

LEGAL UPDATES FOR CHURCHES

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PART I: EMPLOYEE CLASSIFICATIONS
INDEPENDENT CONTRACTORS, EMPLOYEES, AND
FLSA EXEMPTIONS

What Is Employee Classification?

People who do any kind of work for an organization fall into one of three categories:

1. (1) employees,
2. (2) independent contractors, or
3. (3) volunteers.

There are significant penalties associated with treating someone as an **independent contractor** who, by the law, is an **employee**.

True or False

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- I. Employers and the employee have the option to classify a part-time worker as either an independent contractor or employee, based on their preference, if reduced to writing.
- I. Classifying workers (whether as employees versus independent contractors or exempt v. non-exempt) is a logical, common-sense exercise that most employers can do correctly with little help.

The Costly Consequences of Misclassifying

Misclassifying an employee as an independent contractor could result in:

1. IRS back-employment taxes, interest, and penalties due to impacts on your tax filings and payments.
2. Lawsuit from the worker for back-wages and benefits.
3. Statutory civil penalties imposed by state law.

What's the difference?

EMPLOYEES

- W-2
- Employer withholds wages for taxes and pays share of employment taxes
 - More wage, hour, and other laws apply.
- Employee responsible for actions of employee via *respondeat superior*
- Typically covered by mandatory unemployment insurance employer pays
- Compensation includes wages and assortment of benefits (vacation, retirement, insurance, etc.)

INDEPENDENT CONTRACTORS

- 1099
- No withholding. The worker is responsible for employment and other taxes
 - Fewer wage, hour, and other laws apply.
- Employer typically not responsible for actions of independent contractor.
- Typically not covered by unemployment. Insurance
- Compensation is usually just contracted upon monetary payments

INDEPENDENT CONTRACTOR

There are several tests for determining whether someone is a true independent contractor or an employee.

1. IRS Test for Payroll Taxes – Key inquiry: Right to Control. Includes a consideration of three sets of factors (20 total factors)
 - A. Behavioral Control
 - B. Financial Control
 - C. Type of Relationship
2. DOL Test (FLSA and overtime) 5-factor more-employer friendly test established in 2021. Reverted in 2024 to new DOL test .

INDEPENDENT CONTRACTOR

DOL Test 2024

“A worker is an **independent contractor** as opposed to an employee under the Act if the worker is, as a matter of economic reality, **in business for themselves**. The final rule explains that the economic reality test is comprised of **multiple factors** that are **tools or guides** to conduct the totality-of-the-circumstances analysis to determine **economic dependence**.”

Factors:

- A. Opportunity for profit or loss depending on managerial skill,
- B. Investments by the worker and the employer,
- C. Permanence of the work relationship,
- D. Nature and degree of control,
- E. Whether the work performed is integral to the employer’s business, and
- F. Skill and initiative.

INDEPENDENT CONTRACTOR

1. IRS Test for Payroll Taxes
2. DOL 5-Factor Test
3. **State Worker's Compensation Tests** – usually very broad
4. **“ABC” Test** – Imposed by Some States (including California). Assumes every worker is an employee unless the employer can prove each of the following elements:
 - A. The person is **free from the control and direction** of the hiring entity in the performance of the work, both under the contract for the performance of the work and in fact;
 - B. The person performs work that is **outside the usual course** of the hiring entity's business, and;
 - C. The person is customarily engaged in an **independently established** trade, occupation, or business of the same nature as that involved in the work performed.

VIRGINIA TEST

Any individual who performs any work for any pay or remuneration is **assumed to be an employee** “unless it is shown that the individual is an independent contractor as determined under the Internal Revenue Services guidelines.” Va. Code § 40.1-28.7:7.

In other words, all workers are employees unless the employer can prove to the contrary using the IRS multi-factor test.

****PRIVATE RIGHT OF ACTION ON
MISCLASSIFICATION OF WORKER**
(EMPLOYEE V. INDEPENDENT CONTRACTOR)**

1. **Many employers (for-profit, non-profit, churches) who think they have independent contractors, really have misclassified employees legally.**
2. Under existing law, the realities of the relationship trump whatever the written agreement calls the arrangement.
3. The legal test (see IRS guidelines) looks at a number of factors, but ultimately comes down to **control**.
4. New law allows workers to sue to recover wages, salary, benefits, expenses, and any other compensation lost by virtue of misclassification. Court may also award attorneys' fees and costs.
5. New law also presumes that any "individual who performs services for a person for remuneration shall be presumed to be an employee" unless the would-be employer can show that the individual is a contractor under the IRS guidelines
6. Workers can also file administrative complaints for government officials to administratively pursue the employer instead.
7. ***These remedies are available, likely even to a worker who signed an agreement acknowledging that he is a contractor, not an employee.***
8. **Best line of defense is IC agreement with proper wording *and acting consistently with this agreement.***

FLSA EXEMPTIONS

	EXECUTIVE EXEMPTION	ADMINISTRATIVE EXEMPTION	PROFESSIONAL EXEMPTION
DUTIES	<ol style="list-style-type: none"> 1. The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise; 2. The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and 3. The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight. 	<ol style="list-style-type: none"> 1. The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and 2. The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance. 	<ol style="list-style-type: none"> 1. The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment; 2. The advanced knowledge must be in a field of science or learning; and 3. The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.
SALARY THRESHOLD	Changed from \$35,568 to \$43,888 as of July 1, 2024. Increasing to \$58,656 January 1, 2025.		

FLSA EXEMPTIONS

I. Highly Compensated Employee.

A. Salary threshold also increasing from **\$107,432** to **\$132,964** as of **July 1, 2024** and then **\$151,164** January 1, 2025.

B. Duties:

- i. must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- ii. The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- iii. The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

FLSA Civil Monetary Penalties (Now To Be Adjusted For Inflation)

CIVIL MONEY PENALTY INFLATION ADJUSTMENTS

Type of Violation	Statutory Citation	CFR Citation	Maximum Civil Monetary Penalty on or before 1/15/2024	Maximum Civil Monetary Penalty on or after 1/16/2024
Homeworker:				
Violation of recordkeeping, monetary, certificate or other statutes, regulations or employer assurances.	29 USC 211(d)	29 CFR 530.302	\$1,240	\$1,280
Child labor:				
(1) Violation of child labor standards (sec 212 or 213(c));	29 USC 216(e)(1)(A)(i)	29 CFR 570.140(b)(1) and 29 CFR 579.1(a)(1)(i)(A)	\$15,138	\$15,629
(2) Violation of child labor standards (sec 212 or 213(c)) that causes the serious injury or death of a minor;	29 USC 216(e)(1)(A)(ii)	29 CFR 570.140(b)(2) and 29 CFR 579.1(a)(1)(i)(B)	\$68,801	\$71,031
(3) Willful or repeated violation of child labor standards (sec 212 or 213(c)) that causes the serious injury or death of a minor	29 USC 216(e)(1)(A)(ii)	29 CFR 570.140(b)(2) and 29 CFR 579.1(a)(1)(i)(B)	\$137,602	\$142,062
(4) Repeated or willful violation of section 206 or 207.	29 USC 216(e)	29 CFR 579.1(a)(2)	\$2,374	\$2,451
(5) Violation of section 203(m)(2)(B)	29 USC 216(e)(2)	29 CFR 579.1(a)(2)(ii) and 29 CFR 578.3(a)(1)	\$1,330	\$1,373

Other consequences may include criminal penalties for willful violations. The DOL or employee can also file suit for damages which could include back wages, an equal amount in liquidated damages, plus attorney's fees and court costs.

MINISTERIAL EXCEPTION

A judicially-created doctrine rooted in the First Amendment that exempts ministerial employees from statutory employment requirements.

A “ministerial” employee is exempt from FLSA (and all statutory) requirements under the First Amendment-based ministerial exception. See *Hosanna Tabor* and *Our Lady of Guadalupe*.

“Ministerial” employees include more than “ministers” in the sense of pastors, priests, etc. Courts afford ministerial status to those employees whose primary duties are religious, whether directly or indirectly.

However, the boundaries of ministerial status are not clearly defined, relying on each case’s specific facts. Beyond actual ministers, the clearest ministerial employees are those that teach religion or lead worship as required by their job position.

Less clear are those that affect the employer’s mission but whose job duties are “overwhelmingly secular.”

PRIVATE RIGHT OF ACTION FOR WAGE CLAIMS (VA. CODE § 40.1-29)

1. Previous law: Employers were subject to a number of wage and hour regulations, such as the Virginia Wage Payment Act, but the enforcement of violations was left to government agencies, not the individuals impacted.
2. Now: Individuals have a private cause of action to pursue any amounts they believe were wrongfully withheld in violation of wage and hour regulations.
3. Consequences:
 - a. Double damages upon proving a violation; treble (3x) damages for proving knowing violation.
 - b. Mandatory interest, reasonable attorneys' fees, and costs if violation established.
4. Knowing does not only mean specific intent, but includes (1) actual knowledge, (2) acting in deliberate ignorance of information, or simply (3) recklessly disregarding truth or falsity of information.
5. Additionally, employers may no longer forbid employees from disclosing their own wages with other employees, or take action against employees who do so. (Va. Code § 40.1-28.7:9).

Other Wage Considerations

- **Federal Minimum Wage under the FLSA has remained the same since 2009 at \$7.25 per hour.**
- **However, many states have increased their minimum wage to \$15 as of January 2024.**
- **Virginia has established a \$12 minimum wage to be adjusted by the Consumer Price Index. See Va. Code § 40.1-28.10.**

TAKEAWAYS

- 1. Assume your workers are employees unless you take the time to clearly identify them as independent contractors**
- 2. Don't assume your salaried employees are exempt, until you do the work to establish them under one of the appropriate exemptions**
- 3. Make necessary adjustments for employees who were exempt under the previous thresholds but are not, or will not be, under the new salary thresholds.**
- 4. Consider an audit or legal counsel for employees within the grey areas.**
- 5. Consider whether your employees fall under the “so-called ministerial exception.”**
 - A. A brief overview of the ministerial exception: <https://www.simmsshowerslaw.com/liability-looms-large-for-religious-organizations-after-supreme-courts-expansive-interpretation-of-sex/>
 - B. An in-depth review of the ministerial exception in its context of the Church Autonomy Doctrine: Carl H. Esbeck, An Extended Essay on Church Autonomy, 22 Federalist Soc'y Rev. 244 (2021) <https://fedsoc.org/commentary/publications/an-extended-essay-on-church-autonomy>.

PART 2: NON-COMPETITION AND RESTRICTIVE COVENANTS

WHAT CHURCHES NEED TO KNOW ABOUT NEW DEVELOPMENTS

Practitioners are often surprised to learn that many churches and ministries have non-compete agreements with their pastors or other key leaders.

WHAT CHURCHES NEED TO KNOW ABOUT NEW DEVELOPMENTS

Various authorities have sought to significantly restrict the use of non-competes:

1. **The Federal Trade Commission issued a Final Rule heavily restricting the use of non-competes for most workers.**
2. **The NLRB issued a memo asserting that “the proffer, maintenance, and enforcement of such agreements violate Section 8(a)(1) of the [NLRA].”**
3. **States have passed laws restricting the use of non-competes.**
 - A. Four states ban non-competes
 - B. Thirty-four jurisdictions heavily restrict their use including:
 - i. *Virginia (Va. Code § 40.1-28.7:8),*
 - ii. *DC (§ 32–581.01 et seq)*

FTC RULE

1. The FTC Final Rule, if allowed to go into effect would:

- a. prohibit employers from entering new non-compete agreements with most workers (both employees and independent contractors)
- b. apply to members of LLC's as well as employees and independent contractors
- c. require employers to provide written notice to employees indicating that all existing non-compete agreements are unenforceable unless an exemption applies, consistent with FTC mandated wording.

2. FTC Final Rule is supposed to be effective September 4, 2024, but that implementation date is likely to be impacted by litigation seeking to enjoin the enforcement of the rule.

FTC RULE

3. Exceptions to the rule:

- a. Does not apply to banks and some other financial and credit institutions.
- b. Existing agreements for “senior executives.” The definition of “senior executive” is narrow (expected to apply to less than 1% of all workers) and requires both:
 - i. a “job duties test” such that the individual has “policy-making” authority over the entire organization (usually an “entity’s president, chief executive officer or the equivalent” and others).
 - ii. making an income of \$151,164 in the preceding year.
- c. Can still use “garden leave” and essentially pay someone *not* to work.
- d. Non-compete entered into in connection with the bona fide sale of a business
- e. Non-competes enforced where the cause of action accrued prior to the rule’s effective date.

4. Consider litigation updates

- a. Ryan LLC v. Federal Trade Commission (injunction granted as to Plaintiff, but no nationwide injunctive relief yet, pending future developments in other cases).

NLRB MEMO

1. Previous to the FTC Rule, the NLRB issued a memo that it believed, and therefore would be interpreting, **most non-competes to be in violation of the National Labor Relations Act.**
2. Does the NLRB have jurisdiction over religious organizations? The answer to that has changed several times in recent years.
3. NLRB has asserted:
 1. *“Religious organizations:* The Board will not assert jurisdiction over employees of a religious organization who are involved in effectuating the religious purpose of the organization, such as teachers in church-operated schools. The Board has asserted jurisdiction over employees who work in the operations of a religious organization that did not have a religious character, such as a health care institution.”
 2. *Example:* In 2014 the NLRB adopted a standard that made it easier for the NLRB to assert jurisdiction over religious educational institutions. But in 2020 the United States Court of Appeals for the D.C. Circuit overruled the NLRB’s 2014 test.

VIRGINIA LAW

1. VA law provides that “No employer shall enter into, enforce, or threaten to enforce a covenant not to compete with any low-wage employee.” Va. Code § 40.1-28.7:8.
2. “Low-wage” employee means every employee making less than “average weekly wage of the Commonwealth” as calculated by the Virginia Department of Labor and Industry (DOLI).
 - A. This amount was \$62,608 per year initially when the bill was first implemented in 2020.
 - B. The amount for 2024 is \$1410 per week or \$73,320 annually.

PAY TRANSPARENCY LAWS

1. Many states have been passing laws that require some element of pay transparency.
2. VA law penalizes employers who forbid employees from sharing pay or compensation information or who take action against employees who share or inquire about wages or other compensation. Va Code § 40.1-28.7:9

**PART 3: NEW LEGAL ENVIRONMENT
FOR EMPLOYERS**

OVERVIEW OF EMPLOYMENT LAW CHANGES IN 2020

- I. Discrimination Law and Whistleblower Protection**
 - A. New Protected Classifications
 - B. Greater Areas of Potential Discrimination
 - C. Easier Standard for Employees to Satisfy
 - D. Greater Consequences for Violations
- 2. Wage and Hour Requirements**
 - A. Private Right of Action for Wage Claims
 - B. Misclassification of Worker (Employee v. Independent Contractor) new cause of action
 - C. Covenants Not to Compete Restricted
 - D. Minimum Wage Increase
 - E. FLSA Changes for Exempt and Non-Exempt Workers
- 3. Which of these laws apply to me?**
- 4. What exceptions should I be aware of?**

PROTECTED CLASSIFICATIONS VA. CODE § 2.2-3905(B)

Existing Classifications

- Race
- Color
- Religion
- Pregnancy
- Childbirth or related medical conditions including lactation
- Age (generally over 40)
- National origin

*New as of July 1, 2020

- Sexual orientation*
- Gender identity*
- Marital status*
- Status as a veteran*
- Expanded definition of race discrimination*

WHAT IS PROHIBITED DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION OR GENDER IDENTITY?

- “It is an unlawful employment practice for an employer to fail or refuse to hire, discharge, or otherwise discriminate against any individual with respect to such individual’s compensation, terms, conditions, or privileges of employment because of such individual’s ... sexual orientation [or] gender identity. . . .” –Virginia Code Section 2.2-2905(B)
- That sounds good because “discrimination” is a negative term. The concern is the lack of any clear religious exception in the text of the statute. The application of the new law must still pass 1st Amendment muster.
- Is it discrimination on the basis of sexual orientation or gender identity if a church requires its pastors to adopt and live consistently with the church’s sincerely held religious beliefs including that marriage is defined by God and revealed in the Bible to be a lifelong relationship between one man and one woman?
 - What about a religious non-profit (not a church) hiring lay staff to effectuate the organization’s religious ministry?
 - Does it matter whether the organization is a marriage ministry or a ministry intended to serve the poor?
 - What if it is a religious for-profit corporation?
- Ultimately these questions will have to be settled by litigation.
 - One suit in the Eastern District of Virginia. Another in State Court (Loudoun County Circuit Court)
 - Challenging the law and asking the court to answer these questions for various churches, nonprofits, and religious for-profits.

AREAS DISCRIMINATION MONITORED VA. CODE § 2.2-3905(B)

- 1. Before: Employment discrimination cases concentrated on wrongful discharge.**
- 2. Now: Employers may be sued for alleged discrimination in a variety of areas:**
 - A. Failure or refusal to hire
 - B. Discharge
 - C. Discriminate with respect to compensation, terms, conditions, or privileges of employment
 - D. Limiting, segregating, or classifying employees or applicants in anyway that would deprive any individual of employment opportunities or otherwise adversely affect an individual's status as an employee.

STANDARD
VA. CODE § 2.2-3905(B)

“A motivating factor for any employment practice, even though other factors also motivate the practice”

When does a bad employee-employer relationship turn into illegal discrimination? Differences between Millennial and Baby Boomer? Male and female? Caucasian and Minority? Heterosexual and someone who considers themselves LGBT+?

SCENARIO

Employer terminates (or otherwise takes negative employment action) against an individual in a protected class.

The supervisor involved in making the decision is not a part of the same protected class and has a strained relationship with employee due to differences in their backgrounds and viewpoints.

The supervisor admits that the two do not meet eye to eye. Employee also has some objective, moderate work-performance issues, doesn't fit in well with other employees, and frequently shows up late to work. Employee believes adverse action was taken with protected class as motivating factor and threatens legal action.

What is the likely result?

STANDARD
VA. CODE § 2.2-3905(B)

- **The Employee likely has a claim that will survive demurrer and proceed to trial unless settled.**
- Virginia judges will likely look to laws with similar language such as Title VII.
- However, Title VII of the Civil Rights Act of 1964, has similar language, but also includes express protections for employers who can prove they “would have taken the same action in the absence of the impermissible motivating factor.” 42 USCS § 2000e-5.
- The new Virginia law does not have this provision.
- Unclear how judges will review cases with both legitimate and potentially discriminatory motivations.

CONSEQUENCES OF VIOLATION VA. CODE § 2.2-3905(B)

- **Compensatory damages** (unlike some employment discrimination laws, there is no cap to these damages),
- **Punitive damages** up to the Virginia statutory maximum of \$350,000,
- Reasonable **attorney's fees and costs**, and
- A permanent or temporary **injunction, temporary restraining order, or other order**, as the judge deems appropriate, requiring a defendant to stop engaging in a practice or to take certain affirmative action or face being held in contempt of court.
- **Attorney General may also prosecute** any person or group “engaged in a pattern or practice” of resisting the nondiscrimination provisions of the Virginia Human Rights Act (including the employment provisions discussed today). **Civil penalties of \$50,000 for first violation; \$100,000 for subsequent violations.**

BUT IS VIRGINIA REALLY GOING TO ENFORCE THIS LAW? (2020 SNAPSHOT)

In short, **YES.**

- The Attorney General appeared to give a transition period between July 1, 2020 (when the laws went into effect) and the New Year. We expect that period to be coming to a rapid close.
- January 5th, Attorney General created the Office of Civil Rights “to expand, enhance, and centralize” the AG’s work in this area such as under the Virginia Values Act
- 13 staff members (including 7 attorneys) will have the full-time job of seeking out and punishing violations of the new laws we discussed as well as existing non-discrimination law.
 - The Office’s stated areas of focus and responsibility include “Combatting LGBTQ and Gender-based Discrimination.”
 - “The Office of Civil Rights includes personnel to investigate allegations that someone has been fired, denied housing, refused service, or otherwise discriminated against on the basis of gender, gender identity, sexual orientation, or another protected characteristic.”

EXPANSION OF PREGNANCY DISCRIMINATION LAW

- **New Posting Requirements** – must provide the information concerning “(i) the prohibition against unlawful discrimination on the basis of pregnancy, childbirth, or related medical conditions and (ii) an employee's rights to reasonable accommodation for known limitations related to pregnancy, childbirth, or related medical conditions.”
- Notice must be provided in four ways:
 - Posted in a conspicuous location,
 - In any employee handbook,
 - Directly to new employees, and
 - To any employee within 10 days of the employee providing notice to the employer that she is pregnant.
- The posted notice and handbook material must be provided by **October 29, 2020** (120 days from effective date of July 1).

DO ALL OF THESE VA. REQUIREMENTS
APPLY TO MY ORGANIZATION?

Category	Minimum Employees
Generally. Unless stated otherwise – § 2.2-3905(A)	15
Age Discrimination – § 2.2-3905(A)	20
Unlawful discharge – § 2.2-3905(A)	5
Pregnancy Discrimination – § 2.2-3909	5

EXCEPTIONS

1. **Ministerial Exception** – Judicial doctrine under the First Amendment protecting churches and certain religious organizations from state intrusion into the selection of their “ministers.” SCOTUS has broadened this exception recently.
2. Employers may hire or classify for employment individuals on the basis of religion, sex, or age, when religion, sex, or age is a “**bona fide occupational qualification** reasonably necessary to the normal operation of that particular employer.”
3. **Schools** or institutions of higher education may hire and employ employees **of a particular religion** if:
 - a. The school or institution of higher education is owned, supported, controlled, or managed by a particular religion, religious corporation, or association;
 - b. Or the school or institution is “**directed toward the propagation of a particular religion.**”
4. Employers may apply a **bona fide seniority or merit system**, as long as the system does not discriminate on the basis of protected classifications.
5. Employers may give and act upon the results acquired from a **professionally developed ability test**, as long as the test does not discriminate on the basis of a protected classification.

EXCEPTIONS

- 6) It is not considered discrimination for the employer to provide reasonable accommodations related to pregnancy, childbirth, or related medical conditions.
- 7) Employers may condition employment based upon citizenship status where required to do so for national security reasons by federal law or regulation or executive order.
- 8) Certain religious organizations may discriminate on the basis of religion. Nondiscrimination provisions shall not apply to the employment of individuals:
 - a) of a particular religion
 - b) by a religious corporation, association, educational institution, or society to perform work associated with its activities.”

ENFORCEMENT UPDATE

1. Though it would seem clear that enforcement of the Act against two churches, three schools, and a pregnancy center would violate the US or VA constitutions, early challenges to the suit and decisions by the court focused on whether the six ministries had standing to file a pre-enforcement challenge or whether they must wait until they were threatened with fines and prosecution.
2. The case was stayed while a case with similar issues went to the Virginia Supreme Court.
3. Ultimately after the Virginia Supreme Court's ruling in Vlaming v. West Point School Board the Commonwealth agreed that the law could not be enforced "with regard to the Plaintiff's provision of their services, use of their facilities, and publication of their beliefs in a manner consistent with their religious convictions about marriage, sexuality, and gender. . . ."
4. Accordingly, the Plaintiff ministries would be free to employ individuals who "profess and live according to the religious beliefs" held by the ministries and not be required to employ individuals who do not profess and live according to religious beliefs held by Plaintiffs.
5. Plaintiffs would also not be required to pay for or facilitate gender dysphoria treatment that violates their religious teachings.
6. These recognitions are important developments in protecting other ministries as well.

ACTION STEPS

- **Review employment policies** (including your handbook) **and job descriptions.**
- **Review wage, classification, and overtime policies and practices** to ensure consistency with new state and federal wage and hour rules.
- **Comply with new posting requirements** (non-compete and new pregnancy discrimination provisions)
- **Review and update your exempt versus non-exempt employee classifications.**
- **Make sure your independent contractors are truly independent contractors.**
- **Check your non-competition, non-disclosure, and non-solicitation agreements for enforceability and to avoid legal penalties.**
- **Seriously consider a human resources or employment legal audit.**
 - *Taking the initiative to be proactive is easier, and less expensive, than addressing a lawsuit or enforcement action taken against you! **The HR legal audit reviews documents and procedures from application and hiring to termination and employment handbooks and policies in between in a cost-effective manner and prioritizes action steps.***

RESOURCES

Virginia Employment Commission's Listing of the 20 Factors for Classifying Employees v. Contractors: <https://www.vec.virginia.gov/irs-20-factors-and-exemptions>

2020 Employment Law Overhaul: <https://www.simsshowerslaw.com/new-nondiscrimination-accommodations-other-employment-requirements/>

Religious Liberty Issues and the Virginia Values Act: <https://www.simsshowerslaw.com/new-sexual-orientation-and-gender-identity-law-in-virginia-ramifications-for-religious-employers-and-others-2/>

Q&A

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