

Department of Planning and Budget
2026 General Assembly Session
State Fiscal Impact Statement

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ORIGINAL

Bill Number: HB238

Patron: Lopez

Bill Title: Minimum wage and overtime wages; payment, misclassification of workers, civil actions.

Bill Summary: Provides that an employer that violates provisions relating to minimum wage, overtime wages provisions, or the misclassification of workers is liable to the employee for the applicable remedies, damages, or other relief available in an action brought pursuant to the civil action provisions currently available for the nonpayment of wages. Such provisions currently available provide that an employee may bring an action in a court of competent jurisdiction to recover payment of the wages, and the court is required to award the wages owed, an additional equal amount as liquidated damages, plus prejudgment interest thereon, and reasonable attorney fees and costs. Under current law, if the court finds that the employer knowingly failed to pay wages to an employee, the court is required to award the employee an amount equal to triple the amount of wages due and reasonable attorney fees and costs.

Budget Amendment Necessary: No

Items Impacted: N/A

Explanation: This bill involves the Department of Labor and Industry (DOLI) and the Office of the Attorney General (OAG); however, no budget action is required. See Fiscal Analysis section, below.

Fiscal Summary: It is anticipated that DOLI and OAG may have an increase in workload impact as a result of this bill; however, any expenditure impact is indeterminate.

Fiscal Analysis: This fiscal impact statement is preliminary and will be updated as additional information is received from state agencies.

Under this legislation, employers that violate provisions relating to minimum wage, overtime wages provisions, or the misclassification of workers would be liable for the applicable remedies, damages, or other relief available in an action brought pursuant to subsection J of § 40.1-29, Code of Virginia. Under this subsection, an employee can bring action in a court of competent jurisdiction to recover payment of wages, and the court is required to award wages owed, an additional equal amount as liquidated damages, plus prejudgment interest thereon, and reasonable attorney fees and costs. Additionally, if the court finds that the employer knowingly failed to pay wages to an employee, the court is required to award the employee an amount equal to triple the amount of wages due and reasonable attorney fees and costs.

The Department of Labor and Industry (DOLI) is responsible for investigating and enforcing minimum wage, overtime wages, and misclassification of workers violations. DOLI anticipates that there may be an increase in workload under the provisions of this bill. It is anticipated that the number of inquiries and cases related to minimum wage, overtime wages provisions, and the misclassification of workers, and the technical assistance

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and guidance related to labor and employment law that the agency provides, may increase as a result of this bill; however, this amount is indeterminate.

Depending on the amount of additional inquiries, cases, and technical assistance and guidance tasks that may result from this bill, DOLI states that an additional Program Support Analyst position may be needed. A Program Support Analyst position would be at an ongoing general fund cost of \$120,743. Job responsibilities for this role include providing direct technical assistance to employers, employees, and stakeholders regarding labor and employment law requirements; answering and triaging client inquiries; screening complaints to determine jurisdiction, applicability, and appropriate next steps; and developing and maintaining guidance materials, scripts, and internal protocols necessary to implement the bill. The agency states that labor and employment law technical assistance requires specialized legal and regulatory knowledge that cannot be absorbed by staff outside of the agency's Labor Law Division.

Under this bill, Paragraph N of § 40.1-29, Code of Virginia states that the Attorney General may investigate any alleged violation of § 40.1-29, Code of Virginia, payment of prevailing wage for work performed on public works contracts, misclassification of workers, the Virginia Minimum Wage Act, or the Virginia Overtime Wage Act and may cause an action to be brought in the circuit court of the city or county in which such a violation has occurred for the issuance of an injunction to enjoin and restrain the continuance of such a violation. If the court finds that the defendant has violated such provisions, 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. It is anticipated that there may be an increase in cases investigated by the Office of the Attorney General (OAG), which may increase the Office's workload; however, an estimate is not available.

Other: None.