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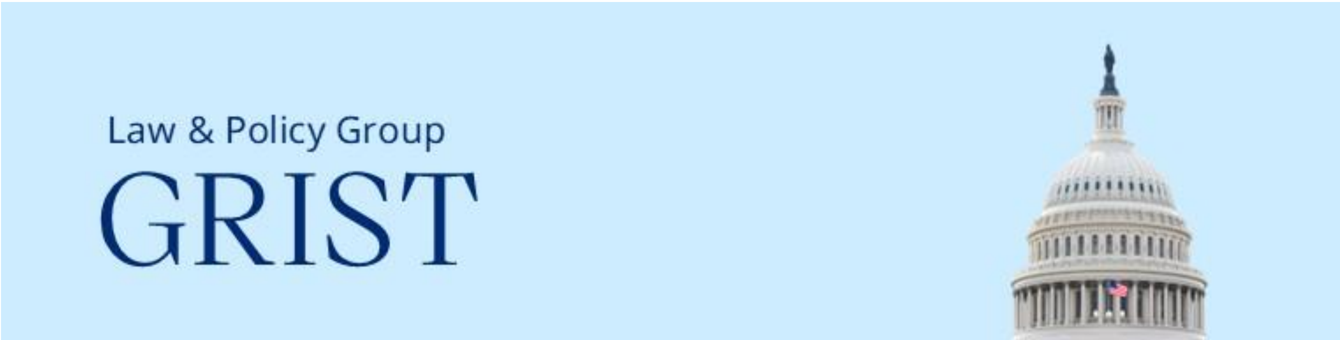

Virginia passes paid sick and safe leave mandate

By Rich Glass and Katharine Marshall
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In this article

Virginia joins 20 other states — plus Puerto Rico and Washington, DC — in requiring accrued paid leave for employees. The new legislation — 2026 Chs. 1128/1129 (HB 5/SB 199) — will require employers in the state to provide employees working in Virginia up to 40 hours of paid sick and safe leave (PSSL) annually beginning on July 1, 2027. The leave will accrue at one hour for every 30 hours worked. The state's Department of Labor and Industry (DOLI) will adopt rules, enforce the law, and provide a model employee notice.

Virginia also enacted a PFML law this year. For details, see Virginia enacts paid family and medical leave mandate (June 17, 2026). For details on other state and local PSSL laws, see Roundup: State accrued paid leave mandates (July 23, 2025).

Note: The new Article 2.1:1 in the Virginia Code is titled "Paid Sick Leave." In this article, we use "PSSL" to refer to the new law because it entitles employees to protected leave for safety reasons in addition to sickness.

Covered employers and employees

Employers. The law's effective date will vary by employer size:

- July 1, 2027, for employers with at least 50 employees
- January 1, 2028, for employers with at least 25 employees
- January 1, 2029, for employers with at least one employee

It is unclear whether these thresholds are based on national or Virginia headcount. The law applies to private employers, state and local government employers, and nonprofit employers. The law does not apply to the federal government.

The law has a delayed application to employers with employees under the Longshore and Harbor Workers' Compensation Act (LHWCA) and those who are subject to a collective bargaining agreement (CBA) in effect on July 1, 2027. In that event, the law will become effective on the earlier of December 31, 2030, or the CBA's expiration date.

Employees. All full-time, part-time, and temporary employees are eligible, regardless of hours worked.

However, the law excludes the following employees:

- Home health workers averaging at least 20 hours per week or 90 hours per month (They are covered by a 2021 law; see the *Home health workers* section.)
- Employees who are:
  - Licensed, registered, or certified by a health regulatory board within the Department of Health Professions, and
  - Employed by a facility licensed by the Department of Health, the University of Virginia Medical Center, or Virginia Commonwealth University Health System Authority, and
  - Working on average no more than 30 hours per week or on an as-needed basis for these entities or an agency licensed by the Department of Behavioral Health and Developmental Services
- Employees covered by the Railroad Unemployment Insurance Act

Accruals and use

Starting on the hire date, PSSL will accrue at a rate of one hour for every 30 hours worked. Employees will be able to accrue and use up to 40 hours in a year, unless an employer sets a higher limit. Exempt employees under the federal Fair Labor Standards Act (FLSA) are presumed to work 40 hours per week, unless their normal workweek is less. A "year" is any regular, consecutive 12-month period, as determined by the employer. With one exception, all unused leave will carry over at year-end to the next year.

Timing. Accruals will start on the later of the applicable effective date or the hire date. Employees must use leave in hourly increments, unless an employer allows smaller increments. Employees rehired within 12 months of separation will receive all previously accrued, unused PSSL, available for immediate use, unless the employer voluntarily paid it out upon separation. Employees transferring to a separate division, entity, or location will retain all accrued, unused leave at the time of transfer. A successor employer must honor leave accruals of all covered employees who remain employed after the transaction.

Front-loading. To avoid carryovers, employers may make a minimum of 40 hours of PSSL available on first day of the year as an alternative to the accrual method. An employer providing all of the PSSL an employee is expected to accrue in a year, at the beginning of the year, avoids accrual but may not avoid the carryover requirement if the amount provided is less than 40 hours.

Covered reasons. Employees may accrue leave for these reasons:

- An employee's own or a family member's need for medical diagnosis, care, or treatment for mental or physical illness, injury, or other health condition
- An employee's or family member's need for preventive medical care
- Issues arising from domestic violence, sexual assault, or stalking experienced by an employee or a family member

Family member. The law broadly defines family members to include:

- An employee's:
  - Spouse or domestic partner
  - Biological child, stepchild, adopted or foster child, legal ward, child to whom the employee stands *in loco parentis*, regardless of age
- Biological parent, stepparent, adoptive parent, foster parent, or legal guardian of employee or employee's spouse
- Grandparent, grandchild, or sibling (including those in a foster, adoptive, or step relationship) of employee, employee's spouse, or domestic partner
- Individual to whom an employee stood *in loco parentis* when the individual was a minor
- Individual who stood *in loco parentis* to an employee or employee's spouse when the employee or employee's spouse was a minor
- An individual for whom an employee is responsible for providing or arranging health or safety-related care
- Any other individual related by blood or affinity whose close association with an employee is equivalent to a family relationship

Virginia does not have a domestic partnership registration process. Domestic partners must be at least 18 years of age and meet either of these requirements:

- Unilateral dependence or mutual interdependence with the covered individual evidenced by a nexus of factors
- Registration as a domestic partner with a registry maintained by the employer of either party or in any US jurisdiction (e.g., neighboring Washington, DC)

For more details on domestic partnership issues, see Domestic partner benefits remain popular but present challenges (August 20, 2025).

Pay. Employees will receive their regular rate of pay (as defined by state wage and hour law) while on leave but no less than the applicable minimum wage without reduction for any tip credit. The state's minimum wage is currently $12.77 per hour, increasing to $13.75 per hour in 2027, and $15.00 per hour in 2028. The law excludes overtime compensation from the pay rate but does not address how to calculate the hourly rate for salaried employees or whether to include bonuses. Employers will not have to pay out unused PSSL on employment separation.

Existing employer policies and CBAs. Employer policies (e.g., PTO) and bona fide CBAs that provide an equivalent amount of paid leave to be used for the same purposes and under the same conditions are excused from providing additional PSSL to eligible or CBA covered employees. Employers with union employees will not have to provide additional leave if the CBA meets PSSL requirements, including the amount, qualifying reasons, and conditions for use.

Notices

Employer notice

Employers must provide employees with written notice of their PSSL rights, including the rights to file a complaint and bring a civil lawsuit. Employers must also post the written notice. Unlike some states, the law does not require PSSL information on pay stubs or earning statements (although DOLI has authority to impose this requirement in future rulemaking).

Employee notice and leave documentation

Employers must provide PSSL upon employee request made orally, electronically, in writing, or by any other means acceptable to the employer. When possible, the request must include the expected leave duration. If an employer requires notice of the need to use PSSL, the employer must first provide a written policy containing the notice procedures. Otherwise, employees need only make a good faith effort to provide notice in advance of a foreseeable leave, and a reasonable effort to schedule leave so as to avoid unduly disrupting operations. Unforeseeable leave is not directly addressed by the law.

Employers will be able to require reasonable documentation for leave of three or more consecutive work days. For health-related reasons, documentation from a healthcare professional that sick leave is necessary will be considered reasonable. Reasonable documentation for safe leave will include:

- Police reports
- Court documents indicating an employee's involvement in legal action
- Documentation from a victim services advocate, the employee's attorney, a clergy member, or a healthcare professional from whom the employee is or was receiving services related to domestic violence, sexual assault, or stalking
- An employee's written statement that leave is for a protected reason

An employer cannot condition leave on an employee's disclosure of health information or details of the domestic violence, sexual assault, or stalking.

Job protections

Interference with an employee's rights under the law is prohibited. Employers cannot require employees to find a replacement worker or work a substitute shift when taking leave. An absence control policy cannot stipulate that PSSL use could lead to or result in discipline, discharge, or other adverse action. Prohibited retaliation includes discharge, discipline, threats, discrimination, or penalizing an employee for:

- Requesting PSSL or exercising PSSL benefits
- Alleging a PSSL violation, even if mistaken but made in good faith
- Participating in or cooperating with a PSSL investigation, hearing, or proceeding
- Informing any individual about potential PSSL benefits

The law does not address which benefits must continue during PSSL and under what conditions. On return from leave, an employee will be entitled to return to the same or equivalent position. Otherwise, the law does not address return to work. Additional guidance would be helpful.

Employer responsibilities

In addition to providing paid leave and defining the year, employers will have to maintain PSSL records for three years and ensure confidentiality of health information and information related to domestic violence, sexual assault, or stalking. DOLI is tasked with publishing rules.

Enforcement and penalties

DOLI will create a system for complaints, which must be filed within one year of the alleged violation. Employers can avoid penalties if corrective action occurs within a reasonable time. An employer's first violation carries a $150 civil penalty. Subsequent failures within two years could reach $500 per violation.

DOLI or the state attorney general can initiate administrative proceedings or a civil lawsuit. Employees need not exhaust administrative remedies before filing their own civil lawsuit. Potential damages include: double the amount of uncompensated leave and actual damages suffered; injunctive relief; legal or equitable relief (including reinstatement); lost wages, benefits, or other remuneration, with interest; and reasonable attorney fees and costs. A two-year statute of limitations applies, starting from the date of the violation or when the aggrieved employee should have known of the alleged violation.

Home health workers

Existing paid sick leave requirements for home health workers largely mirror the new PSSL law. For home health workers, paid sick leave accrues at a rate of one hour for every 30 hours worked. Annual accrual and use are capped at 40 hours. No waiting period for accrual or use applies. All unused leave carries over at year-end to the next year. Employer and employee notice provisions are similar. Both laws require leave of three or more consecutive work days before an employer can request reasonable documentation.

Differences exist:

- While front-loading is permitted, carryovers are still required.
- Covered reasons do not include issues arising from domestic violence, sexual assault, or stalking.
- The family member definition omits domestic partners and their grandparents, grandchildren, and siblings.
- Rehired employees are not entitled to restoration of unused leave accrued prior to separation.
- Prohibitions against retaliatory actions are not as extensive as in the new PSSL law.

Employer considerations

Employers already providing paid leave sufficient to meet the law's requirement (e.g., vacation or paid time off) will not have to provide additional paid sick leave if their policies allow the leave to be used for the same purposes and under the same conditions as the PSSL law. Possible employer action steps include:

- Conducting a side-by-side comparison of existing leave policies applicable to Virginia workers and addressing any necessary changes (Interestingly, this is what the law requires of the state government — ordering an assessment of the law's impact on state human resources policies and necessary changes.)

- Focusing on common compliance gaps like rehires, carryovers/front-loading, and required employer and employee notices
- Updating payroll systems
- Training managers and supervisors
- Staying abreast of upcoming DOLI guidance (due by July 1, 2027), particularly on issues like pay rates for employees (especially fee-for-service employees), notices, recordkeeping, confidentiality, benefit continuation, return to work, and coordination with the state's PFML law and local laws

Related resources

Non-Mercer resources

- Virginia Department of Labor & Industry (DOLI)
- 2026 Chs. 1128/1129, HB 5/SB 199 (May 20, 2026)
- VA § 40.1-29.3(B) (Regular rate of pay)
- VA § 40.1-33.3 et seq. (Home health worker paid sick leave)
- 29 USC § 213(a)(1) (FLSA definition of exempt employee)
- 33 USC §§ 901 et seq. (LHWCA)

Mercer Law & Policy resources

- Virginia enacts paid family and medical leave mandate (June 17, 2026)
- Domestic partner benefits remain popular but present challenges (August 20, 2025)
- Roundup: State accrued paid leave mandates (July 23, 2025)

Other Mercer resource

- Life, absence, and disability benefits

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