

Legislation Passed and Work to be Done!

Disability has been added as a protection against discrimination in employment; this should not require functional change in your employment practices as it is already included at the Federal level. Within 120 days, the Division of Human Rights within the Department of Law will publish the “poster” employers will be required to display. We suspect that this will also be included in the Generic Labor Law Poster that covers all of the necessary topics which is updated annually and is available for purchase!

<https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+HB1848ER+pdf>

Prohibition or discrimination or employment action for the legal/medicinal use of cannabis oil, but does not restrict an employer's ability to take any adverse employment action for any work impairment caused by the use of cannabis oil or to prohibit possession during workhours

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Options for applying for Special ID Cards have been expanded to allow a guardian to ally regardless of the age of the individual

<https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+HB1961ER+pdf>

Evidence of a mental disability (at the time of a charged offense) that satisfies the diagnostic criteria for a mental illness, a developmental disability or intellectual disability or autism spectrum disorder may be introduced at trial; previously such evidence was permissible only at time of sentencing. This also expands the routine, required training for attorneys to include “representation of individuals with behavioral or mental health disorders and individuals with intellectual or developmental disabilities.”

<https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+SB1315S2+pdf>

<https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+HB2047H2+pdf>

Virginia Code has been “conform” to the FLSA to mandate the payment of overtime. While it may not “change the law” it does allow a state action to be brought for violations.

<https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+HB2063S1+pdf>

Independent contractors performing as direct care or as direct supervisors of direct care staff will now be subject to a criminal background check; as we have pointed out, direct care positions are typically not those which can be filled by an “independent contractor” without risking a violation of the FLSA for having “misclassified” employees; however, this also allows/requires that staff from a staffing agency used by a licensed provider in such a position will need to have Virginia State Background checks and CPS Screening prior to filling the role of direct care. We will working on model contract language to provide for you to use prior to the effective date of July 1, 2021

<https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+HB2092ER+pdf>

Limits the expenditure of CSA funds to private Special Ed services that are licensed and have reported

their rates to the Office of Children’s Services; also limits State Pool funds for transitional services in a public school following at least 6 months of private placement to twelve months – such can be provided on contract by a private entity. Also provides for a workgroup with a detailed remit on transition services, payment for services to preclude private placement and the transfer of funds from CSA to DOE, report to be due in November.

Other legislation requires that all licensed private special education school be accredited by 2024

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<https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+SB1313ER+pdf>

<https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+HB2238ER+pdf>

Emergency language to require hospitals to allow a person with a disability to be accompanied by a “designated support person” – the requirement will be in effect from the point of the Governor’s signature and regulations will be developed on an Emergency basis by the Department of Health. There are some provisions and limitations to be aware of clearly spelled out in the language.

<https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+HB2162ER+pdf>

Training and follow-up to the Supported Decision Making study done last year which will, no doubt, result in material coming from DBHDS

<https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+HB2230ER+pdf>

Expansion of EPSDT or other Medicaid services to be covered even for students who do not have an IEP, this also includes a provision for the use of telemedicine.

<https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+SB1307ER+pdf>

Protected portion of disposable earning used to calculate a garnishment will be based on the Virginia minimum wage in effect if it exceeds the federal minimum wage (which it will beginning May 1st)

<https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+HB1814ER+pdf>

Expands the mission and membership of the Virginia Health Workforce Development Authority

<https://lis.virginia.gov/cgi-bin/legp604.exe?212+sum+HB1976>

Does not make the provision of PPE during a public health emergency a factor in determining the classification of the individual as an employee or and independent contractor.

<https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+HB2134ER+hil>

Requires DMAS to convene a workgroup to study the use of virtual support for IDD

<https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+SB1472H1+pdf>

