

Employee Leave Laws—Overview

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, Virginia employers must comply with state employment laws requiring employee leave for specific purposes.

(Employers must also follow federal laws not addressed here, such as the Family and Medical Leave Act, that require employee leave.)

Virginia has state laws that mandate:

- Jury duty and court attendance leave;
- Leave for election officers;
- Military leave;
- Victim and witness leave;
- Paid sick leave for home health workers; and
- Organ and bone marrow donation leave.

The chart below provides a high-level overview of Virginia employee leave laws.

Overview of Virginia Employee Leave Laws

TYPE OF LEAVE	REQUIREMENTS
<p>Jury Duty and Court Attendance Leave</p>	<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>

<p>Leave for Election Officers</p>	<p>An employer cannot discharge or take adverse employment action against an employee serving as a member of a local electoral board, a deputy general registrar, or an election officer at a polling place on election day, or at a meeting of the electoral board following the 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.</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>Different leave provisions apply to public employees.</p> <p>In addition, Civil Air Patrol members must be allowed a leave of absence without loss of seniority, accrued leave, benefits, or efficiency rating for:</p> <ul style="list-style-type: none"> • Training (10 workdays per federal fiscal year); or • Responding to an emergency mission (30 workdays per federal fiscal year). <p>Civil Air Patrol leave may be paid or unpaid, but employers may not require employees to exhaust any other leave first.</p>
<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.</p>

	<p>A “criminal proceeding” is a proceeding involving a crime against the victim, at which the victim has the right or opportunity to appear, 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>
<p>Paid Sick Leave for Home Health Workers</p>	<p>Home health workers who work an average of at least 20 hours per week or 90 hours per month must be provided with paid sick leave.</p> <p>The only employer exception in the law is for federal government agencies. All other Virginia employers are covered if they do business or operate in Virginia and employ another to work for wages, salaries, or on commission. The law also covers entities acting directly or indirectly in the interest of an employer in relation to an employee.</p> <p>"Home health worker" means an individual who provides personal care, respite or companion services to an individual who receives consumer-directed services under Medicaid. The law does not apply to workers who:</p>

	<ul style="list-style-type: none"> • Are licensed, registered, or certified by a health regulatory board within the Department of Health Professions; • Are employed by a hospital licensed by the Department of Health; and • Work no more than 30 hours per month on average. <p>Workers accrue one hour of leave for every 30 hours worked, beginning at the start of employment, but employers may provide all paid sick leave an employee is expected to accrue at the beginning of the year. The leave carries over to the following year. Accrual and use of paid sick leave may be capped at 40 hours per year.</p> <p>Leave may be used for:</p> <ul style="list-style-type: none"> • An employee’s (or an employee’s family member’s) mental or physical illness, injury or health condition; • An employee’s (or an employee’s family member’s) need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or • An employee’s (or an employee’s family member’s) need for preventive medical care. <p>“Family member” is defined broadly to include:</p> <ul style="list-style-type: none"> • Regardless of age, a biological child, adopted or foster child, stepchild, legal ward, child to whom the employee stands in loco parentis, or individual to whom an employee stood in loco parentis when the individual was a minor; • A biological parent, foster parent, stepparent, adoptive parent, legal guardian of an employee or an employee’s spouse, or individual who stood in loco parentis to an employee when the employee or employee’s spouse was a minor child; • An individual to whom an employee is legally married under the laws of any state; • A grandparent, grandchild, or sibling, whether of a biological, foster, adoptive, or step relationship, of an employee or the employee’s spouse; • An individual for whom an employee is responsible for providing or arranging care, including helping that individual obtain diagnostic, preventive, routine, or therapeutic health treatment; or • Any other individual related by blood or affinity whose close association with an employee is the equivalent of a family relationship. <p>Leave must be provided on the employee’s request; however, when the need for leave is foreseeable, the employee must try</p>
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	<p>to provide advance notice and try to schedule the leave to avoid unduly disrupting the employer’s operations.</p> <p>Employers that require notice of the need for leave must provide a written policy containing procedures for their employees to provide notice. An employer that has not provided a written policy for providing notice may not deny paid sick leave to an employee based on noncompliance with the policy.</p> <p>Employers may require reasonable documentation that paid sick leave of three or more consecutive days has been used for a permitted purpose.</p> <p>Employer leave policies or collective bargaining agreements that provide equivalent benefits may be substituted for the required leave.</p>
<p>Organ and bone marrow donor leave</p>	<p>Effective July 1, 2023, employers with 50 or more employees are required to provide 60 unpaid leave days per year for organ donation and 30 unpaid leave days per year for bone marrow leave. The law applies to private employers as well as the state and its agencies, institutions and political subdivisions.</p> <p>Employees are eligible if at the time of leave they have been employed by their employer for at least a 12-month period and have worked for their employer for 1, 250 hours during the previous 12 months.</p> <p>Employees requesting leave must provide written physician verification that they are donors and that there is a medical necessity for the donation. Leave does not run concurrently with the federal FMLA.</p> <p>The law provides for job restoration and continuation of health benefits during leave.</p>

SPECIAL NOTE: The information in this chart focuses on statewide laws. Employers are advised that cities, towns and counties across the country have also enacted ordinances that require employers to provide employee leave. Employers must generally comply with both the local ordinance and statewide law where they apply.

More Information

Contact Heffernan Insurance Brokers for more information on employee leave laws in Virginia.