

Virginia: See FLSA to Determine Need to Report Hours Worked on Exempt Employees' Wage Statements

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Wage and Hour

Clarifying months of confusion, the Virginia General Assembly has passed [HB 689](#), effective July 1, 2020, requiring employers in Virginia to report on employees' wage statements 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 (DOL) pursuant to the federal Fair Labor Standards Act (FLSA).

Background

In 2019, the Virginia General Assembly passed SB 1696, which amended § 40.1-29 Code of Virginia and required all covered employers to give employees on each regular pay date 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, and the rate of pay. Specifically exempted from SB 1696 were employers engaged in agricultural employment, including agribusiness and forestry, that were only required to provide a written statement upon the request of an employee and the wage statement only needed to reflect the gross wages earned by an employee during any pay period and the amount and purpose of any deductions therefrom. SB 1696 was set to go into effect on January 1, 2020.

However, SB 1696 failed to distinguish between exempt and non-exempt employees. This left many Virginia employers wondering how to account for hours worked by exempt employees, who do not typically clock in or out or record their time.

Two months before the law went into effect, the Virginia Department of Labor and Industry (DOLI) clarified that the new law applies to all employees, even those who are not paid on an hourly basis, such as salaried and piece work employees. DOLI said it would not enforce the requirement as to salaried employees until July 1, 2020. This did not provide any clarity on how employers should report the number of hours worked by exempt employees, whether employers must start tracking hours worked or whether they could provide an aggregate number of hours worked (*i.e.*, 40 hours in a week or 80 hours in two weeks).

Before passage of HB 689 in March 2020, DOLI provided input to the Virginia General Assembly's Fiscal Impact Statement and noted that, since the passage of SB 1696, its Labor Law Division had been responding to additional calls about the need for reporting hours for salaried employees on their paystubs.

Confusion No More

Effective July 1, 2020, employers must report 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 DOL pursuant to the FLSA.

Accordingly, employers need not report hours if an employee is paid a salary that meets or exceeds the DOL's salary requirements for exempt employees. In addition, the new law requires that wage statements include sufficient information to enable the employee to determine how the gross and net pay were calculated.

Next

Employers should review and update their payroll practices to ensure compliance with the new pay statement law. Employers also should review and revise their employee handbook policies dealing with wage statements or timekeeping to bring them up to date with the new requirements.

In addition, to ensure compliance with the new law, employers that have not audited employee salaries recently for conformance with DOL's exempt status requirements should perform internal audits, including with regard to minimum salary thresholds required.

Jackson Lewis attorneys are available to answer inquiries regarding this new law and assist employers in achieving compliance with its requirements.

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