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SENATE BILL NO. 28

Offered January 14, 2026

Prefiled November 17, 2025

A BILL to amend and reenact § 40.1-29.3 of the Code of Virginia, relating to overtime for certain employees; domestic workers.

Patron—Carroll Foy

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 40.1-29.3 of the Code of Virginia is amended and reenacted as follows:

§ 40.1-29.3. Overtime for certain employees.

A. As used in this section:

"Carrier" means an air carrier that is subject to the provisions of the federal Railway Labor Act, 45 U.S.C. § 181 et seq.

"Derivative carrier" means a carrier that meets the two-part test used by the federal National Mediation Board to determine if a carrier is considered a derivative carrier.

"Domestic services" means services of a household nature performed by an individual in or about a private home on a permanent or temporary basis. "Domestic services" includes caring for a child, serving as a companion or caretaker for an elderly individual or an individual with an illness or disability, housekeeping or house cleaning, cooking, providing food or butler services, parking vehicles, cleaning laundry, gardening, and organizing personal affairs for an employer.

"Domestic worker" means an hourly or salaried employee, independent contractor, or full-time or part-time worker who provides domestic services for one or more employers. "Domestic worker" does not include any employee providing consumer-directed services under Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., or Title XXI of the Social Security Act, 42 U.S.C. § 1397aa et seq.

"Employee" means *a domestic worker or* an individual employed by a derivative carrier.

B. An employer shall pay each employee an overtime premium at a rate not less than one and one-half times the employee's regular rate for any hours worked by an employee in excess of 40 hours in any one workweek. An employee's regular rate shall be calculated as the employee's hourly rate of pay plus any other non-overtime wages paid or allocated for that workweek, excluding any amounts that would be excluded from the regular rate by the federal Fair Labor Standards Act, 29 U.S.C. § 201 et seq., and its implementing regulations for an individual covered by such federal act, divided by the total number of hours worked in that workweek.

C. If an employer fails to pay overtime wages to an employee in accordance with this section, the employee may bring an action against the employer in a court of competent jurisdiction to recover payment of the overtime wages, and the court shall award the overtime wages owed, an additional equal amount as liquidated damages, and reasonable attorney fees and costs; however, if the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for believing that his act or omission was not a violation of this section, the court may, in its discretion, award no liquidated damages or award any amount thereof not to exceed the amount of the unpaid overtime wages.

D. An action under this section shall be commenced within two years after the cause of action accrued, except that a cause of action arising out of a willful violation may be commenced within three years after the cause of action accrued.

2. That the provisions of this act shall become effective on July 1, 2027.

4/27/26 15:06

INTRODUCED

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