

Office of Regulatory Management
Economic Review Form

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| Agency name | Department of Labor and Industry |
| Virginia Administrative Code (VAC) Chapter citation(s) | 16VAC15-60 – new regulation Chapter 60 |
| VAC Chapter title(s) | Regulation Governing On-The-Job Training Programs or Other Training Programs |
| Action title | Promulgate New Regulation Governing On-The-Job Training Programs or Other Training Programs |
| Date this document prepared | March 17, 2023 |
| Regulatory Stage (including Issuance of Guidance Documents) | Proposed Stage |

Cost Benefit Analysis

Legislative Mandate

“Chapters 1204¹ and 1242² of the 2020 Acts of Assembly (identical bills) amended the Virginia Minimum Wage Act to incrementally increase the Virginia minimum wage beginning May 1, 2021. The legislation also created a training wage for employees in on-the-job training programs lasting less than 90 days. The Virginia training wage (VA training wage) is the higher of either the federal minimum wage or 75 percent of the Virginia minimum wage. The table below shows the effective VA training wage for different time periods, if the federal minimum wage remains at \$7.25.”³

¹ See <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP1204>

² See <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP1242>

³ https://townhall.virginia.gov/L/GetFile.cfm?File=62\5701\9489\EIA_DOLI_9489_v1.pdf

Calculation of the VA Training Wage under the 2020 Legislative Mandate*

| BEGIN DATE | END DATE | VA Minimum Wage | Federal Minimum Wage* | 75 percent of VA Minimum Wage | VA Training Wage* |
|-----------------|-----------------|----------------------|-----------------------|-------------------------------|-------------------|
| < May 1, 2021 | May 1, 2021 | federal minimum wage | \$7.25 | N/A | N/A |
| May 1, 2021 | January 1, 2022 | \$9.50 | \$7.25 | \$7.13 | \$7.25 |
| January 1, 2022 | January 1, 2023 | \$11.00 | \$7.25 | \$8.25 | \$8.25 |
| January 1, 2023 | January 1, 2025 | \$12.00 | \$7.25 | \$9.00 | \$9.00 |
| January 1, 2025 | January 1, 2026 | \$13.50 | \$7.25 | \$10.13 | \$10.13 |
| January 1, 2026 | January 1, 2027 | \$15.00 | \$7.25 | \$11.25 | \$11.25 |

*The VA training wage in this table assumes that the federal minimum wage would remain at \$7.25.

Standards for On-The-Job Training Programs

The legislation specifies that the VA training wage applies to all persons who are, “enrolled in an established employer on-the-job or other training program for a period not to exceed 90 days which meets standards set by regulations adopted by the Commissioner.” The Regulation Governing On-The-Job Training Programs or Other Training Programs (16 VAC 15-60) is a new regulation proposed by DOLI to set such standards. It became effective as an emergency regulation on by May 1, 2021. The emergency regulation is scheduled to expire on April 29, 2023. DOLI proposes to make the regulation permanent.⁴

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

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| (1) Direct & Indirect Costs & Benefits (Monetized) | <p>Direct Costs: There are no direct costs imposed on employers as the regulation does not require them to participate in the on-the-job training program.</p> <p>Employers that choose to participate will incur costs associated with preparing the written description of the training program required. The Department estimates that development of the written description will take up to one (1) hour. The Department intends to provide a Guidance Document with a template for employers to use to develop the written description, including several examples, which could reduce the amount of time employers will need to complete the written description.</p> <p>Employees receive 25% lower wage during the training stage of employment, then if there was no training wage.</p> <p>Indirect Costs: Employees could lose job opportunities who otherwise would have received a desired offer, if the employer could have paid the VA training wage but was</p> |
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⁴ *Id.*

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| | <p>prohibited by one or more of the proposed provisions limiting use of the training wage.</p> <p>Employers may have reduced potential cost savings who would have chosen to pay the VA training wage if not prohibited by one or more of the provisions limiting use of the training wage. For example, if firms could pay the training wage to seasonal or temporary employees, for jobs that do not require technical skills, or to displace a current higher-paid worker, such firms could potentially save on payroll while hiring their preferred candidates.</p> <p>Direct Benefits: Employers that choose to participate can take advantage of paying a 25% lower wage to their trainees during the training stage of employment.</p> <p>The proposed standards in the regulation are likely beneficial for employees in that they may: somewhat reduce the potential occurrences where the training wage is paid when the individual would have been hired anyway, help limit the use of the training wage for only when there is intent to employ the individual more than temporarily and help ensure that actual training occurs when the training wage is paid.</p> <p>Employers could be encouraged to hire inexperienced individuals when they might not otherwise do so with the time-limited training wage that is below the minimum wage allowed under this regulation.</p> <p>Indirect Benefits: The proposed standards in the regulation are likely beneficial for employees in that they may reduce the likelihood that other employees would be displaced.</p> | |
| (2) Present Monetized Values | Direct & Indirect Costs | Direct & Indirect Benefits |
| | (a) Employees receive 25% lower wage during the training stage of employment, then if there was no training wage. | (b) Employers can pay 25% lower wage to their trainees during the training stage of employment. |
| (3) Net Monetized Benefit | Not available. | |
| (4) Other Costs & Benefits (Non-Monetized) | <p>Costs: Employers will know their requirements and responsibilities in having such a training program. Employers who do not utilize the training wage will know that their competitors that do have one are not getting an undue competitive advantage.</p> | |

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| | <p>Benefits:</p> <p>Employees will know if their employer is appropriately paying them at a reduced wage during their participation in the training programs.</p> <p>The Department will be able to adequately monitor compliance with training wage provisions of the minimum wage law.</p> |
| (5) Information Sources | <p>Virginia Department of Planning and Budget Economic Impact Analysis Town Hall Action/Stage: 5701 / 9489 May 2, 2022 https://townhall.virginia.gov/L/GetFile.cfm?File=62\5701\9489\EIA_DOLI_9489_v1.pdf</p> |

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

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| (1) Direct & Indirect Costs & Benefits (Monetized) | <p>This is a new regulation promulgated pursuant to § 40.1-28.10 of the Code of Virginia. This regulation is required by § 40.1-28.10.A.2, which requires the Commissioner of the Department of Labor and Industry to set standards required for any employer on-the-job training program or other training program established in accordance with § 40.1-28.10.</p> <p>Employers are not directly impacted by the regulation, because they are not required to participate in the training wage program.</p> | |
| (2) Present Monetized Values | Direct & Indirect Costs | Direct & Indirect Benefits |
| | (a) Not applicable. | (b) Not. Applicable. |
| (3) Net Monetized Benefit | Not. Applicable. | |
| (4) Other Costs & Benefits (Non-Monetized) | Not. Applicable. | |
| (5) Information Sources | <p>Virginia Department of Planning and Budget Economic Impact Analysis Town Hall Action/Stage: 5701 / 9489</p> | |

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| | <p>May 2, 2022</p> <p>https://townhall.virginia.gov/L/GetFile.cfm?File=62\5701\9489\EIA_DOLI_9489_v1.pdf</p> |
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Table 1c: Costs and Benefits under Alternative Approach(es)

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| <p>(1) Direct & Indirect Costs & Benefits (Monetized)</p> | <p>The Department could limit the requirement for the written description of the training program to employers with 20 or more employees to reduce compliance costs on small businesses.</p> <p>2018 U.S. Census data indicates that small businesses with 19 or fewer or no employees constituted 97.6% of all small businesses in Virginia (small businesses are defined as firms with fewer than 500 employees, Va. Code § 2.2-4007.04).</p> <p>https://cdn.advocacy.sba.gov/wp-content/uploads/2021/08/30143731/Small-Business-Economic-Profile-VA.pdf</p> | |
| <p>(2) Present Monetized Values</p> | <p>Direct & Indirect Costs</p> | <p>Direct & Indirect Benefits</p> |
| | <p>(a) Employers that choose to participate will incur costs associated with preparing the written description of the training program required. The Department estimates that development of the written description will take up to one (1) hour. The Department intends to provide a Guidance Document with a template for employers to use to develop the written description, including several examples, which could reduce the amount of time employers will need to complete the written description.</p> | <p>(b) If the requirement for the written description of the training program is limited to employers with 20 or more employees, it will reduce compliance costs on small businesses with 19 or fewer or no employees. Employers that choose to participate would normally incur costs associated with preparing the written description of the training program required. The Department estimates that development of the written description will take up to one (1) hour.</p> |
| <p>(3) Net Monetized Benefit</p> | <p>Not available.</p> | |

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| (4) Other Costs & Benefits (Non-Monetized) | Please note that the Department has a legal responsibility to investigate payment of wage issues and the requirement for a written program in this regulation is helpful in conducting inspections related to its implementation. As an example, DOLI has received one payment of wage complaint about an employer who raised the defense that they were using the training wage, which DOLI determined was an inappropriate use of the training wage. The employer ceased the inappropriate use and paid the damages to fourteen of its employees to whom they had paid a training wage. Eliminating the written program for employers with 19 or fewer employees will likely increase the time and cost of the inspection for the Department and result in the employer having to expend resources to provide answers to Department questions that would otherwise have been addressed in the written program. |
| (5) Information Sources | Virginia Department of Planning and Budget Economic Impact Analysis Town Hall Action/Stage: 5701 / 9489 May 2, 2022 https://townhall.virginia.gov/L/GetFile.cfm?File=62\5701\9489\EIA_DOLI_9489_v1.pdf |

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 2: Impact on Local Partners

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| (1) Direct & Indirect Costs & Benefits (Monetized) | <p>The proposed regulation neither disproportionately affects localities, nor affects costs for local governments.</p> <p>Local government employers are not directly impacted by the regulation because they are not required to participate in the training wage program.</p> <p>Beginning May 1, 2021, an employee enrolled in an established local government on-the-job or other training program may, for the first 90 calendar days after start of employment, be paid a training wage of not less than 75 percent of the minimum hourly wage specified at §40.1-28.10; which will allow participating local government employers to reduce payroll costs by 25% for up to 90 days per covered employee.</p> <p>Local government employers that choose to participate will incur some costs associated with preparing the written description of the training program. The Department estimates that development of the written description will take up to one (1) hour. The Department intends to provide a Guidance Document with a template for employers to use to develop the written description, including several examples, which could reduce the amount of time local government employers will need to complete the written description.</p> |
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| | <p>Since there are no provisions for enrollment or registration of employers that wish to use a training wage, DOLI does not collect information on the number of participating employers and employees. Given the paucity of information on use of the training wage, the impact of the establishment of the VA training wage is not currently known.</p> | |
| (2) Present Monetized Values | <p>Direct & Indirect Costs</p> <p>(a) Local government employers are not directly impacted by the regulation because they are not required to participate in the training wage program.</p> <p>Local government employers that choose to participate will incur some costs associated with preparing the written description of the training program. The Department estimates that development of the written description will take up to one (1) hour. The Department intends to provide a Guidance Document with a template for employers to use to develop the written description, including several examples, which could reduce the amount of time local government employers will need to complete the written description.</p> <p>Since there are no provisions for enrollment or registration of employers that wish to use a training wage, DOLI does not collect information on the number of participating employers and employees. Given the paucity of information on use of the training wage, the impact of the establishment of the VA training wage is not currently known.</p> | <p>Direct & Indirect Benefits</p> <p>(b) Beginning May 1, 2021, an employee enrolled in an established local government on-the-job or other training program may, for the first 90 calendar days after start of employment, be paid a training wage of not less than 75 percent of the minimum hourly wage specified at §40.1-28.10; which will allow participating local government employers to reduce payroll costs by 25% for up to 90 days per covered employee.</p> <p>Since there are no provisions for enrollment or registration of local government employers that wish to use a training wage, DOLI does not collect information on the number of participating employers and employees. Given the paucity of information on use of the training wage, the impact of the establishment of the VA training wage is not currently known.</p> |
| (3) Other Costs & Benefits | | |

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| (Non-Monetized) | |
| (4) Assistance | |
| (5) Information Sources | Virginia Department of Planning and Budget Economic Impact Analysis Town Hall Action/Stage: 5701 / 9489 May 2, 2022 https://townhall.virginia.gov/L/GetFile.cfm?File=62\5701\9489\EIA_DOLI_9489_v1.pdf |

Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 3: Impact on Families

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| (1) Direct & Indirect Costs & Benefits (Monetized) | <p>Direct Costs: Describe the direct costs of this proposed change here.</p> <p>Indirect Costs: Describe the indirect costs of the proposed change.</p> <p>Direct Benefits: Describe the direct benefits of this proposed change here.</p> <p>Indirect Benefits: Describe the indirect benefits of the proposed change.</p> | |
| (2) Present Monetized Values | Direct & Indirect Costs | Direct & Indirect Benefits |
| | <p>(a) Beginning May 1, 2021, an employee enrolled in an established on-the-job or other training program may, for the first 90 calendar days after start of employment, be paid a training wage of not less than 75 percent of the minimum hourly wage specified at §40.1-28.10; which will negatively impact families who might rely on a wage earner’s reduced wages of 25% for up to 90 days per covered employee.</p> <p>Since there are no provisions for enrollment or registration of</p> | <p>(b) Presumably the intent of having a time-limited training wage that is below the minimum wage is to encourage employers to hire inexperienced individuals when they might not otherwise do so, which could benefit an inexperienced family member in obtaining a job they would otherwise have been unqualified for.</p> <p>Since there are no provisions for enrollment or registration of employers that wish to use a training wage, DOLI</p> |

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| | employers that wish to use a training wage, DOLI does not collect information on the number of participating employers and employees. Given the paucity of information on use of the training wage, the impact of the establishment of the VA training wage is not currently known. | does not collect information on the number of participating employers and employees. Given the paucity of information on use of the training wage, the impact of the establishment of the VA training wage is not currently known. |
| (3) Other Costs & Benefits (Non-Monetized) | | |
| (4) Information Sources | Virginia Department of Planning and Budget Economic Impact Analysis Town Hall Action/Stage: 5701 / 9489 May 2, 2022 https://townhall.virginia.gov/L/GetFile.cfm?File=62\5701\9489\EIA_DOLI_9489_v1.pdf | |

Impacts on Small Businesses

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 4: Impact on Small Businesses

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| (1) Direct & Indirect Costs & Benefits (Monetized) | Small businesses are not directly or indirectly impacted by the regulation because they are not required to participate in the training wage program. For small businesses that choose to participate, an employee enrolled in an established on-the-job or other training program may, for the first 90 calendar days after start of employment, be paid a training wage of not less than 75 percent of the minimum hourly wage specified at §40.1-28.10; which will allow participating small businesses to reduce payroll costs by 25% for up to 90 days per covered employee. | |
| (2) Present Monetized Values | Direct & Indirect Costs | Direct & Indirect Benefits |
| | (a) Small businesses that choose to participate will incur some costs associated with preparing the written | (b) Beginning May 1, 2021, an employee enrolled in an established on-the-job or other training program |

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| | <p>description of the training program. The Department estimates that development of the written description will take up to one (1) hour. The Department intends to provide a Guidance Document with a template for employers to use to develop the written description, including several examples, which could reduce the amount of time employers will need to complete the written description.</p> <p>Since there are no provisions for enrollment or registration of employers that wish to use a training wage, DOLI does not collect information on the number of participating employers and employees. Given the paucity of information on use of the training wage, the impact of the establishment of the VA training wage is not currently known.</p> | <p>may, for the first 90 calendar days after start of employment, be paid a training wage of not less than 75 percent of the minimum hourly wage specified at §40.1-28.10; which will allow participating small businesses to reduce payroll costs by 25% for up to 90 days per covered employee.</p> <p>Since there are no provisions for enrollment or registration of employers that wish to use a training wage, DOLI does not collect information on the number of participating employers and employees. Given the paucity of information on use of the training wage, the impact of the establishment of the VA training wage is not currently known.</p> |
| (3) Other Costs & Benefits (Non-Monetized) | | |
| (4) Alternatives | <p>The Department could limit the requirement for the written description of the training program to employers with 20 or more employees to reduce compliance costs on small businesses.</p> <p>2018 U.S. Census data indicates that small businesses with 19 or fewer or no employees constituted 97.6% of all small businesses in Virginia (small businesses are defined as firms with fewer than 500 employees, Va. Code § 2.2-4007.04).</p> <p>https://cdn.advocacy.sba.gov/wp-content/uploads/2021/08/30143731/Small-Business-Economic-Profile-VA.pdf</p> <p>Please note that the Department has a legal responsibility to investigate payment of wage issues and the requirement for a written program in this regulation is helpful in conducting inspections related to its implementation.</p> | |

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| | <p>As an example, DOLI has received one payment of wage complaint about an employer who raised the defense that they were using the training wage, which DOLI determined was an inappropriate use of the training wage. The employer ceased the inappropriate use and paid the damages to fourteen of its employees to whom they had paid a training wage. Eliminating the written program for employers with 19 or fewer employees will likely increase the time and cost of the inspection for the Department and result in the employer having to expend resources to provide answers to Department questions that would otherwise have been addressed in the written program.</p> |
| <p>(5) Information Sources</p> | <p>Virginia Department of Planning and Budget Economic Impact Analysis Town Hall Action/Stage: 5701 / 9489 May 2, 2022 https://townhall.virginia.gov/L/GetFile.cfm?File=62\5701\9489\EIA_DOLI_9489_v1.pdf</p> |

Changes to Number of Regulatory Requirements

For each individual VAC Chapter amended, repealed, or promulgated by this regulatory action, list (a) the initial requirement count, (b) the count of requirements that this regulatory package is adding, (c) the count of requirements that this regulatory package is reducing, (d) the net change in the number of requirements. This count should be based upon the text as written when this stage was presented for executive branch review. Five rows have been provided, add or delete rows as needed. In the last row, indicate the total number for each column.

Table 5: Total Number of Requirements

| | Number of Requirements | | | |
|-----------------------|-------------------------------|------------------|---------------------|-------------------|
| Chapter number | Initial Count | Additions | Subtractions | Net Change |
| 16VAC15-60-20.B.1-8 | 0 | 8 | 0 | 8 |
| | | | | |
| | | | | |
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| | | | | |
| TOTAL | 0 | 8 | 0 | 8 |