

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend the Code of Virginia by adding in Title 2.1 a chapter numbered 10.1:3, consisting of*  
3 *sections numbered 2.1-116.9:7 through 2.1-116.9:13, relating to overtime compensation for fire*  
4 *protection employees.*

5 [H 2712]

6 Approved

7 **Be it enacted by the General Assembly of Virginia:**8 **1. That the Code of Virginia is amended by adding in Title 2.1 a chapter numbered 10.1:3,**  
9 **consisting of sections numbered 2.1-116.9:7 through 2.1-116.9:13, as follows:**10 **CHAPTER 10.1:3.**11 **OVERTIME COMPENSATION FOR FIREFIGHTERS, EMERGENCY MEDICAL TECHNICIANS AND**  
12 **OTHER FIRE PROTECTION EMPLOYEES.**

13 § 2.1-116.9:7. Definitions.

14 *As used in this chapter, unless the context requires a different meaning:*15 *"Employer" means any political subdivision of the Commonwealth, including any county, city, town,*  
16 *authority, or special district that employs fire protection employees except any locality with five or fewer*  
17 *paid firefighters that is exempt from overtime rules by 29 U.S.C. § 207 (k).*18 *"Fire protection employee" means any person, other than an employee who is exempt from the*  
19 *overtime provisions of the Fair Labor Standards Act, who is employed by an employer as a paid*  
20 *firefighter, paramedic, emergency medical technician, rescue worker, ambulance personnel, or hazardous*  
21 *materials worker who is (i) trained in fire suppression and has the legal authority and responsibility to*  
22 *engage in fire suppression, and is employed by a fire department of an employer, and (ii) engaged in*  
23 *the prevention, control, and extinguishment of fires or response to emergency situations where life,*  
24 *property, or the environment is at risk.*25 *"Regularly scheduled work hours" means those hours that are recurring and fixed within the work*  
26 *period and for which an employee receives a salary or hourly compensation. "Regularly scheduled work*  
27 *hours" does not include on-call, extra duty assignments or any other nonrecurring and nonfixed hours.*

28 § 2.1-116.9:8. Overtime compensation rate.

29 *A. Employers shall pay fire protection employees overtime compensation or leave, as under the Fair*  
30 *Labor Standards Act, 29 U.S.C. § 207 (o), at a rate of not less than one and one-half times the*  
31 *employee's regular rate of pay for all hours of work between the statutory maximum permitted under 29*  
32 *U.S.C. § 207 (k) and the hours for which an employee receives his salary, or if paid on an hourly basis,*  
33 *the hours for which the employee receives hourly compensation. A fire protection employee who is paid*  
34 *on an hourly basis shall have paid leave counted as hours of work in an amount no greater than the*  
35 *numbers of hours counted for other fire protection employees working the same schedule who are paid*  
36 *on a salaried basis in that jurisdiction.*37 *B. Nothing in this chapter shall be construed to affect the right of any employer to provide overtime*  
38 *compensation to fire protection employees in an amount that exceeds the amounts required by this*  
39 *section.*

40 § 2.1-116.9:9. Work period.

41 *Employers may adopt any work period to compute overtime compensation for fire protection*  
42 *employees between seven and twenty-eight days provided that the work period is recurring and fixed,*  
43 *and is not changed for purposes of denying overtime compensation to such employees to which they may*  
44 *be entitled under subsection A of § 2.1-116.9:8.*

45 § 2.1-116.9:10. Hours of work.

46 *For purposes of computing fire protection employees' entitlement to overtime compensation, all hours*  
47 *that an employee works or is in a paid status during his regularly scheduled work hours shall be*  
48 *counted as hours of work.*

49 § 2.1-116.9:11. Employee's remedies; award of attorneys' fees and costs.

50 *A. In an action brought under this chapter, an employer who violates the provisions of this chapter*  
51 *shall be liable to the fire protection employee affected in an amount of double the amount of the unpaid*  
52 *compensation due such employee. However, if the employer can prove that his violation was in good*  
53 *faith, he shall be liable only for the amount of the unpaid compensation plus interest at the rate of eight*  
54 *percent per year, commencing on the date the compensation was due to the employee.*55 *B. Where the fire protection employee prevails, the court shall award him attorneys' fees and costs to*  
56 *be paid by the employer.*

57     § 2.1-116.9:12. *Limitation of actions.*

58     *Actions brought under this chapter shall be commenced within two years of the date the unpaid*  
59 *compensation was due, or if the violation is willful, within three years of the date the unpaid*  
60 *compensation was due.*

61     § 2.1-116.9:13. *Sovereign immunity.*

62     *The immunity of the Commonwealth and of any "agency" as defined in § 8.01-195.2 is hereby*  
63 *preserved.*