



## Labor and Employment Law Division

# MINIMUM WAGE UPDATE

### What is the Virginia minimum wage?

The minimum wage is established by the Code of Virginia § 40.1-28.10. The law establishes **\$9.50** per hour as the minimum wage effective May 1, 2021. When an employee is subject to both the federal and state wage laws, the employee is entitled to the higher minimum wage rate.

### How are “wages” defined in the Act?

"Wages" means legal tender of the United States or checks or drafts on banks negotiable into cash on demand or upon acceptance at full value. "Wages" includes the reasonable cost to the employer of furnishing meals and lodging to an employee if such board or lodging is customarily furnished by the employer and used by the employee.

### What is the state’s minimum wage for tipped employees?

The minimum wage for tipped employees in Virginia is the same as the minimum wage for all other employees. The employee **must** receive a minimum of **\$9.50** per hour from wages plus tips. The law defines a “tipped employee” as an employee who in the course of employment customarily and regularly receives tips totaling more than \$30.00 each month from persons other than the employee’s employer.

### Does the Virginia Minimum Wage Act cover public sector workers?

Public sector employers are covered and include the Commonwealth, any of its agencies, institutions, or political subdivisions, and any public body. The Virginia minimum wage is not binding on the Federal Government and its component agencies.

### **What is a “home care provider” under the Virginia Minimum Wage Act?**

A home care provider means an individual who provides (i) home health services, including services provided by or under the direct supervision of any health care professional under a medical plan of care in a patient's residence on a visit or hourly basis to patients who have or are at risk of injury, illness, or a disabling condition and require short-term or long-term interventions, or (ii) personal care services, including assistance in personal care to include activities of a daily living provided in an individual's residence on a visit or hourly basis to individuals who have or are at risk of an illness, injury, or disabling condition. Home care employees are required to be paid at least the Virginia Minimum Wage.

### **Are there any workers exempt from the Virginia Minimum Wage Act?**

Yes, there are numerous classes of workers who are exempt from the Virginia minimum wage. For a complete list, please refer to [Va. Code § 40.1-28.9](#).

### **What are the state’s minimum wage requirements for youth workers?**

The following categories of employees that may include youth workers are exempt from the Virginia Minimum Wage;

Caddies on golf courses;

Any person under the age of **18** employed by his parent or guardian;

Any person employed by a summer camp for children;

Any person under the age of **16**, regardless of by whom employed;

Students participating in a bona fide educational program;

(The Department interprets § 40.1-28.9(A)(10), exempting “Students participating in a bona fide educational program” from the Virginia Minimum Wage Act, applies to students actively participating in educational activities related to their degree and/or certification-seeking area of study. Simply being a student **does not** exempt them from the Virginia Minimum Wage.)

\*Any person who is less than 18 years of age and who is currently enrolled on a full-time basis in any secondary school, institution of higher education, or trade school, provided that the person is not employed more than **20** hours per week;

\*Any person of any age and who is currently enrolled on a full-time basis in any secondary school, institution of higher education, or trade school and is in a work-study program or its equivalent at the institution at which he is enrolled as a student;

Any person who works as a babysitter for fewer than **10** hours per week;

Any person who is exempt from the federal minimum wage pursuant to 29 U.S.C. § 213(a)(3) that states, “any [employee](#) employed by an establishment which is an amusement or recreational establishment, organized camp, or religious or non-profit educational conference center, if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33½ per centum of its average receipts for the other six months of such year, except that the exemption from sections [206](#) and [207](#) of this title provided by this paragraph does not apply with respect to any [employee](#) of a private entity engaged in providing services or facilities (other than, in the case of the exemption from [section 206 of this title](#), a private entity engaged in providing services and facilities directly related to skiing) in a national park or a national forest, or on land in the National Wildlife Refuge System, under a contract with the [Secretary](#) of the Interior or the [Secretary](#) of [Agriculture](#).”

\*Please note there are Federal requirements that require minimum pay rates for these types of student workers.

See the Virginia Minimum Wage Act for a complete list of additional, exempted jobs that youth may perform at [Va. Code § 40.1-28.9](#)

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### **Does the Virginia Minimum Wage Act permit an employer to pay a sub-minimum training rate?**

Beginning May 1, 2021, every employer shall pay to each of his employees at a rate not less than the federal minimum wage or 75 percent of the Virginia minimum wage provided for in this section, whichever is greater. An "employee" means any person or individual who is enrolled in an established employer on-the-job or other training program for a period not to exceed 90 days which meets standards set by regulations adopted by the Commissioner. The law allows for a sub-minimum training wage during the first 90 calendar days of employment only when the training program meets the requirements of the training wage regulation which states in part;

"The occupation for which the employee is receiving training must require a sufficient degree of technical skill to necessitate a learning period. The training

must not be for the purpose of acquiring manual dexterity and high production speed in repetitive operations"

Please review the training wage regulation here;

<https://townhall.virginia.gov/l/ViewXML.cfm?textid=14999>.

**Are workers at amusement/recreational establishments, organized camps, and religious or non-profit educational conference centers covered by the Virginia Minimum Wage law?**

Workers at these types of establishments are not required to be paid the minimum wages if the following requirements are met;

Any person who is exempt from the federal minimum wage pursuant to 29 U.S.C. § 213(a)(3) that states, “any [employee](#) employed by an establishment which is an amusement or recreational establishment, organized camp, or religious or non-profit educational conference center, if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33½ per centum of its average receipts for the other six months of such year, except that the exemption from sections [206](#) and [207](#) of this title provided by this paragraph does not apply with respect to any [employee](#) of a private entity engaged in providing services or facilities (other than, in the case of the exemption from [section 206 of this title](#), a private entity engaged in providing services and facilities directly related to skiing) in a national park or a national forest, or on land in the National Wildlife Refuge System, under a contract with the [Secretary](#) of the Interior or the [Secretary](#) of [Agriculture](#).”

Please note that an individual worker may fall under another exemption even if the employer does not meet the above requirements. Review the complete list of exemptions here; [Va. Code § 40.1-28.9](#)

**Does the state issue sub-minimum wage certificates?**

Virginia does not issue sub-minimum wage certificates.

### **Are farm workers required to receive the Virginia minimum wage?**

No, farm laborers or farm workers are exempt from the minimum wage.

### **Does the Virginia Minimum Wage Act cover volunteers?**

Any person engaged in the activities of an educational, charitable, religious, or nonprofit organization where the relationship of employer-employee does not, in fact, exist or where the services rendered to such organization are on a voluntary basis are exempt from the Virginia minimum wage.

### **Does the state require employers to display a minimum wage poster?**

Virginia **does not** have a poster requirement for the minimum wage. However, should an employer wish to post one, there is a Minimum Wage notice available [here](#).

### **When is the next scheduled minimum wage increase in Virginia?**

The minimum wage is scheduled to increase to \$11.00 per hour on January 1, 2022, with another increase scheduled on January 1, 2023 to \$12.00 per hour. There may be additional increases on January 1, 2025 and annually thereafter if passed by the General Assembly. ***However, should the federal minimum wage at any time outpace the Virginia minimum wage, Virginia will immediately adopt that wage as the minimum wage for purposes of enforcement.***

### **Who enforces the Virginia Minimum Wage?**

The Virginia Department of Labor and Industry is charged with enforcing the provisions of the minimum wage law. You can file a complaint with the Labor and Employment Law Division for a minimum wage violation.

## **How to file a claim?**

Visit the Agency's web site, [www.doli.virginia.gov](http://www.doli.virginia.gov), after 5/1/21 to download a claim form.

## **Questions?**

Contact the Labor and Employment Law Division for assistance at

(804) 786 - 2706 or [www.laborlaw.DOLI.virginia.gov](http://www.laborlaw.DOLI.virginia.gov)

***Note: When an employee is subject to both the federal and state wage laws, the employee is entitled to the provisions of each law which provide the greater benefits.***



# Minimum Wage Increases to **\$9.50 per hour** Effective May 1, 2021

## Tipped Employees

Tips plus wages must now meet Virginia's minimum wage of \$9.50 per hour

## Beginning May 1, 2021, training wages may be increased

*The complete training wage regulation is available on the Virginia Town Hall website, <https://townhall.virginia.gov/>*

Training Wages:

- ◆ Applies to employees younger than 20 years of age
- ◆ Is restricted to the first 90 days of employment

**Some employees previously exempt *may now be covered as eligible employees.***

These include:

- ◆ **Domestic Service** - Services related to the care of an individual in a private home or the maintenance of a private home or its premises
  - ◇ May be on a permanent or temporary basis
  - ◇ Includes services such as companions, cooks, waiters, butlers, maids, valets, and chauffeurs
- ◆ **Home care providers**
- ◆ **Babysitters** who work more than 10 hours per week

## For More Information, please visit :

- ◆ VA LIS: <https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+SB7>
- ◆ VA definitions: <http://law.lis.virginia.gov/vacode/title40.1/chapter3/section40.1-28.9/>
- ◆ VA min wages: <http://law.lis.virginia.gov/vacode/title40.1/chapter3/section40.1-28.10/>
- ◆ FLSA: <https://www.law.cornell.edu/uscode/text/29/chapter-8>

## Questions?

### Contact the Labor Law Division

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