

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 40.1-28.9 and 40.1-28.10 of the Code of Virginia and to amend the*
 3 *Code of Virginia by adding a section numbered 40.1-28.10:1, relating to minimum wage; employees*
 4 *with disabilities.*

[H 1924]

Approved

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

8 **1. That §§ 40.1-28.9 and 40.1-28.10 of the Code of Virginia are amended and reenacted and that**
 9 **the Code of Virginia is amended by adding a section numbered 40.1-28.10:1 as follows:**

10 **§ 40.1-28.9. Definitions; determining wage of tipped employee.**

11 A. As used in this article:

12 "Adjusted state hourly minimum wage" means the amount established by the Commissioner pursuant
 13 to subsection H 1 of § 40.1-28.10.14 "Domestic service" means services related to the care of an individual in a private home or the
 15 maintenance of a private home or its premises, on a permanent or temporary basis, including services
 16 performed by individuals such as companions, cooks, waiters, butlers, maids, valets, and chauffeurs.17 "Employee" includes any individual employed by an employer. "Employee" includes a home care
 18 provider. "Employee" does not include the following:

19 1. Any person employed as a farm laborer or farm employee;

20 2. Any person engaged in the activities of an educational, charitable, religious, or nonprofit
 21 organization where the relationship of employer-employee does not, in fact, exist or where the services
 22 rendered to such organization are on a voluntary basis;

23 3. Caddies on golf courses;

24 4. Traveling salesmen or outside salesmen working on a commission basis; taxicab drivers and
 25 operators;

26 5. Any person under the age of 18 in the employ of his parent or legal guardian;

27 6. Any person confined in any penal or corrective institution of the Commonwealth or any of its
 28 political subdivisions or admitted to a state hospital or training center operated by the Department of
 29 Behavioral Health and Developmental Services;

30 7. Any person employed by a summer camp for boys, girls, or both boys and girls;

31 8. Any person under the age of 16, regardless of by whom employed;

32 9. Any person who is paid pursuant to 29 U.S.C. § 214(e) of the Fair Labor Standards Act of 1938,
 33 as amended;34 ~~10.~~ Students participating in a bona fide educational program;35 ~~11.~~ 10. Any person who is less than 18 years of age and who is currently enrolled on a full-time
 36 basis in any secondary school, institution of higher education, or trade school, provided that the person
 37 is not employed more than 20 hours per week;38 ~~12.~~ 11. Any person of any age who is currently enrolled on a full-time basis in any secondary
 39 school, institution of higher education, or trade school and is in a work-study program or its equivalent
 40 at the institution at which he is enrolled as a student;41 ~~13.~~ 12. Any person who works as a babysitter for fewer than 10 hours per week;42 ~~14.~~ 13. Any person participating as an au pair in the U.S. Department of State's Exchange Visitor
 43 Program governed by 22 C.F.R. § 62.31;44 ~~15.~~ 14. Any individual employed as a temporary foreign worker as governed by 20 C.F.R. Part 655;
 45 and46 ~~16.~~ 15. Any person who is exempt from the federal minimum wage pursuant to 29 U.S.C.
 47 § 213(a)(3).48 "Employer" includes any individual, partnership, association, corporation, or business trust or any
 49 person or group of persons acting directly or indirectly in the interest of an employer in relation to an
 50 employee. "Employer" includes the Commonwealth, any of its agencies, institutions, or political
 51 subdivisions, and any public body.52 "Federal minimum wage" means the minimum wage or, if applicable, the federal training wage
 53 prescribed by the U.S. Fair Labor Standards Act, 29 U.S.C. § 201 et seq.54 "Home care provider" means an individual who provides (i) home health services, including services
 55 provided by or under the direct supervision of any health care professional under a medical plan of care
 56 in a patient's residence on a visit or hourly basis to patients who have or are at risk of injury, illness, or

57 a disabling condition and require short-term or long-term interventions, or (ii) personal care services,
 58 including assistance in personal care to include activities of a daily living provided in an individual's
 59 residence on a visit or hourly basis to individuals who have or are at risk of an illness, injury, or
 60 disabling condition.

61 "Tipped employee" means an employee who in the course of employment customarily and regularly
 62 receives tips totaling more than \$30 each month from persons other than the employee's employer.

63 "Wages" means legal tender of the United States or checks or drafts on banks negotiable into cash on
 64 demand or upon acceptance at full value. "Wages" includes the reasonable cost to the employer of
 65 furnishing meals and lodging to an employee if such board or lodging is customarily furnished by the
 66 employer and used by the employee.

67 B. In determining the wage of a tipped employee, the amount paid such employee by his employer
 68 shall be deemed to be increased on account of tips by an amount determined by the employer, except in
 69 the case of an employee who establishes by clear and convincing evidence that the actual amount of tips
 70 received by him was less than the amount determined by the employer. In such case, the amount paid
 71 such employee by his employer shall be deemed to have been increased by such lesser amount. An
 72 employer shall not classify an individual as a tipped employee if the individual is prohibited by
 73 applicable federal or state law or regulation from soliciting tips.

74 **§ 40.1-28.10. Minimum wages.**

75 A. *Except as provided in § 40.1-2810:1 B, the provisions of this section shall not apply to any*
 76 *individual paid pursuant to 29 U.S.C. § 214(c).*

77 B. 1. Prior to May 1, 2021, every employer shall pay to each of its employees wages at a rate not
 78 less than the federal minimum wage.

79 2. Beginning May 1, 2021, every employer shall pay to each of his employees at a rate not less than
 80 the federal minimum wage or 75 percent of the Virginia minimum wage provided for in this section,
 81 whichever is greater. For the purposes of this subdivision "employee" means any person or individual
 82 who is enrolled in an established employer on-the-job or other training program for a period not to
 83 exceed 90 days which meets standards set by regulations adopted by the Commissioner.

84 B. C. From May 1, 2021, until January 1, 2022, every employer shall pay to each of its employees
 85 wages at a rate not less than the greater of (i) \$9.50 per hour or (ii) the federal minimum wage.

86 C. D. From January 1, 2022, until January 1, 2023, every employer shall pay to each of its
 87 employees wages at a rate not less than the greater of (i) \$11.00 per hour or (ii) the federal minimum
 88 wage.

89 D. E. From January 1, 2023, until January 1, 2025, every employer shall pay to each of its
 90 employees wages at a rate not less than the greater of (i) \$12.00 per hour or (ii) the federal minimum
 91 wage.

92 E. F. (For effective date, see Acts 2020, cc. 1204 and 1242) From January 1, 2025, until January 1,
 93 2026, every employer shall pay to each of its employees wages at a rate not less than the greater of (i)
 94 \$13.50 per hour or (ii) the federal minimum wage.

95 F. G. (For effective date, see Acts 2020, cc. 1204 and 1242) From January 1, 2026, until January 1,
 96 2027, every employer shall pay to each of its employees wages at a rate not less than the greater of (i)
 97 \$15.00 per hour or (ii) the federal minimum wage.

98 G. H. From and after January 1, 2027, every employer shall pay to each of his employees wages at a
 99 rate not less than the greater of (i) the adjusted state hourly minimum wage or (ii) the federal minimum
 100 wage.

101 H. I. By October 1, 2026, and annually thereafter, the Commissioner shall establish the adjusted state
 102 hourly minimum wage that shall be in effect during the 12-month period commencing on the following
 103 January 1. The Commissioner shall set the adjusted state hourly minimum wage at the sum of (i) the
 104 amount of the state hourly minimum wage rate that is in effect on the date such adjustment is made and
 105 (ii) a percentage of the amount described in clause (i) that is equal to the percentage by which the
 106 United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published
 107 by the Bureau of Labor Statistics of the U.S. Department of Labor, or a successor index as calculated by
 108 the U.S. Department of Labor, has increased during the most recent calendar year for which such
 109 information is available. The amount of each annual adjustment shall not be less than zero.

110 **§ 40.1-28.10:1. Employees with disabilities.**

111 A. *Every employer that is authorized to employ individuals with disabilities at subminimum wage*
 112 *pursuant to a special certificate issued under 29 U.S.C. § 214(c) shall pay to such employees wages at a*
 113 *rate not less than:*

114 1. *From July 1, 2023, until July 1, 2024, \$9.50 per hour.*

115 2. *From July 1, 2024, until July 1, 2025, \$10.50 per hour.*

116 3. *From July 1, 2025, until July 1, 2026, \$11.50 per hour.*

117 B. *From and after July 1, 2026, every employer that is authorized to employ individuals with*

- 118** *disabilities at subminimum wage pursuant to a special certificate issued under 29 U.S.C. § 214(c) shall*
119 *pay to such employees wages at a rate not less than the hourly rate required under § 40.1-28.10.*