of pay for employees except executive personnel. All such employers

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59 shall pay salaried employees at least once each month and employees paid on an hourly rate at least once
60 every two weeks or twice in each month, except that (i) a student who is currently enrolled in a work-study
61 program or its equivalent administered by any secondary school, institution of higher education, or trade
62 school, and (ii) employees whose weekly wages total more than 150 percent of the average weekly wage of
63 the Commonwealth as defined in § 65.2-500, upon agreement by each affected employee, may be paid once
64 each month if the institution or employer so chooses. Upon termination of employment an employee shall be
65 paid all wages or salaries due him for work performed prior thereto; such payment shall be made on or before
66 the date on which he would have been paid for such work had his employment not been terminated.

67 B. Payment of wages or salaries shall be (i) in lawful money of the United States, (ii) by check payable at
68 face value upon demand in lawful money of the United States, (iii) by electronic automated fund transfer in
69 lawful money of the United States into an account in the name of the employee at a financial institution
70 designated by the employee, or (iv) by credit to a prepaid debit card or card account from which the employee
71 is able to withdraw or transfer funds with full written disclosure by the employer of any applicable fees and
72 affirmative consent thereto by the employee. However, an employer that elects not to pay wages or salaries in
73 accordance with clause (i) or (ii) to an employee who is hired after January 1, 2010, shall be permitted to pay
74 wages or salaries by credit to a prepaid debit card or card account in accordance with clause (iv), even though
75 such employee has not affirmatively consented thereto, if the employee fails to designate an account at a
76 financial institution in accordance with clause (iii) and the employer arranges for such card or card account to
77 be issued through a network system through which the employee shall have the ability to make at least one
78 free withdrawal or transfer per pay period, which withdrawal may be for any sum in such card or card
79 account as the employee may elect, using such card or card account at financial institutions participating in
80 such network system.

81 C. No employer shall withhold any part of the wages or salaries of any employee except for payroll, wage
82 or withholding taxes or in accordance with law, without the written and signed authorization of the employee.
83 On each regular pay date, each employer, other than an employer engaged in agricultural employment
84 including agribusiness and forestry, shall provide to each employee a written statement, by a paystub or
85 online accounting, that shows the name and address of the employer; the number of hours worked during the
86 pay period if the employee is paid on the basis of (i) the number of hours worked or (ii) a salary that is less
87 than the standard salary level adopted by regulation of the U.S. Department of Labor pursuant to § 13(a)(1) of
88 the federal Fair Labor Standards Act, 29 U.S.C. § 213(a)(1), as amended, establishing an exemption from the
89 Act's overtime premium pay requirements; the rate of pay; the gross wages earned by the employee during
90 the pay period; and the amount and purpose of any deductions therefrom. The paystub or online accounting
91 shall include sufficient information to enable the employee to determine how the gross and net pay were
92 calculated. An employer engaged in agricultural employment including agribusiness and forestry, upon
93 request of its employee, shall furnish the employee a written statement of the gross wages earned by the
94 employee during any pay period and the amount and purpose of any deductions therefrom.

95 D. No employer shall require any employee, except executive personnel, to sign any contract or
96 agreement which provides for the forfeiture of the employee's wages for time worked as a condition of
97 employment or the continuance therein, except as otherwise provided by law.

98 E. An employer who willfully and with intent to defraud fails or refuses to pay wages in accordance with
99 this section or § 40.1-29.3, unless the failure to pay was because of a bona fide dispute between the employer
100 and its employee:

101 1. To an employee or employees is guilty of a Class 1 misdemeanor if the value of the wages earned and
102 not paid by the employer is less than \$10,000; and

103 2. To an employee or employees is guilty of a Class 6 felony (i) if the value of the wages earned and not
104 paid is \$10,000 or more or (ii) regardless of the value of the wages earned and not paid, if the conviction is a
105 second or subsequent conviction under this section or § 40.1-29.3.

106 For purposes of this section, the determination as to the "value of the wages earned" shall be made by
107 combining all wages the employer failed or refused to pay pursuant to this section and § 40.1-29.3.

108 F. The Commissioner may require a written complaint of the violation of this section and, with the written
109 and signed consent of an employee, may institute proceedings on behalf of an employee to enforce
110 compliance with this section, and to collect any moneys unlawfully withheld from such employee that shall
111 be paid to the employee entitled thereto. In addition, following the issuance of a final order by the
112 Commissioner or a court, the Commissioner may engage private counsel, approved by the Attorney General,
113 to collect any moneys owed to the employee or the Commonwealth. Upon entry of a final order of the
114 Commissioner, or upon entry of a judgment, against the employer, the Commissioner or the court shall assess
115 attorney fees of one-third of the amount set forth in the final order or judgment.

116 G. In addition to being subject to any other penalty provided by the provisions of this section, any
117 employer who fails to make payment of wages in accordance with subsection A shall be liable for the
118 payment of all wages due, and an additional equal amount as liquidated damages, plus interest at an annual
119 rate of eight percent accruing from the date the wages were due.

120 H. Any employer who knowingly fails to make payment of wages in accordance with subsection A or §

121 40.1-29.3 shall be subject to a civil penalty not to exceed \$1,000 for each violation. The Commissioner shall
122 notify any employer that the Commissioner alleges has violated any provision of this section or § 40.1-29.3
123 by certified mail. Such notice shall contain a description of the alleged violation. Within 15 days of receipt of
124 notice of the alleged violation, the employer may request an informal conference regarding such violation
125 with the Commissioner. In determining the amount of any penalty to be imposed, the Commissioner shall
126 consider the size of the business of the employer charged and the gravity of the violation. The decision of the
127 Commissioner shall be final. Civil penalties owed under this section shall be paid to the Commissioner for
128 deposit into the general fund of the State Treasurer. The Commissioner shall prescribe procedures for the
129 payment of proposed assessments of penalties that are not contested by employers. Such procedures shall
130 include provisions for an employer to consent to abatement of the alleged violation and pay a proposed
131 penalty or a negotiated sum in lieu of such penalty without admission of any civil liability arising from such
132 alleged violation.

133 I. Final orders of the Commissioner, the general district courts, or the circuit courts may be recorded,
134 enforced, and satisfied as orders or decrees of a circuit court upon certification of such orders by the
135 Commissioner or the court as appropriate.

136 J. In addition to any civil or criminal penalty provided by this section, and without regard to any
137 exhaustion of alternative administrative remedies provided for in this section, if an employer fails to pay
138 wages to an employee in accordance with this section, the employee may bring an action, individually,
139 jointly, with other aggrieved employees, or on behalf of similarly situated employees as a collective action
140 consistent with the collective action procedures of the Fair Labor Standards Act, 29 U.S.C. § 216(b), against
141 the employer in a court of competent jurisdiction to recover payment of the wages, and the court shall award
142 the wages owed, an additional equal amount as liquidated damages, plus prejudgment interest thereon as
143 provided in subsection G, and reasonable attorney fees and costs. If the court finds that the employer
144 knowingly failed to pay wages to an employee in accordance with this section, the court shall award the
145 employee an amount equal to triple the amount of wages due and reasonable attorney fees and costs.

146 K. As used in this section, a:

147 1. A person acts "knowingly" if the person, with respect to information, (i) has actual knowledge of the
148 information, (ii) acts in deliberate ignorance of the truth or falsity of the information, or (iii) acts in reckless
149 disregard of the truth or falsity of the information. Establishing that a person acted knowingly shall not
150 require proof of specific intent to defraud.

151 2. "Employer" has the same meaning as provided in § 40.1-2, except that "employer" includes the
152 Commonwealth and its agencies, institutions, and political subdivisions, or any public body.

153 L. An action under this section shall be commenced within three years after the cause of action accrued.
154 The period for filing is tolled upon the filing of an administrative action under subsection F until the
155 employee has been informed that the action has been resolved or until the employee has withdrawn the
156 complaint, whichever is sooner.