

Virginia Employment Law Checklist for 2021

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The pace of change in 2020 has been daunting. This year has seen several drastic changes in Virginia employment laws that every business needs to understand. Below find important legal compliance items that may have escaped your attention as you close out 2020 and prepare for 2021.

If You Have Five (5) or More Employees:

- Develop an Employee Handbook because you are now subject to being sued in state court for unlimited compensatory damages plus punitive damages up to \$350,000, plus attorney's fees for discriminatory discharge.
- Your Handbook **MUST** include:
 - Pregnancy Discrimination information about the prohibition on discrimination and the right to reasonable accommodation related to pregnancy, childbirth, or related medical conditions. Sample text might include adding the following to your handbook section regarding ADA disability rights:

***Pregnancy Accommodation.** Applicants and employees who are experiencing pregnancy, childbirth or related medical conditions (including lactation) may request a reasonable accommodation, and the Company will engage in an interactive process to determine if the requested accommodation is reasonable, and if not, to discuss alternative accommodations.*
 - New protected categories: sexual orientation and gender identity.
 - Protection based on traits historically associated with race, including hair texture, hair type, and protective hairstyles such as braids, locks and twists.
- You must post this exact poster for Pregnancy Rights: [Pregnancy Poster](#)
- Within 10 days of receiving notification that an employee is pregnant, you must **again** provide the employee the pregnancy discrimination information contained in your Handbook.

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All Employers Must Comply:

- You must post a notice regarding Virginia's new "non-compete" law. The state has not yet developed an official poster, so posting the following statute will suffice as a poster: [Non-Compete Poster](#)
- You must immediately remove anything in your Handbook or policies that prohibits employees from discussing their salaries with one another.
- Review **all** of your 1099 relationships:
 - You must be able to prove to the Commonwealth that workers are truly independent contractors under the IRS test.
 - The Commonwealth now presumes all workers are employees unless a business can prove otherwise. Employers, *officers* and *agents* may be liable for civil damages if misclassification occurs.
 - The Commonwealth is actively investigating companies for misclassification. If any 1099 who worked for you files for unemployment benefits, you may receive a letter asking for information about your 1099 relationships.
- Review any paycheck deduction policies to make sure they do not violate the new Virginia Wage Theft law. (For example make sure you understand the Virginia rule against forfeitures such as deductions for cash register shortages.)
- Consider developing a written grievance *form* (not policy) to collect employee concerns in writing to better protect you from claims under Virginia's new anti-retaliation law.
- Consider a written mandatory mediation and/or arbitration process to diminish the impact of state court jury trials—which will most likely increase in frequency under the new laws.
- Make sure your employment application and employee review processes do not ask applicants/employees about possession of marijuana charges.

More detailed information may be found here: [New Employment Laws Information](#) and here: [Misclassification Information](#).