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2021 Legislative Update for the HR Professional

EPSHRM September 2021 Meeting | J. Tyler Mayhew, Bowles Rice LLP

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Agenda

- West Virginia Legislative Update: 2020-2021
 - 2020-2021 Sessions: Overview
 - A Selection of New West Virginia Employment Laws for 2020-2021
- Virginia Legislative Update: 2020-2021
 - 2020-2021 Sessions: Overview
 - A Selection of New Virginia Employment Laws for 2020-2021

2020-2021 West Virginia Legislative Sessions: An Overview

- 2020 Session:
 - 365 bills passed
 - 6 bills vetoed by the Governor
- 2021 Session:
 - 282 bills passed
 - 1 bill vetoed by the Governor

2020-2021 Virginia General Assembly Sessions: An Overview

- 2020 General Assembly:
 - 1,291 bills passed in Regular Session
 - 56 additional bills passed during Special Session
 - 4 bills vetoed by the Governor
- 2021 General Assembly:
 - 8 bills passed in Regular Session
 - 556 bills passed during 2021 Special Session I
 - No bills vetoed

West Virginia and Virginia: A Comparison and Overall Trends

- Stark differences in political control
 - West Virginia: Republican trifecta since 2017
 - Virginia: Democrat trifecta since 2019
- Stark differences in policy
 - Common policy areas: COVID-19, worker classification & pay
 - West Virginia has focused on strengthening employer rights
 - Virginia has focused on strengthening employee rights

New West Virginia Employment Laws for 2020

- **Occupational Licenses**
- **Public Employees**
- **Drug Testing**
- **Wage Payment & Collection Act**

New West Virginia Employment Laws for 2020: Licensure Rules

- **HB 4179:** Recognition of Emergency Medical Services Personnel Licensure Interstate Compact (effective as of June 5, 2020)
 - Creates “Recognition of Emergency Medical Services Personnel Licensure Interstate Compact,” W.Va. Code Chapter 16, Article 59
 - Authorizes EMS personnel licensed in other states that have enacted the interstate compact to provide services in West Virginia with a valid license from their home state

New West Virginia Employment Laws for 2020: Licensure Rules

- **HB 4353:** Creating a rational nexus requirement between prior criminal conduct and initial licensure decision making (effective as of May 19, 2020)
 - Amends multiple sections of the West Virginia Code to require that criminal conduct must bear a rational nexus to the occupation or profession requiring licensure to be used in a licensing decision
 - Examples: car dealers, plumbing/HVAC contractors, lottery workers

New West Virginia Employment Laws for 2020: Public Employees

- **HB 2497:** Relating to the whistle-blower law (effective as of May 18, 2020)
 - Adds additional protections under public employees' whistle-blower law, W.Va. Code Chapter 6C, Article 1
 - Strengthens anti-retaliation protections, lengthens the statute of limitations, adds protections for employees engaging in political activities

New West Virginia Employment Laws for 2020: Public Employees

- **HB 4378:** Relating to disciplining teachers (effective as of June 4, 2020)
 - Amends W.Va. Code §§ 18A-2-8 and 18A-3-6 relating to disciplining school employees, revocation of teaching certifications
 - Evidence that employee engaged in conduct that jeopardizes the health, safety, or welfare of students must be investigated, even if employee resigns

New West Virginia Employment Laws for 2020: Drug Testing

- **SB 547:** Relating to employer testing, notice, termination, and forfeiture of unemployment compensation (effective as of June 5, 2020)
 - Revises provisions of “West Virginia Safer Workplace Act,” W.Va. Code § 21-3E-16, relating to positive drug screen or refusal under the act
 - Eliminates automatic disqualification from unemployment for violations of employer’s drug policy
 - Adds violations of employer’s drug policy to definition of “gross misconduct” under unemployment disqualification statute

New West Virginia Employment Laws for 2020: Wage Payment and Collection Act “Safe Harbor” Rule

- **HB 2646:** Providing a “safe harbor” for employers to correct underpayment or nonpayment of wages and benefits due to separated employees (effective as of June 4, 2020)
 - Adds a new section to Wage Payment and Collection Act, W.Va. Code § 21-5-4a
 - Employers that take advantage of the “safe harbor” are not subject to paying liquidated damages or attorney’s fees in a private cause of action

HB 2646: Requirements for Taking Advantage of “Safe Harbor” Rule

- Employer must give written notice to separated employees, either at the time of separation or with their final paycheck, of where to send a written demand by email and regular mail
- Employee must make a written demand for any underpayment or nonpayment
 - For class actions, named employee must make clear that demand is also for all other similarly situated employees
- -Employer has seven calendar days from receipt of the demand to correct the issue or pay all undisputed amounts due
 - If employer only addresses named employee’s demand, class action can still proceed as to other class members

New West Virginia Employment Laws for 2021

- **COVID-19 Jobs Protection Act**
- **West Virginia Employment Law
Worker Classification Act**
- **Wage Payment & Collection Act**
- **Miscellaneous**

New West Virginia Employment Laws for 2021: COVID-19 Jobs Protection Act

- **SB 277:** Creating COVID-19 Jobs Protection Act (effective as of March 11, 2021)
 - Creates the “COVID-19 Jobs Protection Act,” Chapter 55 Article 19
 - Applies retroactively to January 1, 2020
 - Broadly eliminates almost all liability arising from the COVID-19 pandemic
 - Applies to claims against individuals, health care providers, health care facilities, institutions of higher education, businesses, and manufacturers
 - Intended to assure businesses that reopening will not expose them to liability as a result of COVID,

COVID-19 Jobs Protection Act: Liability Shield

- W.Va. Code § 55-19-4: Except as provided in the act, “there is no claim against any person, essential business, business entity, health care facility, health care provider, first responder, or volunteer for loss, damage, physical injury, or death arising from COVID-19, from COVID-19 care, or from impacted care.”
- W.Va. Code § 55-19-6: Workers’ compensation benefits “shall be the sole and exclusive remedy” for injury, disease, or death caused by or arising from COVID-19
- “Arising from COVID-19” is defined in the statute, very broad, includes things like implementing policies to prevent or minimize the spread of COVID-19, providing services or products as an essential business, health care provider, etc.

COVID-19 Jobs Protection Act: Exceptions

- Two limited exceptions to liability shield:
 - (1) Defective products made, sold, or donated in response to COVID-19 if the person had actual knowledge of the defect and acted with conscious, reckless, and outrageous indifference that the product would cause serious injury; or
 - (2) Anyone who engages in intentional conduct with actual malice
 - Products liability claims that fall within the exception are limited to one year from the date of injury

New WV Employment Laws for 2021: West Virginia Employment Law Worker Classification Act

- **SB 272:** Relating to WV Employment Law Worker Classification Act (effective as of June 9, 2021)
 - Creates the “West Virginia Employment Law Worker Classification Act,” Chapter 21, Article 5I
 - Clarifies how to determine whether a worker is an employee or independent contractor
 - Applies to four areas of state employment law:
 - (1) workers’ compensation
 - (2) unemployment compensation
 - (3) the West Virginia Human Rights Act
 - (4) the Wage Payment and Collection Act

West Virginia Employment Law Worker Classification Act: General Requirements

- W.Va. Code § 21-5I-4(a): Four requirements to classify a worker as an independent contractor:
 - (1) signed contract acknowledging intent to hire an independent contractor;
 - (2) must either (a) file, or be contractually required to file, tax returns for a business or for self-employment earnings, or (b) provide services through a business entity or a sole proprietorship registered with a “d/b/a” name;
 - (3) worker must actually and directly control the manner and means of work; and
 - (4) must meet at least 3 out of 9 criteria that indicate independent contractor status

West Virginia Employment Law Worker Classification Act: Contract Requirements

- Signed contract must contain acknowledgments that the worker understands:
 - (1) they are providing services as an independent contractor;
 - (2) they will not be treated as an employee;
 - (3) they not be provided workers' compensation or unemployment benefits;
 - (4) they are obligated to pay their own federal and state taxes, and the principal will not make any tax withholdings on their behalf; and
 - (5) they are responsible for the cost of supplies and other expenses incurred in performing services, except for non-local travel, expenses reimbursed as an express provision of the contract, or expenses that are commonly reimbursed in the industry

West Virginia Employment Law Worker Classification Act: Independent Contractor Indicators

- Statutory criteria that indicate independent contractor status:
 - (1) except for completion deadline (or the amount of entertainment time, if an entertainer), worker controls the amount of time spent providing services;
 - (2) except for services that can only be performed at specific locations, worker controls the location where services are performed;
 - (3) worker may work for more than one principal, unless prohibited by law or if a required license or permit limits the person to working for only one principal at a time or requires identification of the principal;
 - (4) worker may solicit others to purchase their services;
 - (5) worker may hire others to perform some or all of the work;

West Virginia Employment Law Worker Classification Act: Independent Contractor Indicators

- (6) worker cannot be required to perform additional services without a new or modified contract;
 - (7) worker needs a license or other permission from the principal to use the principal's workspace to perform the work;
 - (8) the principal was subjected to an IRS employment audit, and the IRS did not reclassify the worker or category of workers to be employees; or
 - (9) the worker maintains and bears the costs of any required business licenses, insurance, certifications, or permits required to perform the services
- A “direct seller” under I.R.C. § 3508(b)(2) may also be an independent contractor

West Virginia Employment Law Classification Act: Miscellaneous Provisions

- W.Va. Code § 21-5I-4(b): Classification of workers that do not meet the criteria in the act should be determined using the test in Internal Revenue Service ruling 87-41
 - Employer-employee relationship generally exists if the person contracting for services has the right to control not only the result of the services, but also the means by which the result is accomplished
 - IRS uses a fact-specific examination of 20 factors to determine if principal has the right of control over the worker
- The act does not require employers to classify anyone as an independent contractor
- W.Va. Code § 21-5I-5: Test does not apply to other areas of the law, such as determining vicarious liability in tort cases or to rideshare companies like Uber, Lyft

New West Virginia Employment Laws for 2021: More Changes to Wage Payment & Collection Act

- **HB 2009:** Relating to limitations on the use of wages and agency shop fees by employers and labor organizations for political activities (effective as June 17, 2021)
 - Changes to permissible deductions and use of wage assignments
- Changes to statutory deductions for organized labor and employer insurance programs
 - -Expands permissible statutory deductions to include “labor organization” dues or fees, and any form of insurance offered by an employer
 - -However, prohibits deductions for organized labor from public employees’ wages, except as to a subset of unionized municipal employees

HB 2009: Wage Assignment Changes

- Changes definition of “assignment” of wages under the Wage Payment and Collection Act to use the definition of “assignment of earnings” found in the Consumer Credit and Protection Act, W.Va. Code § 46A-2-116
- “assignment of earnings” includes “all forms of assignments,” except it must be “revocable by the employee at will at any time”

HB 2009: Wage Assignment Changes

- No longer need to have a notarized assignment, no longer need to use a specific form
- Still only good for one year, must specify the total amount due, and must state that 3/4 of the employee's periodic earnings are at all times exempt from the assignment
- Priority between multiple assignments is based on the date and time of the assignment

New West Virginia Employment Laws for 2021: Miscellaneous

- **SB 11:** Declaring work stoppage or strike by public employees to be unlawful (effective as of June 2, 2021)
 - Adds a new section to the Education code, W.Va. Code § 18-5-45a
 - School employees that participate in a work stoppage or strike may be terminated
 - Employees that are not terminated forfeit their pay for days on which they strike
 - Days lost due to a strike cannot be made up through accrued/equivalent instructional time

New West Virginia Employment Laws for 2021: Miscellaneous

- **SB 275:** Relating generally to WV Appellate Reorganization Act of 2021 (effective as of June 30, 2021)
 - Creates Intermediate Court of Appeals of West Virginia, beginning July 1, 2022
 - Court will consist of a 3-judge panel, will review final judgments in all civil cases
 - Supreme Court of Appeals of West Virginia will go back to discretionary review

New Virginia Employment Laws for 2020

- **Minimum Wage**
- **Nonpayment of Wages**
- **Misclassification of Workers**
- **Human Rights Protections**
- **Non-Compete Agreements**
- **Miscellaneous**

New Virginia Employment Laws for 2020: Minimum Wage

- **HB 395/SB 7:** Minimum wage (effective as of July 1, 2020)
 - Amends Virginia Code §§ 40.1-28.9 & 40.1-28.10
 - Incrementally increases state minimum wage up to \$15.00 per hour by January 1, 2026:
 - May 1, 2021: increase to \$9.50 per hour
 - January 1, 2022: increase to \$11.00 per hour
 - January 1, 2023: increase to \$12.00 per hour
 - January 1, 2025: increase to \$13.50 per hour
 - January 1, 2026: increase to \$15.00 per hour
 - 2025 and 2026 increases must be re-enacted prior to July 1, 2024

New Virginia Employment Laws for 2020: Minimum Wage

- Beginning January 1, 2027, adjusts the minimum wage annually to reflect increases in the consumer price index
- Creates a training wage of 75% of the minimum wage for employees in on-the-job training programs that last less than 90 days

Virginia Minimum Wage: Other Changes Effective July 1, 2020

- Additional amendments to Virginia Code § 40.1-28.9:
- **SB 78:** Eliminates minimum wage exception for workers paid based on the amount of work done (i.e., piece work)
- **SB 804:** Eliminates minimum wage exception for domestic service workers
 - **HB 2032 (2021):** Amends various provisions of Title 40.1 to include domestic service workers among employees covered by employment health and safety laws
 - Defines “employers” as anyone that (i) is engaged in business or engages an individual to perform domestic service and (ii) has employees
- **HB 56:** Prohibits an employer from classifying an individual as a tipped employee if the individual is prohibited by applicable federal or state law or regulation from soliciting tips

New Virginia Employment Laws for 2020: Nonpayment of Wages

- **HB 123:** Nonpayment of wages; cause of action; penalties (effective as of July 1, 2020)
 - Amends Virginia Code § 40.1-29
 - Creates private cause of action by employees against employers for unpaid wages
 - Remedies include the amount of unpaid wages, plus an additional equal amount as liquidated damages, prejudgment interest, and attorneys' fees and costs
 - Employers that knowingly fail to pay wages can also be sued for treble damages

New Virginia Employment Laws for 2020: Nonpayment of Wages

- An employer acts “knowingly” if it:
 - (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.
 - Intent to defraud is **not** required
- Statute of limitation is three years; this is tolled if the Commissioner of Labor brings an administrative complaint against the employer

Nonpayment of Wages: Other Changes Effective July 1, 2020

- **HB 336 / SB 49: Nonpayment of wages; investigations**
 - Adds new section to Labor & Employment Code, Virginia Code § 40.1-29.1
 - When investigating a complaint of failure to pay wages, the Commissioner of Labor has authority to expand investigation if evidence is revealed during the investigation indicating that other employees were not properly paid

Nonpayment of Wages: Other Changes Effective July 1, 2020

- **HB 337 / SB 48: Nonpayment of wages; discriminatory actions prohibited**
 - Adds new section to Labor & Employment Code, Virginia Code § 40.1-33.1
 - Prohibits discrimination or retaliation against an employee that brings a proceeding for nonpayment of wages or testifies or is about to testify in such proceeding

New Virginia Employment Laws for 2020: Misclassification of Workers

- **HB 1407 / SB 744:** Misclassification of employees as independent contractors; Department of Taxation to investigate and enforce; civil penalties (effective as of July 1, 2021)
 - Amends various provisions of Title 2.2 and 58.1 of the Code of Virginia
 - Adds a new chapter to Taxation Code, Title 58.1 Chapter 19
 - Prohibits misclassifying an employee as an independent contractor

New Virginia Employment Laws for 2020: Misclassification of Workers

- A worker is presumed to be an employee for purposes of the employment and taxation laws unless the employer demonstrates that the worker is an independent contractor under the most recent IRS guidelines
- Department of Taxation is charged with investigating misclassification issues
- Employers that misclassify workers are subject to civil penalties, debarment from public contracts for repeat offenses

Misclassification of Workers: Other Changes Effective July 1, 2020

- **HB 984 / SB 894:** Misclassification of workers; cause of action
 - Adds a new section to Labor & Employment Code, Virginia Code § 40.1-28.7:7
 - Creates private cause of action for misclassifying a worker as an independent contractor
 - Remedies include the amount of lost wages and benefits (for example, insurance premiums) caused by the misclassification, plus attorneys' fees and costs
 - Creates a presumption that workers are employees unless the employer demonstrates that the worker is an independent contractor under the most recent IRS guidelines

Misclassification of Workers: Other Changes Effective July 1, 2020

- **HB 1199 / SB 662:** Employee misclassification; retaliatory actions prohibited; civil penalty
 - Adds a new section to Labor & Employment Code, Virginia Code § 40.1-33.1
 - Prohibits retaliation against an employee that makes a good faith report or plans to report to an appropriate authority that they have been misclassified, or for participating in an investigation or court proceeding related to misclassification of employees
 - Workers may bring an administrative complaint with the Commissioner of Labor for reinstatement and other damages

New Virginia Employment Laws for 2020: Human Rights Protections

- **HB 827 / SB 712:** Virginia Human Rights Act; discrimination on the basis of pregnancy, childbirth, or related medical conditions; reasonable accommodation for the known limitations of persons related to pregnancy, childbirth, or related medical conditions (effective as of July 1, 2020)
 - Amends Virginia Code §§ 2.2-3901 & 3903, adds new Virginia Code § 2.2-3904
 - Requires employers to make reasonable accommodations to the known limitations of a person relating to pregnancy, childbirth, or related medical conditions, including lactation, unless it would pose an undue hardship

New Virginia Employment Laws for 2020: Human Rights Protections

- Prohibits discrimination based on covered conditions, retaliation for asserting rights
- Requires employers to post notice in a conspicuous place, include in handbooks, provide information to new employees and to pregnant employees within 10 days
- Creates private cause of action for violations, remedies include damages and attorney fees

Human Rights Protections: Other Changes Effective July 1, 2020

- **HB 1514 / SB 50:** Virginia Human Rights Act; racial discrimination; hair
 - Amends Virginia Code § 2.2-3901
 - Includes as part of discrimination “because of race” discrimination based on traits historically associated with race, including hair texture, hair type, and protective hairstyles such as braids, locks, and twists

Human Rights Protections: Other Changes Effective July 1, 2020

- **HB 696:** Local human rights ordinances; sexual orientation and gender identity
 - Amends Virginia Code § 15.2-965
 - Localities may include gender identity and sexual orientation as protected characteristics under local human rights ordinances

New Virginia Employment Laws for 2020: Non-Compete Agreements

- **HB 330 / SB 480:** Covenants not to compete; low-wage employees; civil penalty (effective as of July 1, 2020)
 - Adds new section to Labor & Employment Code, Virginia Code § 40.1-28.7:8
 - Prohibits “covenant not to compete” agreements with “low-wage employees”
 - “Covenant not to compete” is an agreement “that restrains, prohibits, or otherwise restricts an individual’s ability ... to compete with his former employer.”

New Virginia Employment Laws for 2020: Non-Compete Agreements

- A “covenant not to compete” shall not “restrict an employee from providing a service to a customer or client of the employer if the employee does not initiate contact with or solicit the customer or client.”
- Appears to include traditional non-solicitation provisions as part of “covenant not to compete” definition; silent as to anti-piracy provisions
- Explicitly excludes confidentiality agreements relating to trade secrets, proprietary or confidential information

Non-Compete Agreements: Who is a “Low-Wage Employee”?

- A “low-wage employee” is an employee whose average weekly earnings are less than the average weekly wage in the Commonwealth, as calculated by the Virginia Employment Commission
- “Low wage employee” also includes independent contractors compensated on an hourly basis that is less than the median hourly wage for the Commonwealth for the preceding year, as reported by the U.S. Department of Labor Bureau of Labor Statistics
- “Low wage employee” does **not** include “any employee whose earnings are derived, in whole or in predominant part, from sales commissions, incentives, or bonuses”

Non-Compete Agreements: How to Determine “Low-Wage Employees”

- Looks at the employee’s average weekly wages over the 52-week period immediately preceding termination (or prorated if employee did not work that long)
- Virginia Employment Commission releases the average weekly wage on a quarterly basis through “Virginia Employment Indicators” publication
- Most recent data: \$1,359 per week, or \$70,668 per year (1st Quarter 2021)
- Problematic: wage threshold changes quarterly, so agreements that may be legal when signed may be illegal to enforce at the time of termination

Non-Compete Agreements: Additional Provisions & Requirements

- Employer Posting Requirement: must post a copy of Virginia Code § 40.1-28.7:8, or an approved summary, along with other required employment posters
 - Commissioner of Labor may assess civil penalties of up to \$1,000 per violation
- Private Cause of Action: employees may sue to void illegal agreements
 - 2 year statute of limitation
 - allows for injunctive relief and monetary damages, including attorneys' fees
- Commissioner of Labor may assess civil penalties of \$10,000 per violation against employers that enter into, enforce, or threaten to enforce an illegal non-compete

New Virginia Employment Laws for 2020: Miscellaneous

- **HB 622:** Limiting employees' sharing of wage information prohibited; civil penalty (effective as of July 1, 2020)
 - Adds new section to Labor & Employment Code, Virginia Code § 40.1-28.7:9
 - Prohibits discrimination or retaliation against an employee for inquiring about, discussing with, or disclosing to another employee information about employee wages
 - Employees may file a complaint with the Commissioner of Labor, which can impose a civil penalty of \$100 per violation and seek injunctive relief in court

New Virginia Employment Laws for 2020: Miscellaneous

- **HB 798:** Employment; prohibited retaliatory action (effective as of July 1, 2020)
 - Adds new section to Labor & Employment Code, Virginia Code § 40.1-27.3
 - Prohibits retaliating against an employee for:
 - (1) making a good faith report of a violation of the law
 - (2) participating in a government investigation
 - (3) refusing to engage in a criminal act
 - Creates a private cause of action for injunctive relief, reinstatement to employment, compensation for lost wages, benefits, interest, and attorney's fees and costs

New Virginia Employment Laws for 2021

- **Overtime Wages**
- **Workers' Compensation**
- **Cannabis (Medical & Recreational)**
- **Consumer Data Protection Law**
- **Court System Changes**

New Virginia Employment Laws for 2021: Overtime Wages

- **HB 2063: Virginia Overtime Wage Act (“VOWA”)** (effective as of July 1, 2021)
 - Adds a new section to Labor & Employment Code, Virginia Code § 40.1-29.2
 - Requires time-and-a-half pay for nonexempt workers for any hours worked in excess of 40 hours in a workweek
 - Generally tracks the requirements of the FLSA, including applicable exemptions
 - Possible ambiguity in statute: incorporates the full list of FLSA exemptions, but also includes a provision that appears to limit employers to only the “EAP” and outside sales exemptions, plus certain exemptions for transportation employees

Virginia Overtime Wage Act: Key Differences from the FLSA

1. VOWA treatment of salaried, nonexempt workers:
 - rate of pay calculation divides all wages for the workweek by 40, regardless of the number of hours worked
 - must pay 1.5x rate of pay, even though FLSA only requires additional .5x
2. VOWA has a 3-year statute of limitations for all violations
 - only “willful” violations are 3 years under FLSA
3. liquidated damages are automatic under VOWA, no good faith defense like the FLSA
4. VOWA allows for treble damages for “willful” violations
5. automatic recovery 8% prejudgment interest rate and attorneys’ fees under VOWA

New Virginia Employment Laws for 2021: Workers' Compensation

- **HB 1985:** Workers' compensation; presumption of compensability for COVID-19
 - Effective as of July 1, 2021 but retroactive to March 12, 2020
 - Amends Virginia Code § 65.2-402.1
 - Creates a presumption that COVID-19 causing the death or disability of a health care provider is an occupational disease covered by workers' compensation
 - Presumption does not apply to anyone who was offered a COVID-19 vaccine, unless they were vaccinated or their physician certifies in writing that vaccination would pose a significant risk to their health

New Virginia Employment Laws for 2021: Medical Cannabis

- **HB 1862:** Employee protections; medicinal use of cannabis oil (effective as of July 1, 2021)
 - Adds a new section to Labor & Employment Code, Virginia Code § 40.1-27.4
 - Prohibits discrimination or retaliation against an employee for their lawful use of cannabis oil pursuant to a valid written certification by a practitioner for medical purposes

New Virginia Employment Laws for 2021: Medical Cannabis

Exceptions:

1. employer may prohibit possession during work hours;
2. may take adverse action for any work impairment caused by use of cannabis oil;
3. does not require employer to take any action that violates federal law or would jeopardize a federal contract or funding;
4. does not require a defense industry employer to hire or retain an applicant or employee who tests positive for THC (50 ng/ml for urine or 10pg/mg for hair)

New Virginia Employment Laws for 2021: Recreational Cannabis

- **HB 2312 / SB 1406:** Marijuana; legalization; retail sales; penalties
 - As of July 1, 2021, simple possession of up to one ounce of cannabis is legal for adults age 21 and older, as is cultivation of up to four cannabis plants
 - Currently, no legal way to purchase cannabis or seeds in Virginia
 - Begins process of creating a comprehensive regulatory framework for growing, processing, and retail sales of recreational cannabis
 - Numerous provisions must be re-enacted by the 2022 Session of the General Assembly
 - Does not include worker protections for recreational cannabis users
 - But keep in mind medical cannabis users, potential disparate impact issues

New Virginia Employment Laws for 2021: Consumer Data Protection

- **HB 2307 / SB 1392: Consumer Data Protection Act (effective on January 1, 2023)**
 - Adds a new chapter to Trade & Commerce Code, Virginia Code Title 59.1 Chapter 53
 - Creates framework for controlling and processing personal data in Virginia
 - Applies to anyone that conducts business in Virginia and either:
 1. controls or processes personal data of at least 100,000 consumers; or
 2. derives over 50% of gross revenue from the sale of personal data, and also controls or processes personal data of at least 25,000 consumers

New Virginia Employment Laws for 2021: Consumer Data Protection

- Sets responsibilities and privacy protection standards for data controllers and processors
- Creates consumer rights to access, correct, delete, and obtain copy of personal data
- Creates opt-out requirements for consumers from processing of personal data for targeted advertising, the sale of personal data, or consumer profiling

New Virginia Employment Laws for 2021: Court System Changes

- **SB 1108:** General district courts; jurisdictional limits (effective as of July 1, 2021)
 - Amends various provisions of the Virginia Code related to the courts
 - Raises the jurisdictional limit for General District Court up to \$50,000
- **SB 1261:** Court of appeals; jurisdiction; number of judges (effective on January 1, 2022)
 - Amends, repeals, and adds various provisions of the Virginia Code related to the courts
 - Expands jurisdiction of the Court of Appeals to include an appeal of right in all civil cases
 - Supreme Court of Virginia has discretionary review of further appeals in civil cases



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Questions?

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Thank you!



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