

Employment Law Summary

Fair Employment Laws – Overview



Because You're Different

In addition to the workplace discrimination protections provided to employees and applicants under federal law, Virginia provides broad workplace discrimination protections under the Virginia Human Rights Act (VHRA). This law prohibits many employers in the state from discriminating against individuals based on certain characteristics and requires them to provide reasonable accommodations for pregnancy-related conditions.

This Employment Law Summary provides an overview of the VHRA. It also provides general information about a related state law that requires all employers in Virginia to provide reasonable accommodations for individuals with disabilities.

COVERED EMPLOYERS

Most provisions of the VHRA generally apply to any employer of a domestic worker and all other employers with **15 or more employees** in Virginia for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. These provisions also apply to any employee with one or more domestic workers.

However, VHRA's prohibitions against unlawful discharge based on a protected trait other than age apply to all employers with more than **five employees** or at least one domestic worker, and its prohibitions against unlawful discharge based on age apply to employers with **six to 19 employees**. The requirements to provide reasonable accommodations to individuals affected by **pregnancy, childbirth or related medical conditions** apply to all employers with **five or more employees**. All employment agencies, joint apprenticeship committees and labor organizations are also subject to the VHRA.

Virginia also has a separate law that requires **all employers** in the state to provide reasonable accommodations for individuals with **disabilities** unless it would cause undue hardship.

PROTECTED TRAITS

The VHRA generally protects individuals from employment discrimination based on any of the following, which are known as "protected traits":

- Race (including traits historically associated with race, such as hair texture, hair type and protective hairstyles);
- Color;
- Religion;
- National origin;
- Sex (including pregnancy, childbirth, lactation and related medical conditions);
- Age (40 and older);
- Marital status;
- Sexual orientation (defined as a person's actual or perceived heterosexuality, bisexuality or homosexuality);
- Gender identity (defined as the gender-related identity, appearance or other gender-related characteristics of an individual, with or without regard to the individual's designated sex at birth);
- Military status; and
- Disability.

Effective July 1, 2024, the protected classes under the VHRA will expand to include ethnic origin.

PROHIBITED ACTIONS

An employer may not do any of the following based on a protected trait:

- Fail or refuse to hire, discharge or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment;
- Limit, segregate or classify individuals in any way that would deprive or tend to deprive any of them of employment opportunities or otherwise adversely affect an individual's status as an employee;
- Discriminate against an individual in an apprenticeship or training program;
- Adjust the scores of, use different cutoff scores for or otherwise alter the results of employment-related tests in connection with the selection or referral of applicants or candidates for employment or promotion;
- Use a protected trait as a motivating factor for any employment practice, even if other factors also motivate the practice;
- Discriminate against any individual for opposing any unlawful practice under the VHRA or for making a charge or in any other manner participating in any investigation or proceeding under the VHRA; or
- Print or publish, or cause to be printed or published, any notice or advertisement that indicates any preference, limitation, specification or discrimination.

EXCEPTIONS

Despite the above prohibitions, the VHRA specifies that an employer may:

- Make employment decisions based on an individual's religion, sex or age if it is a bona fide occupational qualification reasonably necessary to the employer's normal operation;
- Apply different standards of compensation or different terms, conditions or privileges of employment pursuant to a bona fide seniority or merit system, a system that measures earnings by quantity or quality of production, or to employees who work in different locations, as long as the differences are not intended to discriminate based on a protected trait;
- Give and act on the results of any professionally developed ability test, as long as no aspect of the test is designed, intended or used to discriminate based on a protected trait; and
- Condition employment or access to its premises on citizenship if the employer is subject to any federal requirement imposed in the interest of national security.

In addition, certain religious schools and other organizations are exempt from the VHRA for positions in which an individual of a particular religion is employed to perform work associated with the entity's religious activities.

PREGNANCY ACCOMMODATION REQUIREMENTS

Under the VHRA, women affected by pregnancy, childbirth or related medical conditions must be treated the same for all purposes as individuals who are not so affected but similar in their abilities or disabilities.

The law also requires employers to make reasonable accommodations to the known limitations of an individual related to pregnancy, childbirth or related medical conditions, unless the employer can demonstrate that the accommodation would impose an undue hardship on the employer.

Examples of adjustments that may be "reasonable accommodations" for pregnancy-related conditions include:

- More frequent or longer bathroom breaks;
- Breaks to express breast milk;
- Access to a private location other than a bathroom for the expression of breast milk;
- Acquisition or modification of equipment or access to or modification of employee seating;
- A temporary transfer to a less strenuous or hazardous position;
- Assistance with manual labor;
- Job restructuring;
- A modified work schedule;
- Light duty assignments; and
- Leave to recover from childbirth.

UNDUE HARDSHIP EXCEPTION

In determining whether an accommodation would constitute an undue hardship on the employer, the following factors must be considered:

- Hardship on the conduct of the employer's business, considering the nature of the employer's operation, including composition and structure of the employer's workforce;
- The size of the facility where employment occurs; and
- The nature and cost of the accommodations needed.

JOB RIGHTS AND PROHIBITIONS

After an employee receives a pregnancy-related accommodation, the employer must reinstate the employee to their previous position or an equivalent position with equivalent pay, seniority and other benefits when their need for a reasonable accommodation ends.

In addition, employers may not:

- Take adverse action against an employee who requests or uses a reasonable accommodation;
- Deny employment or promotion opportunities to an otherwise qualified individual based on the need to provide pregnancy-related reasonable accommodations; or
- Require an employee to take leave if another reasonable accommodation can be provided.

POSTING AND OTHER NOTICE REQUIREMENTS

Employers must post information about the VHRA's rights and pregnancy-related accommodation requirements in conspicuous locations in their employees' worksites and include it in any employee handbook.

Employers must also provide this information directly to:

- All new employees when they start employment; and
- Any employee who provides notice to the employer that they are pregnant. In this situation, the information must be given within 10 days after the employer receives the employee's notice.

VHRA ENFORCEMENT

An employee or applicant who has experienced unlawful discrimination or been denied pregnancy-related accommodations under the VHRA may file a complaint with the Office of Civil Rights of the Department of Law (the Office). An employee or applicant who has been provided a notice of their right to file a civil action by the U.S. Equal Employment Office (EEOC) or if 180 days have passed since the complaint was filed with the Office (and the individual has not been provided with a notice of their right to file a civil action), may commence a timely civil action. Additionally, a person may file an action that is not dual-filed with the EEOC after 180 days have passed since the complaint was filed with the Office. A civil action must be filed within 90 days of the employee's or applicant's receipt of a notice of their right to file a civil action.

If a court finds that an employer engaged in unlawful discrimination or denial of pregnancy-related accommodations, the employer may be ordered to pay:

- Compensatory damages;
- Punitive damages;
- Attorneys fees; and
- Court costs.

Courts may also grant permanent or temporary injunctions, temporary restraining orders or other orders against as they deem appropriate. If the state attorney general sues an employer in court, the court may order the employer to pay civil penalties of up to \$50,000 for a first violation and \$100,000 for any subsequent violation.

DISABILITY DISCRIMINATION AND ACCOMMODATION LAW

In addition to the VHRA, Virginia has a separate law that prohibits **all employers** in the state from discriminating against an otherwise qualified individual with a disability solely because of the disability.

This law also requires all employers in the state to make reasonable accommodations to the known physical and mental impairments of an otherwise qualified person with a disability, if necessary, to assist the individual in performing a particular job unless the employer can demonstrate that the accommodation would impose an undue burden on its business.

For these purposes, an “otherwise qualified” individual with a disability means an individual who is qualified to perform the essential functions of a job with or without reasonable accommodations.

UNDUE BURDEN FACTORS FOR DISABILITY ACCOMMODATIONS

In determining whether an accommodation would constitute an undue burden upon an employer, the following factors are considered:

- Hardship on the conduct of the business, considering the nature of the operation, including composition and structure of the employer’s workforce;
- Size of the facility where employment occurs;
- The nature and cost of the accommodations needed, taking into account alternate sources of funding or technical assistance under state law;
- The possibility that the same accommodations may be used by others; and
- Safety and health considerations of the individual with a disability, other employees and the public.

ENFORCEMENT OF DISABILITY RIGHTS

An individual with a disability may file a lawsuit with the Office against an employer for disability-based discrimination and failure to provide accommodations any time **within one year** of a violation. However, the individual must first—and within 180 days of the alleged violation—have either commenced the action or sent, via registered mail, a written statement of the nature of the claim to the employer. This type of action is allowed only if the individual does not seek remedies for the same violation under the VHRA’s prohibition against disability discrimination.

If an employer is found to be in violation of Virginia’s disability law, the employer may be ordered to pay compensatory damages, including back pay for up to 180 days, and reasonable attorney fees.

MORE INFORMATION

Please contact Heffernan Insurance Brokers for more information on fair employment laws in Virginia.

Provided By Heffernan Insurance Brokers

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