

# VIRGINIA ACTS OF ASSEMBLY - 2026 RECONVENED SESSION

## CHAPTER 1040

*An Act to amend and reenact §§ 2.2-2751, 2.2-4321.3, 11-4.6, 40.1-28.7:7, 40.1-28.12, 40.1-29, 40.1-29.2, 40.1-29.3, 53.1-40.02, and 53.1-202.3 of the Code of Virginia, relating to labor and employment; payment of wages; minimum wage and overtime wages; misclassification of workers; civil actions.*

[H 238]

Approved April 22, 2026

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

**1. That §§ 2.2-2751, 2.2-4321.3, 11-4.6, 40.1-28.7:7, 40.1-28.12, 40.1-29, 40.1-29.2, 40.1-29.3, 53.1-40.02, and 53.1-202.3 of the Code of Virginia are amended and reenacted as follows:**

#### **§ 2.2-2751. Program enrollment; participating employer liability and status under the Program.**

A. 1. Any employer that is not an eligible employer may facilitate the participation of its eligible employees in the Program. However, such employer shall take all steps necessary to ensure that such facilitation does not constitute an employee benefit plan regulated under Title I of the Employee Retirement Income Security Act (ERISA).

2. Any eligible employee whose employer does not facilitate his participation in the Program pursuant to subdivision 1 or any self-employed individual may participate in the Program under terms and conditions prescribed by the Board.

3. No eligible employee or self-employed individual shall be permitted to participate in the Program unless such individual has Virginia taxable income, as defined in Article 2 (§ 58.1-320 et seq.) of Chapter 3 of Title 58.1.

B. The Program shall be established and enrollment of eligible employers shall begin on July 1, 2023, or as soon thereafter as practicable. The Board shall establish an implementation timeline under which eligible employers shall enroll their eligible employees in the Program.

C. The Board shall develop a Program rollout timeline, including deadlines for the enrollment of eligible employers. The Board may alter the rollout timeline in its discretion, though in all instances any alterations of established rollout dates shall include reasonable notice to affected eligible employers.

D. Participation in the Program shall be mandatory for eligible employers. Eligible employers shall enroll in the Program in accordance with the timeline established by the Plan. Eligible employers shall facilitate a payroll deposit retirement savings agreement pursuant to this chapter for their eligible employees.

E. Each eligible employee of an eligible employer shall be enrolled in the Program unless the employee elects not to participate in the Program in a manner prescribed by the Board.

F. A participating employee may also terminate his participation in the Program at any time in a manner prescribed by the Board.

G. Participating employers shall not have any liability for a participating employee's decision to participate in or opt out of the Program or for the investment decisions of participating employees whose assets are deposited in the Program.

H. Participating employers shall not be a fiduciary, or considered to be a fiduciary, over the Program. The Program is a state-administered program, not an employer-sponsored program. If the Program is subsequently found to be preempted by any federal law or regulation, participating employers shall not be liable as Program sponsors. A participating employer shall not bear responsibility for the administration, investment, or investment performance of the Program. A participating employer shall not be liable with regard to investment returns, Program design, and benefits paid to Program participants.

I. A participating employer shall not have civil liability, and no cause of action shall arise against a participating employer, for acting pursuant to this chapter.

J. The Board shall develop and provide to participating employees and participating individuals Program summaries and other information concerning participation in the Program, including information on Program investments and fees, and the consequences of contributing to an IRA, and a statement that the Program is not an employer-sponsored retirement plan, as required by applicable law and as otherwise determined by the Board.

K. Participating employers shall retain the option at all times to set up any type of employer retirement plan, including plans qualified under § 401(a), 403(a), 403(b), 408(k), or 408(p), of the Internal Revenue Code, in which event such employer shall no longer be considered an eligible employer and shall cease facilitating contributions to the Program in accordance with such procedures as shall be established by the Board.

L. No employer shall be permitted to contribute to the Program or to endorse or otherwise promote the Program.

M. The Program shall be exempt from the provisions of subsection *C D* of § 40.1-29.

**§ 2.2-4321.3. Payment of prevailing wage for work performed on public works contracts; penalty.**

A. As used in this section:

*"Employer" has the same meaning as provided in 29 U.S.C. § 203.*

*"Locality" means any county, city, or town, school division, or other political subdivision.*

*"Prevailing wage rate" means the rate, amount, or level of wages, salaries, benefits, and other remuneration prevailing for the corresponding classes of mechanics, laborers, or workers employed for the same work in the same trade or occupation in the locality in which the public facility or immovable property that is the subject of public works is located, as determined by the Commissioner of Labor and Industry on the basis of applicable prevailing wage rate determinations made by the U.S. Secretary of Labor under the provisions of the Davis-Bacon Act, 40 U.S.C. § 276 et seq., as amended.*

*"Public works" means the operation, erection, construction, alteration, improvement, maintenance, or repair of any public facility or immovable property owned, used, or leased by a state agency or locality, including transportation infrastructure projects.*

*"State agency" means any authority, board, department, instrumentality, institution, agency, or other unit of state government. "State agency" does not include any county, city, or town.*

B. Notwithstanding any other provision of this chapter, each state agency, when procuring services or letting contracts for public works paid for in whole or in part by state funds, or when overseeing or administering such contracts for public works, shall ensure that its bid specifications or other public contracts applicable to the public works require bidders, offerors, contractors, and subcontractors to pay wages, salaries, benefits, and other remuneration to any mechanic, laborer, or worker employed, retained, or otherwise hired to perform services in connection with the public contract for public works at the prevailing wage rate. Each public contract for public works by a state agency shall contain a provision requiring that the remuneration to any individual performing the work of any mechanic, laborer, or worker on the work contracted to be done under the public contract shall be at a rate equal to the prevailing wage rate.

C. Notwithstanding any other provision of this chapter, any locality may adopt an ordinance requiring that, when letting contracts for public works paid for in whole or in part by funds of the locality, or when overseeing or administering a public contract, its bid specifications, project agreements, or other public contracts applicable to the public works shall require bidders, offerors, contractors, and subcontractors to pay wages, salaries, benefits, and other remuneration to any mechanic, laborer, or worker employed, retained, or otherwise hired to perform services in connection with the public contract at the prevailing wage rate. Each public contract of a locality that has adopted an ordinance described in this section shall contain a provision requiring that the remuneration to any individual performing the work of any mechanic, laborer, or worker on the work contracted to be done under the public contract shall be at a rate equal to the prevailing wage rate.

D. Any contractor or subcontractor who employs any mechanic, laborer, or worker to perform work contracted to be done under the public contract for public works for or on behalf of a state agency or for or on behalf of a locality that has adopted an ordinance described in subsection C or at a rate that is less than the prevailing wage rate (i) shall be liable to such individuals for the payment of all wages due, plus interest at an annual rate of eight percent accruing from the date the wages were due; and (ii) shall be disqualified from bidding on public contracts with any public body until the contractor or subcontractor has made full restitution of the amount described in clause (i) owed to such individuals. A contractor or subcontractor who willfully violates this section is guilty of a Class 1 misdemeanor.

E. Any interested party, which shall include a bidder, offeror, contractor, or subcontractor, shall have standing to challenge any bid specification, project agreement, or other public contract for public works that violates the provisions of this section. Such interested party shall be entitled to injunctive relief to prevent any violation of this section. Any interested party bringing a successful action under this section shall be entitled to recover reasonable attorney fees and costs from the responsible party.

F. A representative of a state agency or a representative of a locality that has adopted an ordinance described in subsection C may contact the Commissioner of Labor and Industry, at least 10 but not more than 20 days prior to the date bids for such a public contract for public works will be advertised or solicited, to ascertain the proper prevailing wage rate for work to be performed under the public contract.

G. Upon the award of any public contract subject to the provisions of this section, the contractor to whom such contract is awarded shall certify, under oath, to the Commissioner of Labor and Industry the pay scale for each craft or trade employed on the project to be used by such contractor and any of the contractor's subcontractors for work to be performed under such public contract. This certification shall, for each craft or trade employed on the project, specify the total hourly amount to be paid to employees, including wages and applicable fringe benefits, provide an itemization of the amount paid in wages and each applicable benefit, and list the names and addresses of any third party fund, plan or program to which benefit payments will be made on behalf of employees.

H. Each employer subject to the provisions of this section shall keep, maintain, and preserve (i) records relating to the wages paid to and hours worked by each individual performing the work of any mechanic, laborer, or worker and (ii) a schedule of the occupation or work classification at which each individual

performing the work of any mechanic, laborer, or worker on the public works project is employed during each work day and week. The employer shall preserve these records for a minimum of six years and make such records available to the Department of Labor and Industry within 10 days of a request and shall certify that records reflect the actual hours worked and the amount paid to its workers for whatever time period they request.

I. Contractors and subcontractors performing public works for a state agency or for a locality that has adopted an ordinance described in subsection C shall post the general prevailing wage rate for each craft and classification involved, as determined by the Commissioner of Labor and Industry, including the effective date of any changes thereof, in prominent and easily accessible places at the site of the work or at any such places as are used by the contractor or subcontractors to pay workers their wages. Within 10 days of such posting, a contractor or subcontractor shall certify to the Commissioner of Labor and Industry its compliance with this subsection.

J. The provisions of this section shall not apply to any public contract for public works of \$250,000 or less.

*K. The the Commissioner of Labor and Industry may investigate, institute administrative proceedings, and refer matters to the Attorney General to bring a civil action in a court of competent jurisdiction against an employer for a violation of this section under subsection G or N of § 40.1-29.*

**§ 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

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, *as defined by the Commissioner of Labor and Industry*, 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. *As used in this section:*

"Employer" has the same meaning as provided in 29 U.S.C. § 203.

"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.

B. 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~~ such employer shall be liable to the aggrieved individual for the applicable remedies, damages, or other relief available in an action brought pursuant to subsection K 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-~~ C. In a proceeding under subsection A B, 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 B, 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 K 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. As used in this section:

"Employer" has the same meaning as provided in 29 U.S.C. § 203.

"Wages" includes any remuneration an employer owes to an employee, including hourly wages, minimum wages, piece rate wages, day rates, salaries, overtime wages, legally required prevailing wages, commissions, tips, bonuses, and damages available due to the misclassification of an employee in violation of § 40.1-28.7:7.

B. 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.

C. 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.

D. 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 shall keep such paystubs or online accounting for at least three years following the date of the work performed. 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. E.~~ 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. F.~~ 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. G.~~ The Commissioner may require a written complaint of the violation of this section and, with the written and signed consent of initiate an investigation upon the receipt of a complaint from an employee or an interested third party, or at the Commissioner's discretion. The Commissioner shall not disclose a complainant's or witness's identity unless the complainant or witness consents to such disclosure. The Commissioner may institute commence administrative proceedings on behalf of an employee or refer the matter to the Attorney General, who may bring a civil action to enforce compliance with this section, and upon the reasonable and good-faith belief of wage violations to remedy the failure to pay wages, including violations of this section, § 2.2-4321.3 or 40.1-28.7:7, the Virginia Minimum Wage Act (§ 40.1-28.8 et seq.), or § 40.1-29.2 or 40.1-29.3. The Commissioner may seek and collect any moneys wages unlawfully withheld from such any employee that shall be paid to the employee entitled thereto and all damages and penalties available under subsection K. Such wages and damages shall be paid as restitution to any affected employee entitled thereto, and such penalties may be paid to any affected employee or the Commonwealth. In addition, following The Commissioner may require an employer or employee to submit a statement or report in writing under oath as to all necessary information, examine under oath any person alleged to have participated in or have knowledge relevant to the investigation, and issue subpoenas. Following the issuance of a final order by the Commissioner or a court, the Commissioner or the Attorney General may engage private counsel, approved by the Attorney General, to collect any moneys owed to the employee or the Commonwealth. Upon entry of a final order of the Commissioner, or upon entry of a judgment, against the employer, the Commissioner or the court shall assess reasonable attorney fees of one-third of the amount set forth in the final order or judgment.

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

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

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

~~J. K.~~ In addition to any civil or criminal penalty provided by this section, and without regard to any exhaustion of alternative administrative remedies provided for in this section, if an employer fails to pay wages to an employee in accordance with this section or violates any provision of § 2.2-4321.3 or 40.1-28.7:7, the Virginia Minimum Wage Act (§ 40.1-28.8 et seq.), or § 40.1-29.2 or 40.1-29.3, the employee may bring an action, individually, jointly, with other aggrieved employees, or on behalf of similarly situated employees as a collective action consistent with the collective action procedures of the Fair Labor Standards Act, 29 U.S.C. § 216(b), against the employer in a court of competent jurisdiction to recover payment of the

wages, and the court shall award the wages owed, an additional equal amount as liquidated damages, plus prejudgment interest thereon as provided in subsection ~~G~~ H, and reasonable attorney fees and costs. If the court finds that the employer knowingly failed to pay wages to an employee ~~in accordance with this section~~, the court shall award the employee an amount equal to triple the amount of wages due and reasonable attorney fees and costs.

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

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

N. Upon referral from the Commissioner, the Attorney General may investigate and bring a civil action in a court of competent jurisdiction against an employer for a violation of this section, § 2.2-4321.3 or 40.1-28.7:7, the Virginia Minimum Wage Act (§ 40.1-28.8 et seq.), or § 40.1-29.2 or 40.1-29.3 for restitution or for injunctive, compensatory, or other authorized relief for any affected employees or for the public interest. The Attorney General may require an employer or employee to submit a statement or report in writing under oath as to all necessary information, examine under oath any person alleged to have participated in or have knowledge of the violation, and issue subpoenas. Upon prevailing in a civil action under this section, the Attorney General shall be entitled to reasonable attorney fees and costs, statutory penalties equal to any administrative penalties provided by law, and, on behalf of affected employees, the payment of wages unlawfully withheld, additional damages to the same extent as would be available if the employee brought the civil action, and equitable relief as may be appropriate.

O. In no civil action brought under this section shall an employee be awarded an amount already recovered on their behalf by the Attorney General or the Commissioner for the same violation. In no administrative action brought under this section shall the Commissioner be awarded an amount already recovered by an employee or the Attorney General for the same violation. In no civil action brought under this section shall the Attorney General recover an amount already recovered by the Commissioner or an employee for the same violation.

P. In any action to recover unpaid wages commenced on or after July 1, 2026, if the employer shows to the satisfaction of the court or the Commissioner that the act or omission giving rise to such action was in good faith and that the employer had reasonable grounds for believing that his act or omission was not in violation of this article, the court or the Commissioner shall not award any additional damages or impose any additional penalties. An employer shall not claim the good faith defense unless such employer cures the violation within 14 days of being notified of the violation by paying all wages unlawfully withheld.

#### **§ 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~~ K 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 and shall be commenced within three years after accrual.

#### **§ 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, such as 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.

"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.

"Employer" has the same meaning as provided in 29 U.S.C. § 203.

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 K of § 40.1-29.~~

**§ 53.1-40.02. Conditional release of terminally ill prisoners.**

A. As used in this section, "terminally ill" means having a chronic or progressive medical condition caused by injury, disease, or illness where the medical prognosis is the person's death within 12 months.

B. Any person serving a sentence imposed upon a conviction for a felony offense, except as provided in subsection C, who is terminally ill may petition the Parole Board for conditional release.

C. A person who is terminally ill and is serving a sentence imposed upon a conviction for one of the following offenses shall not be eligible to petition the Parole Board for conditional release:

1. A Class 1 felony;
2. Any violation of § 18.2-32, 18.2-32.1, 18.2-32.2, or 18.2-33;
3. Any violation of § 18.2-40 or 18.2-45;
4. Any violation of § 18.2-46.5, subsection A or B of § 18.2-46.6, or § 18.2-46.7;
5. Any kidnapping or abduction felony under Article 3 (§ 18.2-47 et seq.) of Chapter 4 of Title 18.2, except for a violation of § 18.2-49.1;
6. Any malicious felonious assault or malicious bodily wounding under Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, any violation of § 18.2-51.7, 18.2-54.1, or 18.2-54.2, or any felony violation of § 18.2-57.2;
7. Any felony violation of § 18.2-60.3;
8. Any felony violation of § 16.1-253.2 or 18.2-60.4;
9. Robbery under § 18.2-58 or carjacking under § 18.2-58.1;
10. Criminal sexual assault punishable as a felony under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, except, when not committed against a minor, a violation of subdivision A 5 of § 18.2-67.3, § 18.2-67.4:1, subsection B of § 18.2-67.5, or § 18.2-67.5:1;
11. Any violation of § 18.2-90 or 18.2-93;
12. Any violation of § 18.2-289 or subsection A of § 18.2-300;
13. Any felony offense in Article 3 (§ 18.2-346 et seq.) of Chapter 8 of Title 18.2 involving a minor victim;
14. Any felony offense in Article 4 (§ 18.2-362 et seq.) of Chapter 8 of Title 18.2 involving a minor victim, except for a violation of § 18.2-362 or 18.2-370.5 or subsection B of § 18.2-371.1;
15. Any felony offense in Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 involving a minor victim, except for a violation of subsection A of § 18.2-374.1:1;
16. Any violation of § 18.2-481, 40.1-100.2, or 40.1-103; or
17. A second or subsequent felony violation of the following offenses when such offenses were not part of a common act, transaction, or scheme and such person has been at liberty as defined in § 53.1-151 between each conviction:
  - a. Voluntary or involuntary manslaughter under Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2 or any crime punishable as such;
  - b. Any violation of § 18.2-41 or 18.2-42.1;
  - c. Any violation of subsection C of § 18.2-46.6;
  - d. Any violation when done unlawfully but not maliciously of § 18.2-51 or 18.2-51.1;
  - e. Arson in violation of § 18.2-77 when the structure burned was occupied or a Class 3 felony violation of § 18.2-79;
  - f. Any violation of § 18.2-89 with the intent to commit any larceny or § 18.2-92;
  - g. Any violation of subsection A of § 18.2-374.1:1;
  - h. Any violation of § 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, or 18.2-433.2; or

i. Any violation of subdivision *E F* 2 of § 40.1-29.

D. The Parole Board shall promulgate regulations to implement the provisions of this section.

**§ 53.1-202.3. Rate at which sentence credits may be earned; prerequisites.**

A. A maximum of 4.5 sentence credits may be earned for each 30 days served on a sentence for a conviction for any offense of:

1. A Class 1 felony;
2. Solicitation to commit murder under § 18.2-29 or any violation of § 18.2-32, 18.2-32.1, 18.2-32.2, or 18.2-33;
3. Any violation of § 18.2-40 or 18.2-45;
4. Any violation of subsection A of § 18.2-46.5, of subsection D of § 18.2-46.5 if the death of any person results from providing any material support, or of subsection A of § 18.2-46.6;
5. Any kidnapping or abduction felony under Article 3 (§ 18.2-47 et seq.) of Chapter 4 of Title 18.2;
6. Any malicious felonious assault or malicious bodily wounding under Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, any violation of § 18.2-51.6 or 18.2-51.7, or any felony violation of § 18.2-57.2;
7. Any felony violation of § 18.2-60.3;
8. Any felony violation of § 16.1-253.2 or 18.2-60.4;
9. Robbery under § 18.2-58 or carjacking under § 18.2-58.1;
10. Criminal sexual assault punishable as a felony under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;
11. Any violation of § 18.2-90;
12. Any violation of § 18.2-289 or subsection A of § 18.2-300;
13. Any felony offense in Article 3 (§ 18.2-346 et seq.) of Chapter 8 of Title 18.2;
14. Any felony offense in Article 4 (§ 18.2-362 et seq.) of Chapter 8 of Title 18.2, except for a violation of § 18.2-362 or subsection B or C of § 18.2-371.1;
15. Any felony offense in Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2, except for a violation of subsection A of § 18.2-374.1:1;
16. Any violation of subsection F of § 3.2-6570, any felony violation of § 18.2-128, or any violation of § 18.2-481, 37.2-917, 37.2-918, 40.1-100.2, or 40.1-103; or
17. A second or subsequent violation of the following offenses, in any combination, when such offenses were not part of a common act, transaction, or scheme and such person has been at liberty as defined in § 53.1-151 between each conviction:
  - a. Any felony violation of § 3.2-6571;
  - b. Voluntary manslaughter under Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;
  - c. Any violation of § 18.2-41 or felony violation of § 18.2-42.1;
  - d. Any violation of subsection B, C, or D of § 18.2-46.5 or § 18.2-46.7;
  - e. Any violation of § 18.2-51 when done unlawfully but not maliciously, § 18.2-51.1 when done unlawfully but not maliciously, or § 18.2-54.1 or 18.2-54.2;
  - f. Arson in violation of § 18.2-77 when the structure burned was occupied or a Class 3 felony violation of § 18.2-79;
  - g. Any violation of § 18.2-89 or 18.2-92;
  - h. Any violation of subsection A of § 18.2-374.1:1;
  - i. Any violation of § 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, or 18.2-433.2; or
  - j. Any violation of subdivision *E F* 2 of § 40.1-29.

The earning of sentence credits shall be conditioned, in part, upon full participation in and cooperation with programs to which a person is assigned pursuant to § 53.1-32.1.

B. For any offense other than those enumerated in subsection A for which sentence credits may be earned, earned sentence credits shall be awarded and calculated using the following four-level classification system:

1. Level I. For persons receiving Level I sentence credits, 15 days shall be deducted from the person's sentence for every 30 days served. Level I sentence credits shall be awarded to persons who participate in and cooperate with all programs to which the person is assigned pursuant to § 53.1-32.1 and who have no more than one minor correctional infraction and no serious correctional infractions as established by the Department's policies or procedures.

2. Level II. For persons receiving Level II sentence credits, 7.5 days shall be deducted from the person's sentence for every 30 days served. Level II sentence credits shall be awarded to persons who participate in and cooperate with all programs, job assignments, and educational curriculums to which the person is assigned pursuant to § 53.1-32.1, but who require improvement in not more than one area as established by the Department's policies or procedures.

3. Level III. For persons receiving Level III sentence credits, 3.5 days shall be deducted from the person's sentence for every 30 days served. Level III sentence credits shall be awarded to persons who participate in and cooperate with all programs, job assignments, and educational curriculums to which the person is assigned pursuant to § 53.1-32.1, but who require significant improvement in two or more areas as established by the Department's policies or procedures.

4. Level IV. No sentence credits shall be awarded to persons classified in Level IV. A person will be classified in Level IV if that person willfully fails to participate in or cooperate with all programs, job assignments, and educational curriculums to which the person is assigned pursuant to § 53.1-32.1 or that person causes substantial security or operational problems at the correctional facility as established by the Department's policies or procedures.

C. A person's classification level under subsection B shall be reviewed at least once annually, and the classification level may be adjusted based upon that person's participation in and cooperation with programs, job assignments, and educational curriculums assigned pursuant to § 53.1-32.1. A person's classification and calculation of earned sentence credits shall not be lowered or withheld due to a lack of programming, educational, or employment opportunities at the correctional facility at which the person is confined. Records from this review, including an explanation of the reasons why a person's classification level was or was not adjusted, shall be maintained in the person's correctional file.

D. A person's classification level under subsection B may be immediately reviewed and adjusted following removal from a program, job assignment, or educational curriculum that was assigned pursuant to § 53.1-32.1 for disciplinary or noncompliance reasons.

E. A person may appeal a reclassification determination under subsection C or D in the manner set forth in the grievance procedure established by the Director pursuant to his powers and duties as set forth in § 53.1-10.

F. For a juvenile sentenced to serve a portion of his sentence as a serious juvenile offender under § 16.1-285.1, consideration for earning sentence credits shall be conditioned, in part, upon full participation in and cooperation with programs afforded to the juvenile during that portion of the sentence. The Department of Juvenile Justice shall provide a report that describes the juvenile's adherence to the facility's rules and the juvenile's progress toward treatment goals and objectives while sentenced as a serious juvenile offender under § 16.1-285.1.

G. Notwithstanding any other provision of law, no portion of any sentence credits earned shall be applied to reduce the period of time a person must serve before becoming eligible for parole upon any sentence.

**2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 725 of the Acts of Assembly of 2025 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**