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**HOUSE BILL NO. 1462**

Offered January 17, 2018

*A BILL to amend and reenact §§ 2.2-1201, 2.2-3900, 2.2-4201, and 51.1-1101 of the Code of Virginia, relating to the Virginia Human Rights Act; sexual harassment; contracting agencies.*

Patrons—Tran and Lopez

Referred to Committee on General Laws

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 2.2-1201, 2.2-3900, 2.2-4201, and 51.1-1101 of the Code of Virginia are amended and reenacted as follows:**

**§ 2.2-1201. Duties of Department; Director.**

A. The Department shall have the following duties:

1. Make recommendations to the Governor regarding the establishment and maintenance of a classification plan for the service of the Commonwealth, and recommend necessary amendments thereto.

2. Make recommendations to the Governor regarding the establishment and administration of a compensation plan for all employees, and recommend necessary amendments thereto.

3. Design and maintain a personnel information system that shall support the operational needs of the Department and of state agencies, and that shall provide for the management information needs of the Governor, his secretaries, and the General Assembly. The system shall provide at a minimum a roster of all employees in the service of the Commonwealth, in which there shall be set forth as to each employee, the employing agency, the class title, pay, status and such other data as may be deemed desirable to produce significant facts pertaining to personnel administration.

4. Establish and direct a program of employee-management relations designed to improve communications between employees and agencies of the Commonwealth.

5. Establish and administer a system of performance evaluation for all employees in the service of the Commonwealth, based on the quality of service rendered, related where practicable to specific standards of performance. In no event shall workers' compensation leave affect the total number of hours credited during a performance cycle for purposes of calculating incentive increases in salary based on such performance evaluations.

6. Establish and administer a system of recruitment designed to attract high quality employees to the service of the Commonwealth. In administering this system, applicants shall be rated on the basis of relative merit and classified in accordance with their suitability for the various classes of positions in the service of the Commonwealth, and a record thereof shall be maintained in the open register.

7. Design and utilize an application form which shall include, but not be limited to, information on prior volunteer work performed by the applicant.

8. Establish and administer a comprehensive and integrated program of employee training and management development.

9. *Develop an online training module addressing sexual harassment in the workplace that shall be available for use by all employees and agencies of the Commonwealth.*

10. Establish and administer a program of evaluation of the effectiveness of performance of the personnel activities of the agencies of the Commonwealth.

~~11.~~ 11. Establish and administer a program to ensure equal employment opportunity to applicants for state employment and to state employees in all incidents of employment.

~~12.~~ 12. Establish and administer regulations relating to disciplinary actions; however, no disciplinary action shall include the suspension without pay for more than 10 days of any state employee who is under investigation without a hearing conducted either by a level of supervision above the employee's immediate supervisor or by his agency head.

~~13.~~ 13. Adopt and implement a centralized program to provide awards to employees who propose procedures or ideas that are adopted and that will result in eliminating or reducing state expenditures or improving operations, provided such proposals are placed in effect. The centralized program shall be designed to (i) protect the identity of the individual making the proposal while it is being evaluated for implementation by a state agency, (ii) publicize the acceptance of proposals and financial awards to state employees, and (iii) include a reevaluation process that individuals making proposals may access if their proposals are rejected by the evaluating agency. The reevaluation process must include individuals from the private sector. State employees who make a suggestion or proposal under this section shall receive initial confirmation of receipt within 30 days. A determination of the feasibility of the suggestion or proposal shall occur within 60 days of initial receipt.

59 ~~13.~~ 14. Develop state personnel policies and, after approval by the Governor, disseminate and  
60 interpret state personnel policies and procedures to all agencies. Such personnel policies shall permit an  
61 employee, with the written approval of his agency head, to substitute (i) up to 33 percent of his accrued  
62 paid sick leave, (ii) up to 100 percent of any other paid leave, or (iii) any combination of accrued paid  
63 sick leave and any other paid leave for leave taken pursuant to the Family and Medical Leave Act of  
64 1993 (29 U.S.C. § 2601 et seq.). On and after December 1, 1999, such personnel policy shall include an  
65 acceptable use policy for the Internet. At a minimum, the Department's acceptable use policy shall  
66 contain provisions that (i) prohibit use by state employees of the Commonwealth's computer equipment  
67 and communications services for sending, receiving, viewing, or downloading illegal material via the  
68 Internet and (ii) establish strict disciplinary measures for violation of the acceptable use policy. An  
69 agency head may supplement the Department's acceptable use policy with such other terms, conditions,  
70 and requirements as he deems appropriate. The Director of the Department shall have the final authority  
71 to establish and interpret personnel policies and procedures and shall have the authority to ensure full  
72 compliance with such policies. However, unless specifically authorized by law, the Director of the  
73 Department shall have no authority with respect to the state grievance procedures.

74 ~~13a.~~ 14a. Develop state personnel policies, with the approval of the Governor, that permit any  
75 full-time state employee who is also a member of the organized reserve forces of any of the armed  
76 services of the United States or of the Virginia National Guard to carry forward from year to year the  
77 total of his accrued annual leave time without regard to the regulation or policy of his agency regarding  
78 the maximum number of hours allowed to be carried forward at the end of a calendar year. Any amount  
79 over the usual amount allowed to be carried forward shall be reserved for use only as leave taken  
80 pursuant to active military service as provided by § 2.2-2903.1. Such leave and its use shall be in  
81 addition to leave provided under § 44-93. Any leave carried forward for the purposes described  
82 remaining upon termination of employment with the Commonwealth or any department, institution or  
83 agency thereof that has not been used in accordance with § 2.2-2903.1 shall not be paid or credited in  
84 any way to the employee.

85 ~~14.~~ 15. Ascertain and publish on an annual basis, by agency, the number of employees in the service  
86 of the Commonwealth, including permanent full-time and part-time employees, those employed on a  
87 temporary or contractual basis, and constitutional officers and their employees whose salaries are funded  
88 by the Commonwealth. The publication shall contain the net gain or loss to the agency in personnel  
89 from the previous fiscal year and the net gains and losses in personnel for each agency for a three-year  
90 period.

91 ~~15.~~ 16. Submit a report to the members of the General Assembly on or before September 30 of each  
92 year showing (i) the total number of full-time and part-time employees, (ii) contract temporary  
93 employees, (iii) hourly temporary employees, and (iv) the number of employees who voluntarily and  
94 involuntarily terminated their employment with each department, agency or institution in the previous  
95 fiscal year.

96 ~~16.~~ 17. Administer the workers' compensation insurance plan for state employees in accordance with  
97 § 2.2-2821.

98 ~~17.~~ 18. Work jointly with the Department of General Services and the Virginia Information  
99 Technologies Agency to develop expedited processes for the procurement of staff augmentation to  
100 supplement salaried and wage employees of state agencies. Such processes shall be consistent with the  
101 Virginia Public Procurement Act (§ 2.2-4300 et seq.). The Department may perform contract  
102 administration duties and responsibilities for any resulting statewide augmentation contracts.

103 B. The Director may convene such ad hoc working groups as the Director deems appropriate to  
104 address issues regarding the state workforce.

105 **§ 2.2-3900. Short title; declaration of policy.**

106 A. This chapter shall be known and cited as the Virginia Human Rights Act.

107 B. It is the policy of the Commonwealth to:

108 1. Safeguard all individuals within the Commonwealth from unlawful discrimination because of race;  
109 color; religion; national origin; sex, *including sexual harassment in the workplace*; pregnancy;  
110 childbirth or related medical conditions; age; marital status; or disability, in places of public  
111 accommodation, including educational institutions and in real estate transactions; in employment;  
112 preserve the public safety, health and general welfare; and further the interests, rights, and privileges of  
113 individuals within the Commonwealth; and

114 2. Protect citizens of the Commonwealth against unfounded charges of unlawful discrimination.

115 **§ 2.2-4201. Required contract provisions.**

116 All contracting agencies shall include in every government contract of over \$10,000 the following  
117 provisions:

118 During the performance of this contract, the contractor agrees as follows:

119 1. The contractor will not discriminate against any employee or applicant for employment because of  
120 race, religion, color, sex, or national origin, except where religion, sex, or national origin is a bona fide

occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, including the names of all contracting agencies with which the contractor has contracts of over \$10,000.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that such contractor is an equal opportunity employer. However, notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this chapter.

3. *The contractor shall (i) provide training on the contractor's sexual harassment policy to all supervisors and employees providing services in the Commonwealth and (ii) post the contractor's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth that the contractor owns or leases for business purposes or (b) the contractor's employee handbook. The contractor may use the online training module addressing sexual harassment in the workplace developed by the Department of Human Resource Management pursuant to § 2.2-1201 for compliance with this subdivision.*

The contractor shall include the provisions of the subdivisions 1, 2, and 2 3 in every subcontract or purchase order of over \$10,000, so that such provisions shall be binding upon each subcontractor or vendor.

Nothing contained in this chapter shall be deemed to empower any agency to require any contractor to grant preferential treatment to, or discriminate against, any individual or any group because of race, color, religion, sex or national origin on account of an imbalance that may exist with respect to the total number or percentage of persons of any race, color, religion, sex or national origin employed by such contractor in comparison with the total number or percentage of persons of such race, color, religion, sex or national origin in any community or in the Commonwealth.

**§ 51.1-1101. Sickness and disability program; disability insurance policies.**

A. The Board shall develop, implement, and administer a sick leave, short-term disability, and long-term disability benefits program in accordance with the provisions of this chapter. The Board is authorized to delegate or assign to any person any of the duties required to be performed by the Board pursuant to this chapter. The Board is authorized to purchase long-term disability insurance policies for participating employees. The policies shall be purchased from and carried with a disability insurance company which is authorized to do business in the Commonwealth. Each policy shall contain a provision stipulating the maximum expense and risk charges that are determined by the Board to be on a basis consistent with the general level of charges made by disability insurance companies under policies of long-term disability insurance issued to large employers. The Board may require that the policies have reinsurance with a disability insurance company incorporated or organized under the laws of and authorized to do business in the Commonwealth. This section is not intended to abrogate the final authority of the Director of the Department of Human Resource Management under subdivision A 43 14 of § 2.2-1201 to establish and interpret personnel policy and procedures, such as the sick leave policy.

B. Notwithstanding the provisions of subsection A, the Board may self-insure long-term disability benefits in accordance with the standards set forth in § 51.1-124.30.

**2. That the provisions of this act amending § 2.2-1201 of the Code of Virginia shall become effective on January 1, 2019.**