



Virginia

Human Resources LEGAL FACT SHEET

Disclaimer: This fact sheet summarizes state laws and regulations on a variety of human resource issues for dairy farms, including wages, paystubs, deductions, child labor, and more. It is not intended to provide legal advice. The fact sheet is simply an overview of select issues with a high-level explanation of key requirements for each one, with links to more information and resources throughout the document. This fact sheet does not include all legal requirements for dairies. It was created in July 2018, and while it will be periodically updated, it may not reflect the current state of the law on every topic covered. Dairies should also review the federal fact sheet because employers—depending on size—may be required to comply with some or all of the applicable federal laws and regulations as well. By using this fact sheet you understand that there is no attorney-client relationship between you and the attorneys who were involved in developing the fact sheet. This fact sheet should not be used as a substitute for competent legal advice from a licensed attorney.

ARE THERE VIRGINIA STATE LAWS PERTAINING TO DAIRY FARMS ABOUT:

HIRING

TOPIC	ANSWER	DETAILS
Notice of Payday / Pay Rate	NO	Not required under Virginia law.
Reporting ¹	YES	<u>New hires</u> and rehires must be reported to the New Hire Reporting Center within 20 days.

WAGES

TOPIC	ANSWER	DETAILS
Payday ²	YES	Must establish regular paydays in advance. Hourly employees must be paid at least once every two weeks or twice per month. If the employee's weekly wages are 150% of the average weekly wage in the state, he/she can agree to be paid monthly. Salaried employees must be paid at least once per month.
Final Pay ³	YES	Employees that are fired, quit, or otherwise separated must be paid by the next regularly scheduled payday.
Overtime	NO	Overtime not addressed in Virginia law; federal rules may apply. Employers are encouraged to review the federal fact sheet.
Minimum Wage ⁴	NO	Virginia minimum wage law does not apply to persons employed as farm laborers or farm employees; federal rules may apply. Employers are encouraged to review the federal fact sheet.
Hours Worked	NO	Virginia law does not explicitly define 'hours worked' for calculating compensable time. Employers are encouraged to review the federal fact sheet.
Pay Stub ⁵	YES	Upon request, employers must provide employee with a written statement of: gross wages earned during any pay period and the amount/purpose of each deduction, if any.
Reporting Time Pay	NO	Virginia law does not require reporting time pay, i.e. an employee is only required to be paid for actual hours worked.

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WAGES

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TOPIC	ANSWER	DETAILS
Taxes and Withholding ⁶	YES	<p>If an employer is required to withhold federal income tax, then they must also <u>withhold Virginia income tax</u>. Employers must give employees a statement of taxes withheld, like a federal Form W-2, 1099-MISC or 1099-R.</p> <p>Employers must pay <u>Virginia Unemployment Insurance</u> taxes if:</p> <ul style="list-style-type: none"> • The employer paid cash wages to farm workers of \$20,000 or more in a quarter in the current or prior calendar year; OR, • The employer employed ten or more farm workers for some part of a day in 20 or more weeks of the current or prior calendar year. <p>Certain family employment is excluded from coverage requirements (a parent employed by their son/daughter, a person employed by their spouse, or a child under 21 employed by a parent). Unemployment taxes are paid by the employer; they are not taken out of employee pay. An employer can credit the amount it pays to Virginia in calculating how much it owes for federal unemployment taxes. More information.</p>
Deductions ⁷	YES	<p>Employers can only make deductions:</p> <ul style="list-style-type: none"> • For payroll, wage, or withholding taxes; or, • As required by law; or, • With the written and signed authorization of the employee. <p>See federal fact sheet for additional guidance.</p>
Bonuses	YES	<p>Bonuses are addressed in the Virginia Department of Labor and Industries' Field Operations Manual. Discretionary bonuses are not considered wages, while nondiscretionary bonuses paid under an agreement (oral or written) are considered wages protected under Virginia wage payment laws.</p> <p>A nondiscretionary bonus is one where the amount and criteria for getting the bonus are announced in advance. For example, performance goals (like meeting somatic cell count goals or a bonus for length of service) that workers know about in advance. Discretionary bonuses are ones that are not announced in advance, not expected by the employee, and not an incentive for the employee. For example, when the farm reaches a certain financial goal and decides to give all employees a bonus.</p> <p>Employers should follow any written policy they have about paying bonuses as a best practice.</p>

RECORD KEEPING

TOPIC	ANSWER	DETAILS
Payroll	YES/NO	Payroll records are not required under Virginia wage payment law; however, employers must keep payroll records as part of Unemployment Insurance law. See below for details.
Personnel File — Employee Access ⁸	NO	Virginia law does not require private sector employers to grant employees access to their personnel file.
Workers' Compensation ⁹	YES	Employers must maintain accurate records of work-related deaths, injuries, or illnesses that occur in the course of employment. Within 10 days after the occurrence and knowledge of such injury or death, a report of the injury or death shall be made and transmitted to the Virginia Workers Compensation Commission by the employer.
OSHA	YES	Virginia OSHA recordkeeping rules are identical to the federal standards. See the federal fact sheet for more details.
Federal	YES	There are numerous federal rules about recordkeeping. Employers should review the federal fact sheet.



RECORD KEEPING

(Continued)

TOPIC	ANSWER	DETAILS
Unemployment Insurance ¹⁰	YES	<p>Employers subject to contributions must submit <u>quarterly wage reports</u>.</p> <p>Whether or not subject to paying Unemployment Insurance taxes, every employer in Virginia must maintain accurate payroll records showing the following for each employee:</p> <ul style="list-style-type: none"> • A full legal name; • A social security account number; • The state or states in which his services are performed. If substantial work is performed outside of the state, must specify the base of operations outside of the state and the employee's residence (by state). Where the services are performed outside the United States, the country in which performed; • The date of hire, rehire, or return to work after temporary lay off; • The date when work ceased and the reason; • Scheduled hours (except for workers without a fixed schedule of hours, such as those working outside their employer's establishment in such a manner that the employer has no record or definite knowledge of their working hours); • Wages earned in any week by a partially employed individual, whether any week was in fact a week of less than full-time work, and time lost, if any, by each such worker, and the reason therefor; • Total wages in each pay period, and the total wages payable for all pay periods ending in each quarter, showing separately (i) money wages, including tips and dismissal or severance pay, and (ii) the cash value of other remuneration; • Any special payments for service other than those rendered exclusively in a given quarter, such as annual bonuses, gifts, prizes, etc., showing separately (i) money payments, (ii) other remuneration, and (iii) nature of said payments; • Amounts paid each worker as advancement, allowance or reimbursement for traveling or other business expenses, dates of payment, and the amounts of expenditures actually incurred and accounted for by such worker; • Location in which the worker's services are performed within or outside of the United States and dates such services are performed outside of the United States. <p>Records must be kept for at least four years from the date of the payment of the unemployment insurance tax. The records must be open to examination and audit by the Virginia Employment Commission. Employers must also provide the Commission with other records as needed when they are reviewing compliance with the Unemployment Insurance law (for example W-2 forms, income tax returns, etc.).</p>

WORKING CONDITIONS

TOPIC	ANSWER	DETAILS
Paid Sick and Vacation Leave	NO	Paid sick or vacation leave is not required under Virginia law. Employers who choose to provide such benefits must follow their written policy/contract.
Bathrooms ¹¹	YES	Virginia has incorporated many portions of the federal Pasteurized Milk Ordinance (PMO). The PMO specifies that dairy farms have one or more toilets that are conveniently located, properly constructed, properly operated, and maintained in a sanitary manner.
Working Hours	NO	No max hour or day requirements for adults. See Child Labor (below) for maximum hours for minors.
Rest and Meal Breaks	NO	<u>Not required for adults</u> . See Child Labor (below) for rules for minors. Employers that choose to provide rest and meal breaks must follow the applicable federal rules. Refer to federal fact sheet.
Labor Relations	NO	No provision in state law recognizing farm worker rights to organize.
Breaks for Nursing Mothers	NO	State law does not require workplace accommodations for employees that are nursing, but there may be requirements under federal law. Employers should refer to the federal fact sheet.



WORKING CONDITIONS

(Continued)

TOPIC	ANSWER	DETAILS
Whistleblower Protection	YES/NO	Virginia law does not provide a general protection for private sector employees in whistleblower cases. However, topic-specific laws (like wage discrimination, wage laws, etc.) may protect employees that report unlawful practices. And specific employee disclosures (for example, OSHA-related violations) are protected from retaliation.
Family and Medical Leave	NO	Virginia does not have a state-level family or medical leave law. Federal law requiring unpaid leave may apply depending on the size of the employer. Refer to federal fact sheet.
Pregnancy Accommodations and Leave ¹²	YES	Employers must treat female employees affected by pregnancy, childbirth, or related medical conditions the same as employees who are not affected by it but similar in their abilities or disabilities for all purposes.
Military and other Service Leave ¹³	YES	Employees of the state National Guard, Virginia Defense Force, or a person who is a member of the National Guard of another state and how is otherwise employed in Virginia are entitled to unpaid leave and job reinstatement. Employees cannot be required to use vacation or any other accrued leave, unless they wish to do so. Federal rules also apply for military leave; refer to the federal fact sheet.
Crime Victim and Witness Leave ¹⁴	YES	An employer cannot discharge or take adverse action against an employee for responding to a subpoena or summons and attending future proceedings as required in writing, nor shall an employee be required to use sick leave or vacation time for such a court appearance upon giving reasonable notice to their employer. An employer must also allow an employee who is the victim of a crime to leave work to be present at all criminal proceedings relating to the crime against the employee. The employee must provide the employer with a copy of the form provided to them by law-enforcement. Employers may limit the amount of leave provided if it creates undue hardship.
Jury Duty Leave ¹⁵	YES	An employer cannot discharge or take adverse action against an employee for responding to a jury summons or serving on a jury. Virginia law does not require employers to pay employees for time spent responding to a summons or serving on a jury. Employees cannot be required to use sick leave or vacation time. Employees that appear for four or more hours of jury duty, including travel time, cannot be required to work a shift anytime between 5:00pm the day of service and 3:00am the following day.
Voting Leave	NO	Virginia does not have a law requiring employers to give leave to vote.
School Activity Leave	NO	Virginia law does not address leave for private sector employees to attend a child's school activity.

CHILD LABOR

TOPIC	ANSWER	DETAILS
Child Labor ¹⁶	YES	Virginia child labor laws do not apply to minors employed by a parent or person legally acting as a parent on a farm owned or operated by that parent/legal guardian. Work permits are not required for agriculture, but employers can request an age certificate for minors under 16. Minimum age: <ul style="list-style-type: none"> • During school hours: 16 • Outside school hours: 14, or 12 with parental consent Minors under 16 must be given a lunch break of at least 30 minutes if working five or more continuous hours. There are <u>restricted and prohibited occupations</u> for workers under 18.



HUMAN RIGHTS

TOPIC	ANSWER	DETAILS
Employment Discrimination ¹⁷	YES	<p>Virginia law prohibits employment discrimination based on race, color, religion, national origin, sex, pregnancy, childbirth, and related medical conditions, age 40 and above, marital status, and disability. Applies to employers with more than 5, but less than 15 employees. For the purposes of age discrimination, covers employers with more than 5, but less than 20 employees.</p> <p>Employment discrimination means bias in hiring (including during interviews), promotion, job assignments, firing, pay, and other terms of employment.</p> <p>Employers cannot pay men and women different wages for comparable work on jobs that have virtually the same requirements in terms of skills, effort, and responsibility. Wage differences based on seniority, merit, quantity or quality of production or other factors other than sex are permitted.</p> <p>It is illegal to retaliate against employees for filing or otherwise aiding with a complaint.</p>
Harassment/ Sexual Harassment ¹⁸	YES	<p>Although not specifically mentioned in Virginia law, harassment based on the protected classes set forth above would be unlawful in Virginia. Harassment is unwelcome conduct. It becomes illegal when (1) employees have no choice but to tolerate the harassment if they want to keep their job; (2) it is so severe or pervasive that a regular person would see it as intimidating, hostile, or abusive.</p> <p>Sexual harassment is generally considered a type of employment discrimination based on sex, though not explicitly mentioned in Virginia law. Sexual harassment is unwelcome conduct. It becomes illegal when (1) employees have no choice but to tolerate the harassment if they want to keep their job; (2) it is so severe that a regular person would see it as intimidating, hostile, or abusive.</p> <p>Sexual harassment includes unwelcome sexual advances, requests for sexual favors and verbal or physical conduct of a sexual nature when:</p> <ul style="list-style-type: none"> • <i>Engaging in such conduct is made an implicit or explicit term or condition of employment. Example: A newly hired milker is told that sexual jokes, touching and nude posters are just part of farm life and she should try to ignore it.</i> • <i>Acceptance or rejection of such conduct is used as the basis for an employment decision affecting an employee. Example: A manager tells a worker applying for a promotion that the job would be his if he just "treated her right."</i> • <i>The conduct interferes with an employee's work or creates an intimidating, hostile or offensive work environment. Example: One worker experiences repeated advances from another asking her for dates or "just to go out for drinks after work." The worker says she isn't interested, but the co-worker won't take 'no' for an answer.</i> <p>It is illegal to retaliate against employees for filing or otherwise aiding with a complaint.</p>
Forced Labor	YES	<p>Human trafficking is illegal under federal law. Trafficking for labor means: recruiting, harboring, transporting, provisioning, or obtaining of a person by any means for subjection to forced labor, forced services, debt bondage, or slavery. More details.</p> <p>Employers should ensure they are carefully following all visa requirements or work agreements to avoid any inadvertent violations.</p>



HEALTH AND SAFETY

TOPIC	ANSWER	DETAILS
Workers' Compensation ¹⁹	YES	<p>Virginia agricultural employers <u>must carry workers' compensation coverage</u> if they regularly have more than three employees.</p> <p>Employers <u>must report any work-related injury or illness</u> to the Worker's Compensation Commission or the insurance carrier within 10 days. Minor accidents can be reported within 30 days. A minor accident is one that does not meet any of the following:</p> <ul style="list-style-type: none"> • <i>Lost time exceeds 7 days</i> • <i>Medical expenses more than \$1,000</i> • <i>Compensability is denied</i> • <i>Issues are disputed</i> • <i>Accident resulted in death</i> • <i>Permanent disability or disfigurement</i> • <i>Specific request made by the Workers' Compensation Commission</i>
OSHA ²⁰	YES	<p>Virginia has an approved OSHA 'state-plan', which means it is at least as effective as federal OSHA. Similar to federal OSHA, VOSH has a general duty clause that requires employers to provide employees a workplace free from recognized hazards that can cause death or serious physical harm.</p> <p><u>VOSH has adopted the federal OSHA</u> Standards for Agriculture, the General Industry Standards that apply to agriculture, and the reporting/recordkeeping requirements. See the federal fact sheet for details on requirements.</p>
Housing	YES/NO	<p>Virginia law does not explicitly address standards for permanent agricultural housing, though general landlord/tenant or public health laws may apply. Employers should follow best practices when providing housing – which includes, at minimum, a written housing agreement and properly maintaining the facilities. The FARM HR Manual has guidance around best practices for agricultural worker housing.</p>

References

1. Va. Code Ann. §63.2-1946
2. Va. Code Ann. §40.1-29
3. Va. Code Ann. §40.1-29
4. Va. Code Ann. §40.1-28.9
5. Va. Code Ann. §40.1-29
6. Va. Code Ann. §58.1-461; §60.2-214; §60.2-219
7. Va. Code Ann. §40.1-29
8. VA. Code Ann. §2.2-3705.1
9. Va. Code Ann. §65.2-900
10. 16 VA. Admin. Code §5-32-20 and §5-32-10
11. 2 Va. Admin. Code §5-490-50; §5-531-70
12. Va. Code Ann. §2.2-3901
13. Va. Code Ann. §44-93.2 to 44-93.4
14. Va. Code Ann. §18.2-465.1; 40.1-28.7:2
15. Va. Code Ann. §18.2-465.1
16. Va. Code Ann. §40.1-79.01; §40.1-78; §40.1-104; 16 Va. Admin. Code 15-40-40
17. Va. Code Ann. §2.2-3900 et seq.; §40.1-28.6
18. Va. Code Ann. §2.2-3900 et seq
19. Va. Code Ann. §65.2-101; §65.2-900
20. Va. Code Ann. §40.1-51.1; 16 Va. Admin. Code §25-190-1928; §25-90-1910; §25-85-1904; §15-30-20

