

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 40.1-29.3 of the Code of Virginia, relating to overtime for certain*
3 *employees; live-in domestic workers.*

4 [S 494]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 40.1-29.3 of the Code of Virginia is amended and reenacted as follows:**8 **§ 40.1-29.3. Overtime for certain employees.**

9 A. As used in this section:

10 "Carrier" means an air carrier that is subject to the provisions of the federal Railway Labor Act, 45
11 U.S.C. § 181 et seq.12 "Derivative carrier" means a carrier that meets the two-part test used by the federal National
13 Mediation Board to determine if a carrier is considered a derivative carrier.14 "Employee" means an individual employed by a derivative carrier *or any individual who is employed*
15 *in domestic service in a household and resides in such household.*16 B. An employer shall pay each employee an overtime premium at a rate not less than one and
17 one-half times the employee's regular rate for any hours worked by an employee in excess of 40 hours
18 in any one workweek. An employee's regular rate shall be calculated as the employee's hourly rate of
19 pay plus any other non-overtime wages paid or allocated for that workweek, excluding any amounts that
20 would be excluded from the regular rate by the federal Fair Labor Standards Act, 29 U.S.C. § 201 et
21 seq., and its implementing regulations for an individual covered by such federal act, divided by the total
22 number of hours worked in that workweek.23 C. If an employer fails to pay overtime wages to an employee in accordance with this section, the
24 employee may bring an action against the employer in a court of competent jurisdiction to recover
25 payment of the overtime wages, and the court shall award the overtime wages owed, an additional equal
26 amount as liquidated damages, and reasonable attorney fees and costs; however, if the employer shows
27 to the satisfaction of the court that the act or omission giving rise to such action was in good faith and
28 that he had reasonable grounds for believing that his act or omission was not a violation of this section,
29 the court may, in its discretion, award no liquidated damages or award any amount thereof not to exceed
30 the amount of the unpaid overtime wages.31 D. An action under this section shall be commenced within two years after the cause of action
32 accrued, except that a cause of action arising out of a willful violation may be commenced within three
33 years after the cause of action accrued.

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