

VIRGINIA

EMPLOYMENT LAW

Employee Leave Laws - Overview

STATE RESOURCES

Virginia Department of Labor and Industry

<https://www.doli.virginia.gov/>

Poster

Employers can use these model [posters](#) to satisfy their posting requirements.

Employers may provide their employees with various types of paid or unpaid leave as part of their overall compensation packages, including vacation time, personal leave and sick leave. Employers have some flexibility when it comes to establishing or negotiating employee leave policies. However, federal laws, such as the Family and Medical Leave Act (FMLA), require covered employers to provide employee leave in certain situations.

In addition to federal leave laws, Virginia has employee leave laws regarding:

- Jury duty and court attendance leave;
- Leave for election officers;
- Military leave; and
- Victim and witness leave.

This Employment Law Summary includes a chart that provides a high-level overview of Virginia's employee leave laws and suggests compliance steps for Virginia employers.

OVERVIEW OF EMPLOYEE LEAVE LAWS

TYPE OF LEAVE	REQUIREMENTS
Jury Duty and Court Attendance Leave	<p>An employer cannot discharge or take adverse employment action against an employee who is absent from work if he or she is summoned for jury duty, subpoenaed to appear in court or required in writing to appear at any future hearing. Employers also cannot require the employee to use sick or vacation time because of missing work for any of these reasons.</p> <p>Additionally, an employee who appears for jury duty for four or more hours in one day (including travel time) may not be required to start any scheduled work shift that begins:</p> <ul style="list-style-type: none">• On or after 5 p.m. on the day of the jury duty; or• Before 3 a.m. on the day following the jury duty. <p>These protections do not apply to employees summoned as a defendant in a criminal case.</p>

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<p>Leave for Election Officers</p>	<p>An employer cannot discharge or take adverse employment action against an employee serving as an election officer at a polling place for any election. An employer also cannot require an employee to use sick or vacation time because of an absence for this service.</p> <p>Additionally, an employee who serves as an election officer for four or more hours on his or her day of service (including travel time) may not be required to start any work shift that begins:</p> <ul style="list-style-type: none"> • On or after 5 p.m. on the day of service; or • Before 3 a.m. on the day following the day of service. <p>Employees must provide reasonable notice of their service as election officers.</p>
<p>Military Leave</p>	<p>In addition to USERRA, Virginia law provides rights and benefits to members of the Virginia National Guard, the Virginia Defense Force or the Naval Militia who serve state active duty or military duty.</p> <ul style="list-style-type: none"> • These military service members are entitled to unpaid leave if they are called to state or military active duty. Employers may not require use of any type of accrued paid leave during a period of active service. However, an employee forfeits reemployment rights when the cumulative length of leave for military duty exceeds five years. • An employer may not discriminate against any employee for his or her connection or membership with these organizations.
<p>Victim and Witness Leave</p>	<p>Employers must allow crime victims unpaid leave in order to attend criminal proceedings. An employee must provide notice to the employer with a copy of the form provided to the employee by law enforcement, and any notice of each scheduled criminal proceeding. A “criminal proceeding” is a proceeding at which the victim has the right or opportunity to appear, involving a crime against the victim, including:</p> <ul style="list-style-type: none"> • The initial appearance of the person suspected of committing the crime against the victim; • Any proceeding in which the court considers the post-arrest release of the person accused of a crime against the victim or the conditions of that release; • Any proceeding in which a negotiated plea for the person accused of the crime against the victim will be presented to the court; • Any sentencing proceeding; • Any proceeding in which post-conviction release from confinement is considered; • Any probation revocation disposition proceeding or any proceeding in which the court is requested to terminate the probation of a person convicted of a crime against the victim; or • Any proceeding where the court is requested to modify the terms of probation or intensive probation of a person, if the modification will substantially affect the person’s contact with, or the safety of, the victim, or if the modification involves restitution or incarceration status. <p>Employers cannot dismiss, refuse to hire, discriminate or apply any adverse employment action against victims who leave work to attend criminal proceedings. Employers may only limit victim and witness leave if the leave creates an undue hardship for the employer.</p>

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COMPLIANCE STEPS

It is important for Virginia employers to understand when their employees are entitled to take time off from work and the legal protections associated with such leaves. Employers that violate state or federal leave law requirements may be subject to government investigations, fines, employee lawsuits and significant penalties, fees and damage awards.

To minimize these risks, employers should review applicable federal and state leave law requirements and determine whether they have any compliance gaps to correct. This compliance review may be complex, especially in areas where federal and state leave laws overlap.

As part of the compliance review, employers should confirm that:

- Employee handbooks and written policies and procedures have been updated to accurately describe employee leaves;
- Human resources personnel, as well as managers and supervisors, are educated on how to administer employee leaves and receive ongoing training;
- Employee leaves are administered on a consistent basis, and employees are educated on leave rights and requirements;
- Recordkeeping systems accurately track and document employee leaves; and
- Required notices and posters regarding leave laws are provided.