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HOUSE BILL NO. 238

Offered January 14, 2026

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A BILL to amend and reenact §§ 11-4.6, 40.1-28.7:7, 40.1-28.12, 40.1-29, 40.1-29.2, and 40.1-29.3 of the Code of Virginia, relating to labor and employment; payment of wages; minimum wage and overtime wages; misclassification of workers; civil actions.

Patron—Lopez

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That §§ 11-4.6, 40.1-28.7:7, 40.1-28.12, 40.1-29, 40.1-29.2, and 40.1-29.3 of the Code of Virginia are amended and reenacted as follows:

§ 11-4.6. Required contract provisions in construction contracts.

A. As used in this section, unless the context requires a different meaning:

"Construction contract" means a contract for the construction, alteration, repair, or maintenance of a building, structure, or appurtenance thereto, including moving, demolition, and excavation connected therewith, or any provision contained in any contract relating to the construction of projects other than buildings, except for contracts awarded solely for professional services as that term is defined in § 2.2-4301.

"Contractor" or "general contractor" means the same as that term is defined in § 54.1-1100, except that such term shall not include persons solely furnishing materials.

"Owner" means a person or entity, other than a public body as defined in § 2.2-4301, responsible for contracting with a general contractor for the procurement of a construction contract.

"Subcontractor" means the same as that term is defined in § 2.2-4347.

B. 1. In any construction contract between an owner and a general contractor, the parties shall include a provision that requires the owner to pay such general contractor within 60 days of the receipt of an invoice following satisfactory completion of the portion of the work for which the general contractor has invoiced. An owner shall not be liable for amounts otherwise reducible due to the general contractor's noncompliance with the terms of the contract. However, in the event that an owner withholds all or a part of the amount invoiced by the general contractor under the terms of the contract, the owner shall notify the general contractor within 45 days of the receipt of such invoice, in writing, of his intention to withhold all or part of the general contractor's payment with the reason for nonpayment, specifically identifying the contractual noncompliance and the dollar amount being withheld. Failure of an owner to make timely payment as provided in this subdivision shall result in interest penalties consistent with § 2.2-4355. Nothing in this subdivision shall be construed to apply to or prohibit the inclusion of any retainage provisions in a construction contract.

2. Any construction contract in which there is at least one general contractor and one subcontractor shall be deemed to include a provision under which any general contractor is liable to any subcontractor with whom the general contractor contracts for satisfactory performance of the subcontractor's duties under the contract. Such contract shall require such general contractor to pay such subcontractor within the earlier of (i) 60 days of the receipt of an invoice following satisfactory completion of the portion of the work for which the subcontractor has invoiced or (ii) seven days after receipt of amounts paid by the owner to the general contractor or by the contractor to the subcontractor for work performed by a subcontractor pursuant to the terms of the contract. Such contractors shall not be liable for amounts otherwise reducible due to the subcontractor's noncompliance with the terms of the contract. However, in the event that a contractor withholds all or a part of the amount invoiced by any subcontractor under the contract, the contractor shall notify the subcontractor within 50 days of the receipt of such invoice, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment, specifically identifying the contractual noncompliance, the dollar amount being withheld, and the subcontractor responsible for the contractual noncompliance. Payment by the party contracting with the contractor shall not be a condition precedent to payment to any subcontractor, regardless of that contractor's receiving payment for amounts owed to that contractor, unless the party contracting with the contractor is insolvent or a debtor in bankruptcy as defined in § 50-73.79. Any provision in a contract contrary to this section shall be unenforceable. Failure of a contractor to make timely payment as provided in this subdivision shall result in interest penalties consistent with § 2.2-4355. Nothing in this subdivision shall be construed to apply to or prohibit the inclusion of any retainage provisions in a construction contract. Every subcontract between a subcontractor and a lower-tier subcontractor or supplier, of any tier, shall contain the identical payment, notice, and interest requirements as those provided in this subdivision if (i) such construction contract is related to a project other

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than a single-family residential project and (ii) the value of the project, or an aggregate of projects under such construction contract, is greater than \$500,000.

C. 1. Any construction contract between a general contractor and its subcontractor ~~and any lower tier additional subcontract~~ entered into on or after July 1, 2020 2026, shall be deemed to include a provision under which the general contractor; ~~and its subcontractor; and the additional subcontractor at any lower tier~~ are jointly and severally liable to pay the employees of ~~any additional the subcontractor at any lower tier~~ the greater of (i) all wages due to ~~a the subcontractor's employees or to the lower tier subcontractor's employees~~ at such rate and upon such terms as shall be provided in the employment agreement between the subcontractor and its employees or (ii) the amount of wages that the subcontractor ~~or any lower tier subcontractor~~ is required to pay to its employees under the provisions of applicable law, including the provisions of §§ 40.1-28.7:7 and 40.1-29, the Virginia Minimum Wage Act (§ 40.1-28.8 et seq.), and the federal Fair Labor Standards Act (29 U.S.C. § 201 et seq.).

2. A general contractor shall be deemed to be the employer of any subcontractor's employees for purposes of § 40.1-29. If the wages due to the subcontractor's employees under the terms of the employment agreement between a subcontractor and its employees are not paid, the general contractor shall be subject to all penalties, criminal and civil, to which an employer that fails or refuses to pay wages is subject under § 40.1-29. Any liability of a general contractor pursuant to § 40.1-29 shall be joint and several with the subcontractor that failed or refused to pay the wages to its employees.

3. Except as otherwise provided in a contract between the general contractor and the subcontractor, the subcontractor shall indemnify the general contractor for any wages, damages, interest, penalties, or attorney fees owed as a result of the subcontractor's failure to pay wages to the subcontractor's employees as provided in subdivision 1, unless the subcontractor's failure to pay the wages was due to the general contractor's failure to pay moneys due to the subcontractor in accordance with the terms of their construction contract.

4. The provisions of this subsection shall only apply if (i) ~~it can be demonstrated that the general contractor knew or should have known that the subcontractor was not paying his employees all wages due;~~ (ii) the construction contract is related to a project other than a single family residential project; and (iii) the value of the project, or an aggregate of projects under one construction contract, is greater than \$500,000. ~~As evidence a general contractor or any subcontractor may offer a written certification, under oath, from the subcontractor in direct privity of contract with the general contractor or subcontractor stating that (a) the subcontractor and each of his sub-subcontractors has paid all employees all wages due for the period during which the wages are claimed for the work performed on the project and (b) to the subcontractor's knowledge all sub-subcontractors below the subcontractor have similarly paid their employees all such wages. Any person who falsely signs such certification shall be personally liable to the general contractor or subcontractor for fraud and any damages the general contractor or subcontractor may incur.~~

§ 40.1-28.7:7. Misclassification of workers.

A. An individual who has not been properly classified as an employee may bring a civil action for damages against his employer for failing to properly classify the employee if the employer had knowledge of the individual's misclassification. An individual's representative may bring the action on behalf of the individual. If the court finds that the employer has not properly classified the individual as an employee, the court may award the individual damages in the amount of any wages, salary, employment benefits, including expenses incurred by the employee that would otherwise have been covered by insurance, or other compensation lost to the individual, a reasonable attorney fee, and the costs incurred by the individual in bringing the action. *In addition, any employer that violates this section shall be liable to the aggrieved individual for the applicable remedies, damages, or other relief available in an action brought pursuant to subsection J of § 40.1-29. Any action brought pursuant to this subsection shall commence within three years after the accrual of the cause of action.*

B. In a proceeding under subsection A, an individual who performs services for a person for remuneration shall be presumed to be an employee of the person that paid such remuneration, and the person that paid such remuneration shall be presumed to be the employer of the individual who was paid for performing the services, unless it is shown that the individual is an independent contractor as determined under the Internal Revenue Service guidelines.

C. As used in this section, "Internal Revenue Service guidelines" means the most recent version of the guidelines published by the Internal Revenue Service for evaluating independent contractor status, including its interpretation of common law doctrine on independent contractors, and any regulations that the Internal Revenue Service may promulgate regarding determining whether an employee is an independent contractor, including 26 C.F.R. § 31.3121(d)-1.

D. In a proceeding under subsection A, a hiring party providing an individual with personal protective equipment in response to a disaster caused by a communicable disease of public health threat for which a state of emergency has been declared pursuant to § 44-146.17 shall not be considered in any determination regarding whether such individual is an employee or independent contractor. For the purposes of this subsection, the terms "communicable disease of public health threat," "disaster," and "state of emergency" have the same meaning as provided in § 44-146.16.

§ 40.1-28.12. Employee's remedies.

Any employer who violates *any* of the minimum wage requirements of this ~~law~~ *article* shall be liable to the employee or employees affected in the amount of the unpaid minimum wages, plus interest at eight per centum per annum upon such unpaid wages as may be due the plaintiff, said interest to be awarded from the date or dates said wages were due the employee or employees. The court may, in addition to any judgment awarded to the employee or employees, require defendant to pay reasonable attorney's fees incurred by the employee or employees for the applicable remedies, damages, or other relief available in an action brought pursuant to subsection J of § 40.1-29.

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

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

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

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

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

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

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

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

F. The Commissioner may require a written complaint of ~~the violation of this section~~ *an employer's*

183 *failure to pay wages* and, with the written and signed consent of an employee, may institute proceedings on
184 behalf of an employee to ~~enforce compliance with this section~~ *require payment*, and to collect any ~~moneys~~
185 *wages* unlawfully withheld from such employee that shall be paid to the employee entitled thereto. In
186 addition, following the issuance of a final order by the Commissioner or a court, the Commissioner may
187 engage private counsel, approved by the Attorney General, to collect any ~~moneys~~ *wages* owed to the
188 employee or the Commonwealth. Upon entry of a final order of the Commissioner, or upon entry of a
189 judgment, against the employer, the Commissioner or the court shall assess attorney fees of one-third of the
190 amount set forth in the final order or judgment.

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

195 H. Any employer who knowingly fails to make payment of wages ~~in accordance with subsection A or~~
196 ~~§ 40.1-29.3~~ shall be subject to a civil penalty not to exceed \$1,000 for each violation. The Commissioner
197 shall notify any employer that the Commissioner alleges has violated any provision of this section ~~or~~
198 ~~§ 40.1-29.3~~ by certified mail. Such notice shall contain a description of the alleged violation. Within 15 days
199 of receipt of notice of the alleged violation, the employer may request an informal conference regarding such
200 violation with the Commissioner. In determining the amount of any penalty to be imposed, the Commissioner
201 shall consider the size of the business of the employer charged and the gravity of the violation. The decision
202 of the Commissioner shall be final. Civil penalties owed under this section shall be paid to the Commissioner
203 for deposit into the general fund of the State Treasurer. The Commissioner shall prescribe procedures for the
204 payment of proposed assessments of penalties that are not contested by employers. Such procedures shall
205 include provisions for an employer to consent to abatement of the alleged violation and pay a proposed
206 penalty or a negotiated sum in lieu of such penalty without admission of any civil liability arising from such
207 alleged violation.

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

211 J. In addition to any civil or criminal penalty provided by this section, and without regard to any
212 exhaustion of alternative administrative remedies provided for in this section, if an employer fails to pay
213 wages to an employee in accordance with this section ~~or violates any provision of § 40.1-28.7:7, 40.1-29.2,~~
214 ~~or 40.1-29.3 or the Virginia Minimum Wage Act (§ 40.1-28.8 et seq.),~~ the employee may bring an action,
215 individually, jointly, with other aggrieved employees, or on behalf of similarly situated employees as a
216 collective action consistent with the collective action procedures of the Fair Labor Standards Act, 29 U.S.C. §
217 216(b), against the employer in a court of competent jurisdiction to recover payment of the wages, and the
218 court shall award the wages owed, an additional equal amount as liquidated damages, plus prejudgment
219 interest thereon as provided in subsection G, and reasonable attorney fees and costs. If the court finds that the
220 employer knowingly failed to pay wages to an employee ~~in accordance with this section~~, the court shall
221 award the employee an amount equal to triple the amount of wages due and reasonable attorney fees and
222 costs. *No provision of this subsection shall be construed to replace or limit the availability of any other class*
223 *or collective action available in a court of competent jurisdiction or other tribunal.*

224 K. As used in this section, a person acts "knowingly" if the person, with respect to information, (i) has
225 actual knowledge of the information, (ii) acts in deliberate ignorance of the truth or falsity of the information,
226 or (iii) acts in reckless disregard of the truth or falsity of the information. Establishing that a person acted
227 knowingly shall not require proof of specific intent to defraud.

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

232 M. *As used in this section, "wages" includes any remuneration an employer owes to an employee,*
233 *including hourly wages, piece rate wages, day rates, salaries, overtime wages, legally required prevailing*
234 *wages, commissions, bonuses, severance, accrued vacation or sick leave pay pursuant to an employment*
235 *policy or agreement, and damages available due to the misclassification of an employee in violation of*
236 *§ 40.1-28.7:7.*

237 N. *The Attorney General may investigate any alleged violation of this section, § 2.2-4321.3 or*
238 *40.1-28.7:7, the Virginia Minimum Wage Act (§ 40.1-28.8 et seq.), or the Virginia Overtime Wage Act*
239 *(§ 40.1-29.2 et seq.) and may cause an action to be brought in the circuit court of the city or county in which*
240 *such a violation has occurred for the issuance of an injunction to enjoin and restrain the continuance of such*
241 *violation. In conducting such investigation, the Attorney General may require an individual or entity to*
242 *submit a sworn statement or report regarding any information the Attorney General deems relevant, examine*
243 *under oath any person with knowledge of the alleged violation, and issue subpoenas. If it appears to the*
244 *satisfaction of the court that the defendant has, in fact, violated such provision, the Attorney General shall be*

entitled to reasonable attorney fees and costs, any applicable statutory penalties, equitable relief as may be appropriate, and, on behalf of impacted employees, the payment of back wages unlawfully withheld and any other applicable damages. The Attorney General shall not, in any action brought pursuant to this subsection, recover wages or other damages already recovered by an employee.

§ 40.1-29.2. Employer liability.

Any employer that violates the overtime pay requirements of the federal Fair Labor Standards Act of 1938, 29 U.S.C. § 201 et seq., as amended, and any regulations, guidance, or rules adopted pursuant to the overtime pay provisions of such federal act or any related governing case law shall be liable to the employee for the applicable remedies, damages, or other relief available under the federal Fair Labor Standards Act in an action brought pursuant to the process in subsection J of § 40.1-29. For the purposes of this section, "employer" and "employee" shall have the meanings ascribed to them under the federal Fair Labor Standards Act and all applicable exemptions, overtime calculation methods, methods of overtime payment, or other overtime provisions within the federal Fair Labor Standards Act and any attendant regulations, guidance, or rules shall apply. Any action brought pursuant to this section shall accrue according to the applicable limitations set forth in the federal Fair Labor Standards Act.

§ 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.

"Direct support services" means personal care services that assist participants with instrumental activities of daily living, including grooming, toileting, bathing, eating, dressing, monitoring health status and physical condition, and assisting with housekeeping activities, and other in-home, long-term services and supports provided to an elderly person or person with a disability to meet such person's daily living needs and ensure that such person may adequately function at home and have safe access to the community.

"Employee" means an individual employed by a derivative carrier or an individual who is employed by a home care agency or other third-party provider to provide direct support services.

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. Employer shall be liable to the employee for the applicable remedies, damages, or other relief available in an action brought pursuant to subsection J of § 40.1-29.