SESCO
Management Consultants

Staff Recommendation: How Virginia Public and Private Employers Can Comply with Virginia's New 2026 Employment Legislation

May 28, 2026

The bills have been passed by the House and Senate and signed into law by Governor Spanberger

As SESCO has been reporting over the last several months, Virginia's legislators and Governor have passed and signed into law the following sweeping employment regulations that affect all public and private employers. Please consider the following summaries of each regulation as well as SESCO staff recommendations to ensure compliance.

Expanded Definition of "Wages"

Virginia Statute HB238

This new law redefines "wages" and will become effective **July 1, 2026**.

Under the new definition, wages includes any renumeration an employer owes to an employee, including hourly wages, minimum wages, piece rate wages, day rates, salaries, overtime wages, legally required prevailing wages, **commissions, tips and bonuses**.

The most important requirement is that in Virginia, once a commission is earned, it must be paid regardless of policies such as claw backs, employment standing, employed when the commission is paid, etc.

SESCO Staff Recommendations

Pay plans and practices need to be audited for wage and hour compliance, both federal DOL as well as Virginia wage laws. Pay plans, especially within retail organizations that pay commissions and bonuses such as automotive dealerships and organizations that pay tips

such as restaurants, need to ensure that their individual pay plans are reduced to writing and signed and dated.

Ensure that overtime is calculated on all non-discretionary bonuses, commissions and incentives. You can contact SESCO to ensure compliance, but this issue is the number one FLSA wage-hour compliance matter for all employers across the United States. Commissions, bonuses and incentives are wages earned for the purposes of overtime and please know that payroll providers **do not ensure compliance with this requirement**.

As SESCO is considered a national expert on wage and hour compliance, both federal and state, have your consultant conduct an onsite or virtual audit of all compensation practices. Retainer clients (monthly service agreement) receive these audits at no additional charge.

Wage Transparency (Job Postings)

Virginia Statue SB215

As of **July 1, 2026**, employers are required to disclose wage and salary ranges in all public and internal postings for each job opening, promotion, transfer with the employer.

The "wage or salary range" means the minimum and maximum wage or salary for the position as set forth in good faith by a reference to a current and applicable pay scale, any previously determined wage or salary range for the position, the actual range or wages and salaries for persons currently holding equivalent positions or the budgeted amount available for the position as current and applicable.

Any analysis of whether the wage or salary range has been set in good faith shall consider, among other items, the breadth and process of the wage or salary range analysis.

As to enforcement, **applicants** or **employees** must first notify the employer of any question or concern as to wage transparency and, further, allow a fifteen (15) business day cure on behalf of the employer before filing a lawsuit.

SESCO Staff Recommendations

Consider the following SESCO Staff Recommendations to ensure compliance:

- All employers, regardless of public or private, large or small, industry or purpose, should develop a formal compensation administration plan as labor is any employer's **largest-single controllable cost**. Proactive employers will fill the void of developing, implementing and communicating sound compensation philosophies and practices. For those employers that do so, you will comply with this regulation very easily.

- The application of this wage transparency is if a position is externally or internally posted. Is the employer "advertising" for applicants or employees to apply for an open position? If so, the posting must include as noted above the current and credible wage/salary scale.

Distribution of general employment applications, receipt of unsolicited resumes or applications or websites where applicants can apply for work, **and** where no position is currently being advertised or promoted, would not be affected by the new law. Many employers actively seek applications and/or resumes to keep the "hopper" full in case of future turnover.

- Employers need to adopt or revise job postings as well as promotions and transfers policies.

- Employers should assess the marketplace every two (2) years through a custom wage and benefits survey. This would include the employer selecting specific organizations to participate in a confidential wage and benefits survey conducted by an outside third party such as SESCO. This will go a long way to ensure the credibility of the posted wage and salary range as well as to undergird the organization's compensation philosophy and practices.

Ban on Requesting or Discussing an Applicant's Pay History

Virginia Statute SB215

Effective **July 1, 2026**, employers are prohibited from seeking or relying on a perspective employee's wage or salary history when making hiring or compensation decisions. Of course, if an employer has a defined compensation system to include new hire rates and ranges, this ban is easily complied with.

If a prospective employee voluntarily provides wage or salary history to an employer without the employer's prompting the request, then:

- The employer may not rely on such wage or salary history to support a wage or salary higher than the employer's initial offer of compensation.

- The employer may not seek to confirm the wage or salary history of the prospective employee such as through reference checks to support a wage or salary higher than the wage or salary offered by the employer.

SESCO Staff Recommendations

Please consider the following SESCO staff recommendations to ensure compliance:

- Conduct an audit of all screening and hiring practices to include interviewing questions, forms and processes to ensure compliance. This would include an immediate review of your **application form**, to remove any questions that refer to previous positions and subsequent wage and salary history.

SESCO has revised its current application form to comply with this new ban. This application form can be purchased by clicking here and/or by calling Tonya Roark at 423-764-4127.

- Train all those who conduct interviews so that inappropriate questions to include this ban are not asked.

- Where appropriate, such as on websites or other screening and hiring documents, include a disclaimer, in effect, summarizing the ban and the employer's compliance thereto.

Restrictions on Non-Compete Agreements

Virginia current prohibits employers from entering into or enforcing a **post-employment** "covenant not to compete" those earning less than $1,507.01 per week or any other nonexempt employee under the FLSA (irrespective of their total earnings) cannot be required to enter into a **post-employment** non-compete agreement.

Virginia Statute SB128 and SB170

As of July 1, 2026, new restrictions apply to non-compete agreements entered into, amended or renewed on or after these restrictions include:

- Any "healthcare professional" can't be required to enter into a non-compete agreement. "Healthcare professionals" are defined as "any person licensed, registered, or certified by the Board of Medicine, Board of Nursing, Board of Optometry, Board of Psychology, or Board of Social Work.

- No covenant not to compete between an employer and employee is enforceable if such employer discharges an employee from employment without providing severance benefits or other monetary payment to such an employee, unless the employer discharges an employee **for cause**. Such severance benefits or other monetary payment shall be disclosed upon execution of the non-compete agreement.

SESCO Staff Recommendations

Please consider the following for compliance:

- Have SESCO audit current non-competes for compliance or **have SESCO revise and/or prepare new non-competes to ensure compliance**. This new statute does not affect a non-disclosure/confidentiality or non-solicitation agreement which SESCO prepares and widely recommends for various organizations and positions.

- Severance Agreements and Releases will need to be revised to comply with this new regulation. SESCO prepares and initiates compliant Severance Agreement and Releases for our clients.

Minimum Wage

Virginia Statute SB1

The current Virginia State hourly minimum wage is $12.77 per hour which was effective January 1, 2026.

The minimum wage will increase to **$13.75 per hour** on **January 1, 2027**. On **January 1, 2028**, it will increase again to **$15.00 per hour**.

Effective **January 1, 2029**, and annually thereafter, the minimum wage rate will be adjusted to reflect increases in the Consumer Price Index (CPI).

SESCO Staff Recommendations

Please consider the following recommendations to ensure compliance:

- Ensure all state labor law postings are compliant. SESCO provides federal and state labor law posting kits for $29.95. You can click here to order or call Tonya Roark at 423-764-4127 to order these postings and/or other SESCO forms.

Paid Sick and Safe Leave

Virginia Statute SB199

Employers, both private and public, are required to provide paid sick and safe leave to their employees.

- Effective **July 1, 2027**, employers with 50 or more employees must comply.

- Effective **January 1, 2028**, employers with 25 or more employees must comply.

- Effective **January 1, 2029**, employers with at least one (1) employee must comply.

The new regulations require that one (1) hour of paid sick leave for every 30 hours worked are provided to employees of private, state and local governments and employers. This law currently applies to home health workers as defined.

This new regulation does not apply to licensed healthcare employees that work less than 30 hours per week. This includes employees licensed by the following regulatory boards: counseling, dentistry, funeral directors and embalmers, LTC, medicine and nursing, nor does it apply to employees who work for employers who are licensed by the Department of Health if the employee works less than 30 hours per week.

Employees may use accrued paid sick leave for:

- Leave related to their own personal or mental illness, injury or health condition, as well as for preventative healthcare.

- Leave to take care of a sick family member (as defined).

- Leave related to domestic abuse, sexual assault or stalking.

- Employers **are not required** to pay out accrued unused sick and safe leave at separation for any reason of separation of employment to include termination for cause or voluntary resignation.

Employers with a current paid leave policy such as paid time off, vacation and/or sick leave, that provides an employee with an amount of paid leave sufficient to meet the requirements of the new paid sick and safe leave requirements under the same conditions as defined are not required to provide additional paid leave time.

SESCO Staff Recommendations

Consider the following SESCO staff recommendations to ensure compliance:

- All employers should have their current handbook and related policies reviewed for compliance. SESCO retainer clients (monthly service agreement) receive these reviews at no charge. These reviews are conducted by SESCO staff attorneys.

- Know that the definition of "family member" is very broad and needs to be understood for policy application specific to these leave requirements.

- Employers will need to customize policy based on whether exemptions as noted within the law and whether the employer wants to carve out coverage for specific staff positions.

- The law does require carryover provisions, so current policy that does not allow for carryover must be revised to ensure compliance with the specific carryover provisions.

- Policy needs to include employee notification standards such as a "two (2) week notice" when possible.

- Once policy is updated, employers need to review new policy revisions to all leadership and employees for a full understanding of their rights as well as responsibilities.

Paid Family and Medical Leave Insurance Program

Virginia Statute SB2

Virginia has established a new state-administered Paid Family and Medical Leave (PFML) insurance program that applies to all employers except the "Commonwealth." Through this program, employees will receive payment from the state (Virginia Employment Commission) not by their employer. This state-administered paid family and medical leave program will be funded by payroll premiums shared by both employers and employees. Employers may deduct up to **50%** of the required contributions from employees' pay.

Employers with **more than 10 employees** will be required to deduct up to 50% of the required contribution. Employers **with 10 or fewer employees** will be required to deduct 50% of the required contribution from employee wages and will not be required to make additional employer contributions. Any deduction may not reduce an employee's compensation below minimum wage.

- The terms under which employees may use benefits.

- The amount of benefits available.

- The procedure for filing a claim for benefits.

- A statement of the right to job protection and benefits continuation.

- A statement that discrimination and retaliatory personnel actions are prohibited.

- A statement that the employee has a right to file a complaint for violation of the statute.

- As of December 1, 2028, employees may start receiving benefits as covered.

Up to **12 weeks** of paid leave in a benefit year (as defined) can be used for the following reasons:

- To care for a new child during the first year after birth, adoption or placement through foster care.

- To care for a family member with a serious health condition (as defined).

- For an individual's own serious health condition (as defined) that makes the individual unable to perform the functions of their position of employment.

- To care for a covered military service member who is the covered individual's next of kin or other family members.

- Qualifying leave arising out of a family member of the covered individual on military active duty, or an impending call or order to military active duty in the armed forces.

Up to **four (4) weeks** of paid leave in a benefit year (as defined) to be used or to seek safety services for a covered individual or family member related to domestic violence, sexual assault or stalking.

Additional details that apply include:

- Paid leave benefits equal to 80% of the average weekly wage earnings, subject to a cap of 100% of the statewide average weekly wage of which the VEC will adjust by September 30 of each year to apply beginning on January 1 of the following calendar year.

- Employees may take continuous, intermittent or reduced schedule leave, and are required to make a reasonable effort to schedule family and medical leave such as not to unduly disrupt the operations of their employer.

- Employees who worked for the employer for at least 120 days before beginning the leave are entitled to be restored to the same or equivalent position at the conclusion of the leave.

- Employers are required to maintain an employee's healthcare benefits while on leave as if the employee had worked continuously during the leave. The employee, however, is still required to pay their fair share of the cost of the healthcare benefits.

- Employers may seek the VEC's approval to meet the statutory obligations when using a private plan, as long as the plan meets the specific requirements enumerated in the statute. Those employers with private plans must reapply to the VEC to renew approval of their private plans every two (2) years.

- The statute empowers the VEC to take enforcement action against employers including filing civil actions, for unpaid contributions at an interest rate of 1.5% per month from the date payment is due.

- The statute requires a posting requirement including in English, Spanish and any language that is the first language spoken by at least 5% of the employee's workforce.

SESCO Staff Recommendations

Please consider the following staff recommendations to ensure compliance:

- Employers, as with many of these new regulations, must have their current employee handbook reviewed and revised to ensure compliance with this new paid family and medical leave law. All related policies to include paid sick leave, vacation, PTO and other related leave laws must be challenged as well. All handbook reviews are conducted by one of SESCO's staff attorneys. SESCO retainer clients (monthly service agreement) receive these reviews at no additional charge.

- Implement new forms to ensure compliance. SESCO has developed forms and they can be obtained by calling Tonya Roark at 423-764-4127.

- Train leadership as well as employees on their rights as well as responsibilities.

- Current employers with 50 or more employees, already complying with the federal DOL's family and medical leave will need to revise their policy to state that leave will run concurrently with Virginia's new paid family and medical leave act.

- It is critical that SESCO clients contact us when an employee may request PMFL so that we can assist in ensuring compliance with not only leave requirements but also

documentation. Other laws will come into play such as the Americans with Disabilities Act as Amended, return to work – fitness for duty and others.

Heat Safety Standard

Virginia Statute SB288

The Virginia Safety and Health Codes Board is required to develop and adopt heat illness regulations by **May 1, 2028**.

This law will apply to employees working indoors and outdoors and the regulations will include requirements for employers to:

- Provide water, access to shade or climate-controlled environments when practical.
- Rest periods.
- Acclimatization to working in heat.
- Effective training regarding heat illness prevention.
- Implement high-heat procedures when the temperature equals to or exceeds 80 degrees Fahrenheit.
- Establish effective emergency response procedures for heat related illnesses.

The statute will provide employer exemptions for:

- Heat exposure during the provision of emergency related services that involve emergency law enforcement, emergency medical services, firefighting services, rescue and evacuation operations or emergency restoration of essential utilities including electric and telecommunication utilities.
- Heat exposure lasting no longer than 15 consecutive minutes.

SESCO Staff Recommendations

Employers will be required to develop new policies to ensure compliance. SESCO will monitor the Virginia Safety and Health Codes Board's final heat illness regulations and subsequently recommend policy to our clients.

We urge all retainer clients (monthly service agreement) to contact us to discuss compliance with these new and complicated regulations. We suggest that SESCO clients

have their policies reviewed and, most importantly, communicate new policies and practices to all leadership and employees. There are many rumors, mostly false, surrounding these laws and regulations and the sooner employers can fill the void with the facts of policies and procedures the better.

For those employers who are not SESCO retainer clients, our monthly service agreement starts as low as $40.00 per month and provides the following:

- Unlimited telephone, research and email consulting
- Up to four (4) consulting hours per annum
- Free annual employee handbook review with follow-up report
- Discounts on requested consulting

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