

**VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY
DIVISION OF LABOR AND EMPLOYMENT LAW**

FIELD OPERATIONS MANUAL

**CHAPTER FIVE
PAYMENT FOR MEDICAL EXAMS AS A CONDITION OF
EMPLOYMENT**

This document is part of the latest version of the Virginia Department of Labor and Industry Division of Labor and Employment Law's Field Operations Manual. This document supersedes any and all previous editions.

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DISCLAIMER

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5.00 Unlawful to Require Payment for Medical Examination as Condition of Employment

A. Coverage

The medical examination statute is set forth in § 40.1-28 of the Code of Virginia. It applies to all private industry employers doing business in the Commonwealth.

B. Summary

Employers cannot require an employee or prospective employee to pay the cost of a medical examination or the costs for furnishing medical records as a condition of employment unless the medical examination is required by local, state or federal law.

A medical examination referred to in this section is not construed to cover only a complete physical or medical examination. Rather, it includes all types of medical procedures whether singularly such as a drug test or a tuberculin test or a combination of such procedures such as a complete physical.

Employers may require an employee to pay the cost of a medical examination or the costs of furnishing medical records as a condition of employment if such is required by any local, state, or federal law or regulation such as the Interstate Commerce Commission (ICC) requires truckers to secure a physical examination each year; the ICC requires the physical, not the employer; thus, the employee could be made to pay for such costs.

There are instances, however, when a law will require a certain medical procedure and also specify who is to incur the costs. For example, VOSH regulations in connection with the asbestos program require an employee to secure a medical examination and also require payment to be made by the employer.

In summary, generally any medical examination or medical procedure required by law would be exempt from § 40.1-28, and the employee could be required to pay such costs as a condition of employment. The cost may be deducted from wages provided the employer first secures written and signed authorization from the employee(s) pursuant to § 40.1-29 C of Virginia's Payment of Wage Law.

C. Case Assignment

1. Regional, Field, or Central Office staff member may receive the complaint.
2. Complaint must be received in writing.

D. Investigation

1. Interviews complainant.
2. Interviews employer.

3. Conducts records review/audit.
4. Interviews co-workers/witnesses if necessary.
5. Determines the validity of the complaint and the amount that should be reimbursed each affected employee.

E. Informal Resolution

1. Discuss findings and determination with employer.
2. Inform employer:
 - (1) To cease and desist requiring employees to pay the cost of medical examinations or the costs for furnishing medical records as a condition of employment.
 - (2) To reimburse the named employees all moneys withheld for medical examinations or furnishing medical records as a condition of employment.
 - (3) Civil penalties under the authority of § 40.1-28 will be assessed by DOLI if the affected employees are not reimbursed all moneys withheld from the employees' wages or paid for with other moneys of the employees for medical costs as a condition of employment and if informal settlement is not made within 15 days from receipt of the forthcoming Demand Resolution Letter.
 - (4) That all employees who file complaints alleging unauthorized deductions from their wages for medical costs will be advised of their rights under § 40.1-29 of the Code of Virginia. Final Wage Orders may be issued by the Commissioner of DOLI to recover unauthorized deductions, and additional civil money penalties may be assessed under the authority of § 40.1-29.

3. Demand Resolution Letter

The Representative will prepare and mail the Demand Resolution Letter immediately after Informal Conference with employer. The Representative will have the revised letter reviewed and approved by the Supervisor before mailing. The letter will be sent by first-class mail.

4. Informal Compliance Obtained

If employer complies within 15 days of the letter date of the Demand Resolution Letter, case will be closed; no penalty will be assessed.

E. Penalty Assessment Under § 40.1-28

1. Case File Preparation and Submission of Penalty

If employer does not comply within 15 days of the letter date of the Demand Resolution Letter, Representative will prepare the Medical Examination Costs Civil Money Penalty Report calculation sheet. A penalty will be calculated for each employee who has had to pay medical costs as a condition of employment. Such medical cost amounts may have been deducted from the employee's wages which is determined by the Representative during the investigative records/review audit or paid with other moneys of the employee which is documented by the Representative through employee/employer interviews, review of the employer's employment policy, etc. The case file will be submitted to the Supervisor for review and approval. Upon receiving approval, the Representative will submit the case file to the Central Office for assessment of the penalty.

2. Assessment of Penalty

The Central Office will assess the penalty, by certified and regular first-class mail. A copy of the penalty calculation sheet will be sent to the employer with the assessment letter. The Central Office will notify the Representative of the amount and date the penalty is paid or that the payment has not been received and the 15 days after receipt of the assessment has expired.

3. Penalty Contested

If the employer notifies DOLI within 15 days of receipt of the assessment letter that he wishes to contest the penalty before the appropriate court, the case will be forwarded to the Central Office to be set for trial in the appropriate general district court.

4. Final Order

If the employer does not pay the penalty or contest, the Representative will prepare a draft Final Order, and submit to Central Office. Central Office will prepare the Final Order, and it will be submitted for approval and signing to the Commissioner. The Final Order will be sent by certified and first-class mail. The Representative will be furnished a copy of the Final Order .

5. Recording Final Order

If the Final Order is not paid within 18 days (15 days plus 3 days mailing), the Central Office will prepare the Certification of Final Order and send to the Representative for recording with the appropriate circuit court(s). The Representative will send the recordation information to the Central Office for sending to collection.

6. Tracking and Collection of Final Order

The Central Office will track all penalty assessment and penalty collections. If the Final Order is not paid, the case will be sent to the collection attorney or collection agency and/or the Commonwealth's Debt Set off Program.

7. Accounts Receivable Report

The Central Office will prepare the quarterly Accounts Receivable Report and submit to DOLI's accounting office

F. Action Under Section 40.1-29

1. Upon receiving a "Statement of Claim for Unpaid Wages" form from each employee who has had moneys deducted from his or her wages for medical costs, the Representative will proceed with the payment of wage procedures. Action under § 40.1-29 will only be taken for those employees who file a wage claim with DOLI. On the other hand, penalty calculations under § 40.1-28 will be made based on all employees who have had to pay such medical costs as a condition of employment whether deducted from the paycheck or paid for with other moneys of the employee.
2. If the employer fails to comply with the Payment of Wage Law, a Final Wage Order and a Final Penalty Order under § 40.1-29 will be issued.
3. The Central Office will track all penalty assessments and collections.