

JULY 13, 2023 | STATE & LOCAL TRENDS

# Mid-Year Employment Updates in DC, Maryland, and Virginia

We are mid-way through 2023, and there have been several changes to the employment laws in the District of Columbia, Maryland, and Virginia that employers need to take note of. All of these laws, which were passed in 2022 or the more recent 2023 legislative sessions, went into effect on July 1, 2023, including amendments to minimum wage laws, leave laws, marijuana laws, and laws related to nondisclosure, confidentiality, and non-disparagement agreements. Below is an overview of some of the key changes that employers need to carefully analyze to ensure existing employment policies and practices are up to date.

## District of Columbia

**Minimum Wage Hike.** Beginning on July 1, 2023, DC [minimum wage](#) increased from \$16.50 per hour to \$17 per hour. Tipped workers will see their base wage increase from \$6 per hour to \$8 per hour, and if their tips don't bring their total hourly earnings up to \$17 per hour overall, their employer needs to make up the difference. 

**Recreational Cannabis Use Protection in Effect.** Under the [DC Cannabis Employment Protections Amendment Act of 2022](#), which went into effect on July 1, 2023, employers cannot take any adverse action against an employee because of the employee's recreational cannabis use, participation in D.C. or another state's medical cannabis program, or failure to pass an employer-required or requested cannabis drug test. In simple terms, employers are prohibited from terminating, suspending, demoting, refusing to hire, failing to promote, or otherwise penalizing an employee for cannabis use, but there are two notable exceptions:

1. the law does not apply to "safety-sensitive" positions (i.e. employees that operate equipment or vehicles);
2. employers will not violate the law if:
  1. their actions are required by federal statute, federal regulations, or a federal contract or funding agreement; or
  2. the employee used, consumed, possessed, stored, delivered, transferred, displayed, transported, sold, purchased, or grew cannabis at the place of employment, while performing work for the employer, or during the employee's working hours.

Employers can still implement reasonable drug-free workplace policies that (1) require post-accident or reasonable suspicion drug testing of employees in safety-sensitive positions for cannabis or other drug use; (2) that are necessary to comply with certain federal laws, contracts or funding; and/or (3) that prohibit employees

from using or having cannabis in the workplace.

## Maryland

**Recreational Marijuana Legal in Maryland.** As of July 1, 2023, adults 21 and older can use and possess up to 1.5 ounces of cannabis flower, up to 12 grams of concentrated cannabis or a total amount of cannabis products that do not exceed 750 mg of THC. This is known as the “personal use amount.” It is also now legal to buy marijuana and cannabis products from licensed dispensaries in the state for recreational purposes. Unlike the DC law described above, Maryland law does not prohibit employers from disciplining, firing, or taking adverse action against an employee for marijuana use. However, Maryland employers should closely monitor potential amendments to the law to add worker protections, as there is a growing trend among state legislatures enacting such protections.

**Minimum Wage Increase in Montgomery County:** As of July 1, 2023, the [Montgomery County minimum wage](#) increased to \$16.70 for people working at large employers (those with 51 employees or more). It also increases to \$15 for workers at mid-sized employers (those with 11 to 50 employees), and \$14.50 for those working for small employers (those with 10 or fewer employees).

## Virginia

**Employee Social Security Numbers Cannot Be Used for Employee Identification Numbers.** On March 21, 2023, Gov. Glenn Youngkin approved [Senate Bill 1040](#), which prohibits employers from using an employee’s Social Security number, “or any number derivative thereof,” as an employee’s identification number, which includes prohibiting employers from using an employee’s Social Security number, “or any number derivative thereof,” on any identification card or badge, access card or badge, or similar card or badge issued to employees. Employers that knowingly violate this law are subject to a civil penalty of up to \$100 per violation. The law went into effect on July 1, 2023, so Virginia employers should analyze and modify any employment practices where an employee’s social security number, or even fraction of it, are used as an employee identification number.

**Nondisclosure, Confidentiality and Non-Disparagement Agreements & Sexual Harassment.** On March 24, 2023, Governor Youngkin approved [House Bill 1895](#), which prohibits employers from requiring an employee or prospective employee from executing or renewing a nondisclosure or confidentiality agreement, including any provision relating to non-disparagement, that has the purpose or effect of concealing the details relating to a claim of sexual harassment as a condition of employment. This law, which went into effect on July 1, 2023, expands the current provisions in Virginia Code § 40.1-28.1 that prohibits non-disclosure and confidentiality agreements related to claims of *sexual assault* to now include claims of *sexual harassment*.

Although the law does not apply to severance agreements or other post-termination agreements, it likely does apply to confidentiality and non-disparagement agreements that employees may be required to enter into at the onset of employment or as employers update their policies. Therefore, Virginia employers should audit their current pre-employment agreements for these provisions and revise them to ensure that it addresses potential claims of sexual harassment.

**Sub-Minimum Wage Workers Exception Rescinded.** On April 12, 2023, Governor Youngkin approved [House Bill 1924](#), which removes the exception under Virginia Code § 40.1-28.9 of the Virginia Minimum Wage Act that

allowed employers to employ individuals with disabilities at a sub-minimum wage under a special certificate issued under 29 U.S.C. § 214(c) of the Fair Labor Standards Act.

Thus, as of July 1, 2023, Virginia employers are strictly prohibited from paying sub-minimum wages, unless they had a 14(c) exemption prior to that date. Those employers that had an exemption under 29 U.S.C. § 214(c) prior to July 1, 2023, have until July 1, 2030, to increase the pay rates of disabled workers to the minimum wage.

**Organ Donation Leave.** On April 12, 2023, Governor Youngkin approved [Senate Bill 1086](#), which requires Virginia employers with 50 or more employees to provide eligible employees with up to 60 business days per 12-month period of unpaid organ donation leave and up to 30 business days per 12-month period of bone marrow donation leave. Employees are eligible if they have worked for the employer for at least a 12-month period and 1,250 hours during the preceding 12 months.

Although the organ donation leave is unpaid, employers are required to restore employees to the position they held before the leave began, or an equivalent position with equivalent pay, benefits, and other terms and conditions of employment. Furthermore, employers are required to maintain the employee's health benefits during the leave in the same manner as if the employee did not take leave and pay any commissions during organ donation leave that become due because of work the employee did prior to taking leave.

Violations of the law protecting organ donation leave can result in fines of up to \$1,000 for the first violation, up to \$2,500 for the second violation, and up to \$5,000 for successive violations.