

Publications

Virginia Employers Must Contend With More Than COVID-19 When They Get Back To Work (Part II)

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As employers begin to reopen their businesses and employees start to return to work, Virginia employers will need to contend with a significant expansion of the Virginia Human Rights Act (in addition to the Virginia's new wage-hour laws [detailed here](#) and confronting the myriad workplace changes wrought by COVID-19).

Expanded Protected Classes

The Human Rights Act now prohibits discrimination on the basis of sexual orientation and gender identity. "Gender identity" means 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, and "sexual orientation" means a person's actual or perceived heterosexuality, bisexuality, or homosexuality.

Virginia also became the fourth state (along with California, New Jersey, and New York) to prohibit discrimination on the basis of natural hairstyle. The Human Rights Act specifies that discrimination "because of race" or "on the basis of race" includes discrimination on the basis of traits historically associated with race, including hair texture, hair type, and protective hairstyles such as braids, locks, and twists.

Employers are further prohibited from failing or refusing to hire, discharging, or otherwise discriminating against any individual on the basis of pregnancy, childbirth, or related medical conditions. Additionally, employers must make reasonable accommodation to the known limitations of a person related to pregnancy, childbirth, or related medical conditions, unless doing so would impose an undue hardship. An employer must engage in a timely, good faith interactive process with an employee who has requested an accommodation to determine if the requested accommodation is reasonable and, if determined not to be reasonable, discuss alternative accommodations. An employer must conspicuously post and include in any employee handbook information concerning these provisions; the information must also be directly provided to new employees upon hire and to any

employee within 10 days of providing notice that she is pregnant.

Expanded Coverage -- Employment

Previously, the only causes of action for employment discrimination were for unlawful discharge on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions by employers with more than 5 but fewer than 15 employees, and for unlawful discharge on the basis of age by employers with more than 5 but fewer than 20 employees.

Now, the Human Rights Act expands coverage to employers with more than 5 employees for employment discrimination based on race, color, religion, national origin, status as a veteran, sex, sexual orientation, gender identity, marital status, pregnancy, childbirth or related medical conditions including lactation. For age discrimination claims, coverage only applies to employers with 6 to 19 employees.

Expanded Coverage – Public Accommodations

Previously, there was no cause of action for discrimination in places of public accommodation. Now, it is an unlawful discriminatory practice for a place of public accommodation to refuse, withhold from, or deny any individual any of the accommodations, advantages, facilities, services, or privileges made available on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, sexual orientation, gender identity, marital status, disability, or veteran status.

A "place of public accommodation" is all places or businesses offering or holding out to the general public goods, services, privileges, facilities, advantages, or accommodations. This does not include a private club, a place of accommodation owned by or operated on behalf of a religious entity that is not in fact open to the public, or any other establishment that is not in fact open to the public. This also does not prohibit discrimination against individuals who are less than 18 years of age or the provision of special benefits, incentives, discounts, or promotions to assist persons who are 50 years of age or older.

Expanded Rights and Remedies

Previously, the Human Rights Act did not allow for a private right of action. Now, there is a private right of action, and individuals may recover compensatory damages, punitive damages, and reasonable attorney's fees as well as other equitable relief. The Virginia Division of Human Rights now also has the power to investigate and process discrimination charges, and the Attorney General may initiate civil actions on an employee's behalf.

Conclusion

These changes to the Virginia Human Rights Act are effective July 1, 2020. Employers should ensure that their policies and procedures comply with these new requirements. Contact your Vorys lawyer if you have questions about discrimination laws in the workplace.

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Vorys COVID-19 Task Force

Outside of this new law, employers continue to face myriad issues as COVID-19 continues to spread and impact communities and workplaces (some of these issues are addressed in our prior alerts [located here](#)). We will continue to keep you posted on any important developments. In the meantime, if you have any questions regarding this new law or any other aspect of COVID-19, please contact your Vorys lawyer.

We have also established a comprehensive Coronavirus Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at vorys.com/coronavirus.