

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 An Act to amend and reenact § 40.1-28.9 of the Code of Virginia, relating to employees providing
3 domestic service; minimum wage.

4 [S 804]
5 Approved

6 Be it enacted by the General Assembly of Virginia:

7 1. That § 40.1-28.9 of the Code of Virginia is amended and reenacted as follows:

8 § 40.1-28.9. Definitions; determining wage of tipped employee.

9 A. As used in this article:

10 "Domestic service" means services related to the care of an individual in a private home or the
11 maintenance of a private home or its premises, on a permanent or temporary basis, including services
12 performed by individuals such as companions, cooks, waiters, butlers, maids, valets, and chauffeurs.

13 "Employee" includes any individual employed by an employer, except the following:

- 14 1. Any person employed as a farm laborer or farm employee;
 - 15 2. Any person employed in domestic service or in or about a private home or in an eleemosynary
16 institution primarily supported by public funds;
 - 17 3. Any person engaged in the activities of an educational, charitable, religious, or nonprofit
18 organization where the relationship of employer-employee does not, in fact, exist; or where the services
19 rendered to such organizations are organization is on a voluntary basis;
 - 20 4. Caddies on golf courses;
 - 21 5. Traveling salesmen or outside salesmen working on a commission basis; taxicab drivers and
22 operators;
 - 23 6. Any person under the age of 18 in the employ of his father, mother parent or legal guardian;
 - 24 7. Any person confined in any penal or corrective institution of the State Commonwealth or any of
25 its political subdivisions or admitted to a state hospital or training center operated by the Department of
26 Behavioral Health and Developmental Services;
 - 27 8. Any person employed by a summer camp for boys, girls, or both boys and girls;
 - 28 9. Any person under the age of 16, regardless of by whom employed;
 - 29 10. Any person who normally works and is paid based on the amount of work done;
 - 30 11. Any person whose employment is covered by the Fair Labor Standards Act of 1938, as amended;
 - 31 12. Any person whose earning capacity is impaired by physical deficiency, mental illness, or
32 intellectual disability;
 - 33 13. Students participating in a bona fide educational program;
 - 34 14. Any person employed by an employer who does not have four or more persons employed at any
35 one time; provided that husbands, wives, sons, daughters (i) the spouse, children, and parents of the
36 employer shall not be counted in determining the number of persons employed and (ii) this exception
37 shall not apply to persons employed as domestic service employees;
 - 38 15. Any person who is less than 18 years of age and who is currently enrolled on a full-time basis in
39 any secondary school, institution of higher education, or trade school, provided that the person is not
40 employed more than 20 hours per week;
 - 41 16. Any person of any age who is currently enrolled on a full-time basis in any secondary school,
42 institution of higher education, or trade school and is in a work-study program or its equivalent at the
43 institution at which he or she is enrolled as a student;
 - 44 17. Any person who is less than 18 years of age and who is under the jurisdiction and direction of a
45 juvenile and domestic relations district court; or
 - 46 18. Any person who works as a babysitter for fewer than 10 hours per week.
- 47 "Employer" includes any individual, partnership, association, corporation, or business trust; or any
48 person or groups group of persons acting directly or indirectly in the interest of an employer in relation
49 to an employee.

50 "Wages" means legal tender of the United States or checks or drafts on banks negotiable into cash on
51 demand or upon acceptance at full value; provided, wages may include. "Wages" includes the reasonable
52 cost to the employer of furnishing meals and for lodging to an employee; if such board or lodging is
53 customarily furnished by the employer; and used by the employee.

54 B. In determining the wage of a tipped employee, the amount paid such employee by his employer
55 shall be deemed to be increased on account of tips by an amount determined by the employer, except in
56 the case of an employee who establishes by clear and convincing evidence that the actual amount of tips

57 received by him was less than the amount determined by the employer. In such case, the amount paid
58 such employee by his employer shall be deemed to have been increased by such lesser amount.

59 **2. That the Secretary of Commerce and Trade shall convene a work group consisting of**
60 **representatives from the Department of Labor and Industry, the Virginia Employment**
61 **Commission, the Workers' Compensation Commission, organizations representing domestic**
62 **workers, and such other stakeholders as the Secretary of Commerce and Trade shall deem**
63 **appropriate to make recommendations, including any necessary statutory and regulatory changes,**
64 **with regard to protecting domestic service employees from workplace harassment and**
65 **discrimination, providing remedies for such employees for the nonpayment of wages, ensuring the**
66 **safety and health of such employees in the workplace, and protecting such employees from loss of**
67 **income as a result of unemployment or employment-related injury by including coverage of such**
68 **employees in the Virginia Unemployment Compensation Act and the Virginia Workers'**
69 **Compensation Act. The work group shall report its findings and recommendations to the Chairs of**
70 **the Senate Committee on Commerce and Labor and the House Committee on Labor and**
71 **Commerce by November 1, 2020.**