

First & Foremosts

Legal Update

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State Law Changes

New Maryland Laws

- **Maryland Bans Captive Audience Meetings**

- Effective October 1st, Maryland employers may not refuse to hire an applicant or discipline, discharge or penalize an employee who declines to attend, participate in or listen to an employer's communication or meeting in which the employer communicates the opinion of the Employer regarding Religious Matters or Political Matters
 - Religious Matters = matters relating to religious belief, affiliation, and practice, or the decision to join and support a religious organization or association
 - Political Matters = matters relating to elections for political office, political parties, proposals to change legislation, regulations, or public policy, the decision to join or support a political party or potential civic, community, fraternal, or labor organization
- Exemptions for Certain Educational, Political, and Religious Institutions
- Notice to Hires & Poster Requirement

F&F Takeaway: Amend policies and onboarding materials to include this required notice. Implement policies and amend practices to ensure no mandatory meetings.

New Maryland Laws

- **Montgomery County, Maryland increase to Minimum Wage Effective July 1**

- Large Employers (51+ employees) = \$18 per hour
- Mid Size Employers (11-50 employees) = \$16.50 per hour
- Small Employers (<10 employees) = \$15.95 per hour

F&F Takeaway = Ensure minimum wages are set to increase for work performed effective July 1, 2026

- **Maryland Earned Wage Access Provides Barred from Soliciting & Receiving Tips**

Overview of New Virginia Laws

- Expansion of Non-Compete Prohibitions – July 1, 2026
- Salary History and Pay Transparency – July 1, 2026
- Expansions of Virginia Human Rights Act – July 1, 2026
- Wage Payment and Misclassification Penalties – July 1, 2026
- Employment Protections for Voluntary Emergency Responders – July 1, 2026
- Minimum Wage Increases – January 1, 2027
- Paid Sick Leave – July 1, 2027
- Overtime Protections for Domestic Workers – July 1, 2028
- Paid Family and Medical Leave Insurance Program – January 1, 2028

Virginia – Expansion of Non-Compete Prohibitions

- Virginia’s original law on non-competes went into effect on July 1, 2020 and prohibited the use of non-competes with “low wage” employees
 - “Low wage employee” is defined as an employee whose average weekly earnings are less than the average weekly wage in the Commonwealth (determined annually)
- Effective July 1, 2025, the law was expanded to prohibit non-competes for any employee who is non-exempt under the FLSA (regardless of their compensation)

Virginia – Expansion of Non-Compete Prohibitions, continued

- SB170 – Any non-compete agreement entered into, amended or renewed on or after **July 1, 2026**, will be unenforceable if the employer terminates the employee without cause and fails to provide severance or other compensation (regardless of the employee's compensation level)
- SB128 – Effective July 1, 2026, new non-competes will be prohibited for health care professionals (defined as any person licensed, registered, or certified by the Board of Medicine, Nursing, Counseling, Optometry, Psychology, or Social Work) except in limited circumstances surrounding the sale of a business
- Non-compete law (as now expanded) is enforced through private right of action and civil penalties. Employers are required to post a notice of rights on the non-compete law

Virginia Salary History and Pay Transparency (HB636)

- Prohibits a prospective employer from:
 - Seeking the wage or salary history of a prospective employee
 - Relying on the wage or salary history of a prospective employee in considering the prospective employee for employment
 - Relying on the wage or salary history of a prospective employee in determining the wages or salary the prospective employee is to be paid upon hire
 - Refusing to interview, hire, employ, or promote or retaliating against a prospective or current employee for not providing wage or salary history or requesting a wage or salary range
 - Failing or refusing to disclose in each public and internal posting for each job, promotion, transfer, or other employment opportunity the wage, salary, or wage or salary range
 - Failing to set a wage or salary range in good faith
- Enforced through civil penalties and private cause of action
 - If the claim is for (1) failing to disclose a wage range in a posting, or (2) failing to set a wage range in good faith, the employer will be afforded an opportunity (15 business days after notice) to correct the violation before a private cause of action can be filed

Virginia Human Rights Act Expansions (SB637)

- VHRA prohibits discrimination based on race, color, religion, ethnic or national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, sexual orientation, gender identity, disability, or military status
 - Note – on May 19, 2026, the Governor vetoed a bill that would have added menopause and perimenopause to the list of protected categories
- The new law:
 - Expands the definition of “employer” for all claims under the VHRA to include employers with 5+ employees
 - Enlarges the time to file a charge with the Virginia Office of the Attorney General from 300 days to 2 years

Virginia Wage Payment and Misclassification Penalties (HB238)

- Expands the remedies currently available in civil claims for non-payment of wages to minimum wage, overtime, worker misclassification and prevailing wage claims.
- Definition of “employer” is expanded across the board to include any person acting directly or indirectly in the interest of the employer – ***likely triggering potential individual liability***
- Definition of “wage” is expanded to include all forms of remuneration, including commissions, tips, bonuses and damages due to misclassification
- Lengthens statute of limitations to three years and requires employers to keep pay stubs for at least 3 years
- Allows for collective actions

Virginia Employment Protections for Voluntary Emergency Responders (SB100)

- Prohibits employers from discriminating or retaliating against an employee because the employee is serving as a voluntary emergency responder, and is actively responding to an emergency alarm or during a state of emergency
- The employer is not required to pay an employee for any work time missed while the employee is serving as a volunteer emergency responder
- In lieu of taking unpaid time off for such service, the employee may use paid sick leave or other paid leave if such employee has accrued or is otherwise entitled to such leave
- The law does not apply to employees deemed essential by statute or contract

Virginia Minimum Wage Increases (HB1/SB1)

- Virginia's minimum wage (currently \$12.77) will increase to \$13.75 on January 1, 2027
- On January 1, 2028, Virginia's minimum wage will increase to \$15 with annual CPI adjustments thereafter

Virginia Paid Sick Leave (HB5)

- Requires employers to provide all employees with 1 hour of paid sick leave for every 30 hours worked up to 40 hours per year
- Phase-In Effective Date:
 - 50+ employees effective July 1, 2027
 - 25+ employees effective January 1, 2028
 - 1+ employees effective January 1, 2029
- Uses for paid sick leave:
 - For employees' physical or mental illness
 - To care for a family member
 - To seek or obtain certain services or to relocate or secure an existing home due to domestic abuse, sexual assault, or stalking

Virginia Overtime for Domestic Workers (SB28)

- Extends Virginia's overtime pay laws (requiring 1.5 x hourly rate for all hours over 40 in a week) to domestic workers, including housekeepers and au pairs
- This law will only become effective on July 1, 2028, if it is reenacted by the 2027 Session of the General Assembly

Virginia Paid Family and Medical Leave Insurance Program (SB2)

- The program will be administered by the Virginia Employment Commission (VEC), and implementing regulations will be forthcoming
- The program will be funded through contributions from the employer (except for employers with 10 or fewer employees) and employees starting **April 1, 2028**
- Employees may begin applying for benefits on **December 1, 2028**

Virginia Paid Family and Medical Leave Insurance Program (SB2), continued

- Once the program is in place, employees will be eligible for wage replacement benefits for up to 12 weeks of leave to:
 - Care for a child in the first year following birth, adoption or foster care placement;
 - Care for a family member with a serious health condition;
 - For the employee's own serious health condition that makes the employee unable to perform the functions of their position;
 - To care for a covered service member who is the employee's next of kin or family member;
 - Address qualifying exigency leave arising out of the fact that the employee's family member is on active duty, or subject to an impending call or order to active duty, in the Armed Forces; or
 - Seek safety services for the employee or a family member related to domestic violence, sexual assault or stalking.
- Leave benefits will run concurrently with FMLA leave and can be coordinated with STD or other employee leave policies.

TITLE VII AND GENERAL DISCRIMINATION PRINCIPLES

4th Circuit Limits Employers' Ability to Shorten Fed Discrim. Deadlines

- Employer attempted to limit the time period for bringing a lawsuit for discrimination to 180 days after the discriminatory act
- Title VII & ADEA allow employees 90 days following receipt of right to sue notice
- This was beyond the 180 days set by Employer in this case.
- Fourth Circuit held this was impermissible infringement on the rights employees have under federal law.

-Thomas v. EOTech, 169 F.4th 259 (4th Cir. 2026).

- **F&F Takeaway:** Employers should review and revise any agreements in place that limit employee's time to file lawsuits under federal law.

EEOC Plans to Eliminate Employer Data Reports on Race, Gender

- EEOC proposed to eliminate the EEO-1 and similar reports
- The EEO-1 requires certain employers to disclose race, sex and national origins of their workplaces
- This effort correlates with EEOC's position that race and sex data collection demonstrates an employer's goals of diversity in the workplace based on these classifications, which is impermissible under discrimination law.
- ***F&F Takeaway:*** *Monitor this development to ensure proper reporting and data collection processes*

EEOC's Focus Areas in First 15 Months of Trump Administration

- Protecting Religious Freedom
 - Employee Opposition to Vaccine Mandate
 - Employee Requests for Accommodation for Sabbath Observance or Attendance at Religious Meeting or Service
- Protecting American Workers from Anti-American Bias
 - EEOC filed suit against a construction services company for failing to address anti-American slurs by employees, including harassment for not speaking fluent Spanish. The employer failed to investigate or take prompt corrective action following the employee's complaint

EEOC's Focus Areas in First 15 Months of Trump Administration

- Defending Women's Sex-Based Rights at Work
 - Rescinded 2024 Enforcement Guidance on Harassment in the Workplace
 - Issued federal sector appellate decision recognizing the ability of federal agencies to designate intimate spaces in federal workplaces by sex
- Attacking DEI-Related Race and Sex Discrimination
 - *EEOC v. New York Times* – lawsuit alleges DEI goals resulted in the non-selection of a qualified white male for an editor role and the selection of a female candidate
 - <https://www.eeoc.gov/newsroom/eeoc-delivers-administration-priorities-and-president-trumps-executive-orders>
- ***F&F Takeaway:*** Train managers on religious accommodation, anti-American bias, the risks of goals for diversity in hiring and promotion decisions. Review training content and affinity group structures.

E.O. 14398 – Addressing DEI Discrimination by Federal Contractors

Contractors will not engage in any “racially discriminatory DEI activities.”

- “Racially discriminatory DEI activities” = disparate treatment based on race or ethnicity in the recruitment, employment (e.g., hiring, promotions), contracting (e.g., vendor agreements), program participation, or allocation or deployment of an entity's resources
- “Program Participation” means membership or participation in, or access or admission to: training, mentoring, or leadership development programs; educational opportunities; clubs; associations; or similar opportunities that are sponsored or established by the contractor or subcontractor.

E.O. 14398 – Addressing DEI Discrimination by Federal Contractors

- Contractors must furnish all information required by the government for compliance.
- In the event of a contractor or subcontractor's noncompliance, the contract may be canceled, terminated or suspended, or the contractor declared ineligible for future contracts
- Contractor will report any subcontractor's known or reasonably knowable conduct that may violate this clause to the contracting officer and take appropriate remedial actions as directed.
- Contractor will recognize that compliance with the requirements of this clause are material to the Government's payment decisions
- Contractor must include the clause in subcontracts of any tier, including those for commercial products and services for which delivery is in the US.
- New Clause FAR 52.222-90 required in new contracts by April 27 and existing contracts by July 24, valued at over \$15,000

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- ***F&F Takeaways:***
 - Evaluate any program that includes demographic goals or considerations in financial decisions (including philanthropy), employment decisions, contracting decisions, resource allocation decisions (mentoring & leadership programs, etc.)
 - Determine how to address subcontractor compliance obligation
 - Ensure contract language is included in subcontracts when required

DOJ's First Anti-DEI False Claims Act Case Settlement

- DOJ announced IBM will pay \$17 million to settle False Claims Act case
- IBM allegedly violated Title VII by:
 - Making compensation decisions based on hitting demographic targets of race, color, national origin, and sex
 - Hiring practices that altered interview criteria based on race and sex, such as diverse sourcing for transfers and promotions, and diverse interview slates for hiring
 - Demographic Goals – employment decisions included considerations of race and sex-based goals
 - Exclusionary Programs and Training -
- ***F&F Takeaways:*** Review existing programs and practices for similar connections between compensation and decisions based on race, sex and national origin

Other Changes in the Law

Other Changes in the Law

- ICE Adjusts Penalties for I-9 Errors
 - Errors previously classified as technical, which can be easily corrected, are now considered substantive violations and subject to immediate fines.
 - Newly defined as Substantive Errors = Missing Employee birth date, failing to complete the required Section 1 fields or attestation, failure to enter dates such as first day of employment/date of hire, missing document title, issuing authority, number, or expiration date, etc.
- ***F&F Takeaways:*** Review processes and train HR teams to ensure all I-9 fields are fully completed; Audit existing forms to identify and correct curable technical errors; organize I-9 records

FLSA & FMLA

DOL Proposed Rule on Joint Employment

- New rule proposes when a company can be considered a joint employer, jointly and severally liable for wage & FMLA violations under the FLSA, FMLA, and Migrant and Seasonal Agricultural Worker Protection Act
- Horizontal Joint Employment exists when separate companies are sufficiently associated with respect to the employment of the same employee, e.g., they share the employee's services; one is acting in the interest of the other in relation to the employee, or they share control of the employee
- Vertical Joint Employment requires analysis of: actual control over schedule or conditions of employment, pay decisions, hiring/firing, and maintenance of records. No one factor is determinative.
- ***F&F Takeaway – Consider whether your company could be a joint employer with the other and make adjustments where possible to eliminate the risk***

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Jessie Summers works with companies and organizations in Maryland, the District of Columbia, and Virginia on a wide range of employment, business and litigation matters. She works with clients on establishing and implementing effective employment policies, drafting employment agreements, handling business litigation in state and federal courts, and monitoring and advising clients on legislative and regulatory developments of import to them.

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