

# State of the States: Wage and Employment Law in the DMV

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Maryland and the District of Columbia have some of the most progressive employment laws in the country, offering protections and remedies beyond those guaranteed by the federal minimum wage and antidiscrimination laws that apply nationwide. This year alone, Maryland joined four other states and the District of Columbia in raising its minimum wage to \$15/hour, which it plans to implement by 2026. Here is an overview of wage and employment laws in the District of Columbia, Maryland, and Virginia, many of which fill gaps in the coverage of federal law.

## **District of Columbia Employment Laws**

The District of Columbia Human Rights Act ([DCHRA](#)) protects employees from discrimination on the basis of 16 protected traits, including sexual orientation, gender identity or expression, marital status, personal appearance and credit information. Unlike Title VII of the Civil Rights Act of 1964, which only applies to employers with 15 or more employees, the DCHRA applies to employers with as few as one employee. Another way in which the DCHRA expands employees' rights beyond those that exist under federal law is by empowering the D.C. Office of Human Rights to adjudicate individual claims and award remedies, as appropriate. The DCHRA also gives employees the option to bypass that process entirely and file their complaints directly in court. Under Title VII, in contrast, the EEOC cannot itself provide relief; it only confers on employees the right to take their claims to court after exhausting their administrative remedies, which include allowing the EEOC to investigate and to attempt to conciliate cases in which it has found cause to believe discrimination occurred.

Compensatory and punitive damages available under the DCHRA also exceed those available under Title VII, which are subject to monetary "caps" based upon the size of the employer, the highest of which is \$300,000. Compensatory and punitive damages are uncapped under the DCHRA, and D.C. juries regularly award such damages in excess of the Title VII caps. See, e.g., [Garcia Hernandez v. Chipotle Mexican Grill, Inc.](#), No. 1:14-cv-00297-BAH (D.D.C. 2016) (jury award of \$550,000 in compensatory and punitive damages under DCHRA). Additionally, the DCHRA provides for uncapped damages for age discrimination, while the [federal Age Discrimination in Employment Act](#) only provides for back pay.

The District of Columbia Wage Payment and Collection Law (DCWPCL) provides employees a robust avenue for relief when they have been denied compensation by their employers. The DCWPCL defines "wages" extremely broadly, to include compensation such as bonuses, commissions, fringe benefits, and unused vacation days. The law also provides for liquidated damages in the amount of three times the amount of unpaid wages, for a total of four times the amount of wages owed to employees, as well as attorneys' fees and costs. The federal [Fair Labor Standards Act](#) (FLSA), in contrast, does not provide employees with a private right of action to recover unpaid wages and does not cover, for example, commissions or vacation pay. The District of Columbia enacted a \$15 minimum wage law in 2016, requiring employers to reach that threshold by July 1, 2020.

## **Maryland Employment Laws**

Like the District of Columbia, Maryland enforces its own antidiscrimination law, the Maryland Fair Employment Practices Act (FEPA). The Maryland FEPA prohibits discrimination on the basis of 12 protected traits, including sexual orientation and gender identity. Unlike the DCHRA, however, the Maryland FEPA does not apply to employers with fewer than 15 employees; in this respect, it is merely coextensive with federal antidiscrimination law. The Maryland FEPA also requires exhaustion of the state's administrative remedies and caps compensatory and punitive damages at the levels prescribed by Title VII.

The Maryland Wage Payment and Collection Law (MWPCCL), however, is significantly more employee-friendly. It applies to employers with one or more employees and, like the DCWPCL, defines "wages" very broadly, and expressly to include bonuses, commissions, fringe benefits, overtime wages, and "any other remuneration promised for service." It also provides for treble damages, reasonable attorneys' fees, and costs. Notably, Maryland courts have held that the MWPCCL covers employees who merely perform work in Maryland, even though they otherwise "work[] for an out-of-state company, located in that state, under an employment contract governed by the laws of that state[.]" *Hausfeld v. Love Funding Corp.*, 131 F. Supp. 3d 443, 455 (D. Md. 2015).

On March 28, 2019, the Maryland General Assembly overrode Governor Larry Hogan's veto to approve raising the state's minimum wage from \$10.10 to \$15 per hour for all employees by 2026. The new law lays out stepwise annual increases in employee wages, requiring employers with 15 or more employees to pay employees at least \$15 per hour by 2025 and employers with fewer than 15 employees to reach that threshold by July 2026.

## **Virginia Employment Laws**

Virginia's antidiscrimination law, the Virginia Human Rights Act (VHRA), prohibits discrimination on the basis of race, color, religion, sex, national origin, pregnancy, childbirth and related medical conditions, age, marital status, and disability. The Virginia Division of Human Rights functions in the same manner as the EEOC by investigating complaints and issuing notices of right to sue, but not adjudicating complaints and awarding relief. However, the VHRA, like the DCHRA, allows employees to file a complaint directly in state court without first going to the state agency.

The VHRA applies only to employers with between 6 and 14 employees, covering many employees who would not be entitled to relief under Title VII, but only provides for up to 12 months of back pay, and does not provide for any compensatory or punitive damages. Employees whose employers have 5 or fewer employees may be entitled to administrative relief under one of Virginia's county ordinances. For example, the Fairfax County Human Rights Ordinance applies to employers with at least 4 employees, and does provide for compensatory and punitive damages that can be awarded in state court.

The Virginia Wage Payment Act (VWPA) imposes criminal penalties on employers that withhold wages from their employees but does not specify whether "wages" includes other benefits of monetary value, such as unpaid vacation. Although the law does not create a private right of action empowering employees to seek their own relief in court, it does provide for the Commissioner of the Department of Labor to institute enforcement proceedings against an employer that is violating the law. If an employer is found liable for violation of the VWPA, employees will be entitled to all wages due to them, plus 8 percent interest on that amount. The minimum wage in Virginia is \$7.25, as it is under federal law, and repeated efforts to raise the minimum wage to \$15 have failed passage in the Virginia legislature, most recently by a margin of 19-21 in January 2019.