

# 2026 SESSION

INTRODUCED

26100563D

1 **SENATE BILL NO. 121**

2 Offered January 14, 2026

3 Prefiled January 5, 2026

4 *A BILL to amend and reenact § 40.1-28.9, as it is currently effective and as it shall become effective, of the*  
5 *Code of Virginia, relating to minimum wage; farm laborers or farm employees; temporary foreign*  
6 *workers.*

7 Patron—Carroll Foy

8 Referred to Committee on Commerce and Labor

9 **Be it enacted by the General Assembly of Virginia:**

10 **1. That § 40.1-28.9, as it is currently effective and as it shall become effective, of the Code of Virginia is**  
11 **amended and reenacted as follows:**

12 **§ 40.1-28.9. (Effective until July 1, 2030) Definitions; determining wage of tipped employee.**

13 A. As used in this article:

14 "Adjusted state hourly minimum wage" means the amount established by the Commissioner pursuant to  
15 subsection F of § 40.1-28.10.

16 "Domestic service" means services related to the care of an individual in a private home or the  
17 maintenance of a private home or its premises, on a permanent or temporary basis, including services  
18 performed by individuals such as companions, cooks, waiters, butlers, maids, valets, and chauffeurs.

19 "Employee" includes any individual employed by an employer. "Employee" includes a home care  
20 provider. "Employee" does not include the following:

21 1. Any person employed as a farm laborer or farm employee;

22 2. Any person engaged in the activities of an educational, charitable, religious, or nonprofit organization  
23 where the relationship of employer-employee does not, in fact, exist or where the services rendered to such  
24 organization are on a voluntary basis;

25 3. 2. Caddies on golf courses;

26 4. Traveling salesmen or outside salesmen working on a commission basis; taxicab drivers and  
27 operators;

28 5. Any person under the age of 18 in the employ of his parent or legal guardian;

29 6. Any person confined in any penal or corrective institution of the Commonwealth or any of its  
30 political subdivisions or admitted to a state hospital or training center operated by the Department of  
31 Behavioral Health and Developmental Services;

32 7. Any person employed by a summer camp for boys, girls, or both boys and girls;

33 8. Any person under the age of 16, regardless of by whom employed;

34 9. Any individual with disabilities employed by an employer that was authorized, prior to July 1, 2023,  
35 to employ individuals with disabilities at a subminimum wage pursuant to a special certificate issued under  
36 29 U.S.C. § 214(c) of the Fair Labor Standards Act of 1938, as amended, provided that such individual was  
37 employed by and paid a subminimum wage by such employer pursuant to 29 U.S.C. § 214(c) of the Fair  
38 Labor Standards Act of 1938, as amended, prior to July 1, 2023;

39 10. 9. Students participating in a bona fide educational program;

40 11. Any person who is less than 18 years of age and who is currently enrolled on a full-time basis in  
41 any secondary school, institution of higher education, or trade school, provided that the person is not  
42 employed more than 20 hours per week;

43 12. Any person of any age who is currently enrolled on a full-time basis in any secondary school,  
44 institution of higher education, or trade school and is in a work-study program or its equivalent at the  
45 institution at which he is enrolled as a student;

46 13. Any person who works as a babysitter for fewer than 10 hours per week;

47 14. Any person participating as an au pair in the U.S. Department of State's Exchange Visitor Program  
48 governed by 22 C.F.R. § 62.31; and

49 15. Any individual employed as a temporary foreign worker as governed by 20 C.F.R. Part 655; and

50 16. Any person who is exempt from the federal minimum wage pursuant to 29 U.S.C. § 213(a)(3).

51 "Employer" includes any individual, partnership, association, corporation, or business trust or any person  
52 or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.  
53 "Employer" includes the Commonwealth, any of its agencies, institutions, or political subdivisions, and any  
54 public body.

55 "Federal minimum wage" means the minimum wage or, if applicable, the federal training wage prescribed  
56 by the U.S. Fair Labor Standards Act, 29 U.S.C. § 201 et seq.

INTRODUCED

SB121

59        "Home care provider" means an individual who provides (i) home health services, including services  
60        provided by or under the direct supervision of any health care professional under a medical plan of care in a  
61        patient's residence on a visit or hourly basis to patients who have or are at risk of injury, illness, or a disabling  
62        condition and require short-term or long-term interventions, or (ii) personal care services, including  
63        assistance in personal care to include activities of a daily living provided in an individual's residence on a  
64        visit or hourly basis to individuals who have or are at risk of an illness, injury, or disabling condition.

65        "Tipped employee" means an employee who in the course of employment customarily and regularly  
66        receives tips totaling more than \$30 each month from persons other than the employee's employer.

67        "Wages" means legal tender of the United States or checks or drafts on banks negotiable into cash on  
68        demand or upon acceptance at full value. "Wages" includes the reasonable cost to the employer of furnishing  
69        meals and lodging to an employee if such board or lodging is customarily furnished by the employer and used  
70        by the employee.

71        B. In determining the wage of a tipped employee, the amount paid such employee by his employer shall  
72        be deemed to be increased on account of tips by an amount determined by the employer, except in the case of  
73        an employee who establishes by clear and convincing evidence that the actual amount of tips received by him  
74        was less than the amount determined by the employer. In such case, the amount paid such employee by his  
75        employer shall be deemed to have been increased by such lesser amount. An employer shall not classify an  
76        individual as a tipped employee if the individual is prohibited by applicable federal or state law or regulation  
77        from soliciting tips.

78        **§ 40.1-28.9. (Effective July 1, 2030) Definitions; determining wage of tipped employee.**

79        A. As used in this article:

80        "Adjusted state hourly minimum wage" means the amount established by the Commissioner pursuant to  
81        subsection F of § 40.1-28.10.

82        "Domestic service" means services related to the care of an individual in a private home or the  
83        maintenance of a private home or its premises, on a permanent or temporary basis, including services  
84        performed by individuals such as companions, cooks, waiters, butlers, maids, valets, and chauffeurs.

85        "Employee" includes any individual employed by an employer. "Employee" includes a home care  
86        provider. "Employee" does not include the following:

87        1. Any person employed as a farm laborer or farm employee;

88        2. Any person engaged in the activities of an educational, charitable, religious, or nonprofit organization  
89        where the relationship of employer-employee does not, in fact, exist or where the services rendered to such  
90        organization are on a voluntary basis;

91        3. 2. Caddies on golf courses;

92        4. 3. Traveling salesmen or outside salesmen working on a commission basis; taxicab drivers and  
93        operators;

94        5. 4. Any person under the age of 18 in the employ of his parent or legal guardian;

95        6. 5. Any person confined in any penal or corrective institution of the Commonwealth or any of its  
96        political subdivisions or admitted to a state hospital or training center operated by the Department of  
97        Behavioral Health and Developmental Services;

98        7. 6. Any person employed by a summer camp for boys, girls, or both boys and girls;

99        8. 7. Any person under the age of 16, regardless of by whom employed;

100        9. 8. Students participating in a bona fide educational program;

101        10. 9. Any person who is less than 18 years of age and who is currently enrolled on a full-time basis in  
102        any secondary school, institution of higher education, or trade school, provided that the person is not  
103        employed more than 20 hours per week;

104        11. 10. Any person of any age who is currently enrolled on a full-time basis in any secondary school,  
105        institution of higher education, or trade school and is in a work-study program or its equivalent at the  
106        institution at which he is enrolled as a student;

107        12. 11. Any person who works as a babysitter for fewer than 10 hours per week;

108        13. 12. Any person participating as an au pair in the U.S. Department of State's Exchange Visitor Program  
109        governed by 22 C.F.R. § 62.31;

110        14. Any individual employed as a temporary foreign worker as governed by 20 C.F.R. Part 655; and

111        15. 13. Any person who is exempt from the federal minimum wage pursuant to 29 U.S.C. § 213(a)(3).

112        "Employer" includes any individual, partnership, association, corporation, or business trust or any person  
113        or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.  
114        "Employer" includes the Commonwealth, any of its agencies, institutions, or political subdivisions, and any  
115        public body.

116        "Federal minimum wage" means the minimum wage or, if applicable, the federal training wage prescribed  
117        by the U.S. Fair Labor Standards Act, 29 U.S.C. § 201 et seq.

118        "Home care provider" means an individual who provides (i) home health services, including services  
119        provided by or under the direct supervision of any health care professional under a medical plan of care in a  
120        patient's residence on a visit or hourly basis to patients who have or are at risk of injury, illness, or a disabling

121 condition and require short-term or long-term interventions, or (ii) personal care services, including  
122 assistance in personal care to include activities of a daily living provided in an individual's residence on a  
123 visit or hourly basis to individuals who have or are at risk of an illness, injury, or disabling condition.

124 "Tipped employee" means an employee who in the course of employment customarily and regularly  
125 receives tips totaling more than \$30 each month from persons other than the employee's employer.

126 "Wages" means legal tender of the United States or checks or drafts on banks negotiable into cash on  
127 demand or upon acceptance at full value. "Wages" includes the reasonable cost to the employer of furnishing  
128 meals and lodging to an employee if such board or lodging is customarily furnished by the employer and used  
129 by the employee.

130 B. In determining the wage of a tipped employee, the amount paid such employee by his employer shall  
131 be deemed to be increased on account of tips by an amount determined by the employer, except in the case of  
132 an employee who establishes by clear and convincing evidence that the actual amount of tips received by him  
133 was less than the amount determined by the employer. In such case, the amount paid such employee by his  
134 employer shall be deemed to have been increased by such lesser amount. An employer shall not classify an  
135 individual as a tipped employee if the individual is prohibited by applicable federal or state law or regulation  
136 from soliciting tips.