

Virginia Overtime Wages

Until June 30, 2022

On March 31, 2021, Virginia adopted the [Virginia Overtime Wage Act](#) (VOWA). **Effective July 1, 2021** the VOWA, like the Fair Labor Standards Act (FLSA), requires employers to compensate their non-exempt employees for overtime work at a rate of 1 ½ the employees' regular wage rate.

Exemptions

The following individuals are exempt from VOWA requirements:

- Individuals who volunteer to perform services for a public agency;
- Public employees;
- Individuals exempt from minimum wage and overtime requirements under the FLSA; and
- Salesmen, partsmen, or mechanics primarily engaged in selling or servicing automobiles, trucks, or farm implements, if they are employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers.

Wage Rate Calculation

The VOWA establishes a different formula to calculate an employee's regular wage rate. Under the FLSA, the regular wage rate is the sum of all remuneration paid for employment (less certain statutory exclusions) divided by the total number of hours worked during the workweek. However, under the VOWA, the regular wage rate formula depends on whether the employee receives a salary or an hourly wage, as follows:

- **For hourly employees:** Add all wages earned at the hourly wage rate and any other non-overtime wages paid or allocated for the workweek (less any items regularly excluded under the FLSA). Divide the sum by the total number of hours worked in the workweek.
- **For salaried employees:** The regular rate of pay is one-fortieth (0.025) of all wages paid for the workweek.

Beginning July 1, 2022

On April 11, 2022, Virginia [amended](#) its overtime wage laws to follow federal overtime pay provisions set by the FLSA. The amendments become effective July 1, 2022. The new amendments align the VOWA with FLSA overtime pay provisions. Beginning July 1, Virginia employers will need to follow FLSA overtime pay requirements and exemptions, including:

- Regular wage rate calculations;
- Use of the [fluctuating workweek](#) method for overtime compensation;
- All exemptions available under FLSA ([29 U.S.C. § 207](#), [§ 213\(a\) and \(b\)](#)), except the exemption under [29 U.S.C. § 213\(b\)\(3\)](#) as applied to derivative carriers); and
- All relevant FLSA interpretations and guidance.

In spite of the amendments, the VOWA still allows employees in Virginia to file individual or collective action claims for unpaid wages and overtime in state courts in addition to a right of action under the FLSA. As a result, employers may be liable for penalties under both the FLSA and the VOWA.

The VOWA also extends the period for filing a claim for unpaid wages to three years (two years under the FLSA).

More Information

For more information please visit the [Virginia Department of Labor and Industry](#).

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