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

FIELD OPERATIONS MANUAL

CHAPTER SIX-A
LOCAL GOVERNMENT UNION REQUIREMENTS AND EMPLOYEE PROTECTIONS

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.

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DISCLAIMER

The Field Operations Manual (FOM) is an operations manual that provides the Division of Labor and Employment Law investigators and staff with interpretations of statutory provisions, procedures for conducting investigations, and general administrative guidance. The FOM was developed by the Division of Labor and Employment Law under the general authority to administer laws that the agency is charged with enforcing. The FOM reflects policies established through changes in legislation, regulations, court decisions, and the decisions and opinions of the Virginia Department of Labor and Industry.

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Section 1.00 Background

A. Virginia's Right-to-Work Law

Virginia's Right-to-Work Law is set forth in §§ 40.1-58 through 40.1-69 of the Code of Virginia and applies to both private and public sector employees, pursuant to § 40.1-58.1 of the Code of Virginia:

"As used in this article, the words, 'person,' 'persons,' 'employer,' 'employees,' 'union,' 'labor union,' 'association,' 'organization' and 'corporation' shall include but not be limited to public employers, public employees and any representative of public employees in this Commonwealth. The application of this article to public employers, public employees and their representatives shall not be construed as modifying in any way the application of § 40.1-55 to government employees."

Note: For further information, see **Field Operations Manual Chapter Six, Right to Work**.

B. Local Government Collective Bargaining

Section 40.1-57.2 of the Code of Virginia permits counties, cities, and towns (local government public employers) to adopt local ordinances authorizing them to (i) recognize any labor union or other employee association as a bargaining agent of any public officers or employees, except for Constitutional officers and their employees, and including public school employees and (ii) collectively bargain or enter into any collective bargaining contract with any such union or association or its agents with respect to any matter relating to them or their employment.

Further, the statute states that for any governing body of a county, city, or town that has not adopted an ordinance or resolution providing for collective bargaining, such governing body is required, within 120 days of receiving certification from a majority of public employees in a unit considered by such employees to be appropriate for the purposes of collective bargaining, to take a vote to adopt or not adopt an ordinance or resolution to provide for collective bargaining by such public employees and any other public employees deemed appropriate by the governing body.

The statute also provides that the prohibition against striking for public employees applies, irrespective of any such local ordinance.

C. Regulation 16VAC15-70, Local Government Requirements and Employee Protections

Section 40.1-2.1 of the Code of Virginia states that the provisions within Title 40.1 and the regulations issued pursuant to the authority of that chapter shall not apply to the Commonwealth or any of its agencies, institutions, or political subdivisions, or any public body, unless, and to the extent that, coverage is extended by specific regulation of the Commissioner or the Safety and Health Codes Board.

On June 8, 2025, the Department adopted 16VAC15-70 to clarify that the statutory requirements that currently apply to any private sector labor organization elections apply to labor organization elections for local government employees, thereby providing equal opportunity, application, and protection of the law for local government employers and employees. The final regulation defines applicable terms, extends certain statutory labor protections to local government public employers and employees, and allows the Commissioner to request prosecution by the appropriate Attorney for the Commonwealth of all violations of law relating to local government labor organization requirements and employee protections before a court of competent jurisdiction.

Section 2.00 Coverage

Article 3 of Chapter 4 of Title 40.1 of the Code of Virginia includes the following statutes which, pursuant to § 40.1-58.1 of the Code of Virginia, "shall include but not be limited to public employers, public employees and any representative of public employees in this Commonwealth" and therefore explicitly extend to local government labor organizations:

i. Section 40.1-62 of the Code of Virginia, Employer not to require payment of union dues, etc.

ii. Section 40.1-66 of the Code of Virginia, Conduct causing violation of article illegal; peaceful solicitation to join union.

iii. Section 40.1-67 of the Code of Virginia, Injunctive relief against violation; recovery of damages.

iv. Section 40.1-69 of the Code of Virginia, Violation a misdemeanor.

Note: For the sake of clarity, these statutes are also referenced in 16VAC15-70.

16VAC15-70-20, Applicability of statute to local government public employers, extends coverage of the following statutory provisions to local government public employers:

i. Section 40.1-6(2) of the Code of Virginia, Powers and duties of Commissioner;

ii. Section 40.1-7 of the Code of Virginia, Attorney for the Commonwealth to prosecute on request of Commissioner;

iii. Section 40.1-49.4(F)(2) of the Code of Virginia, Injunctions;

iv. Section 40.1-54.3 of the Code of Virginia, Right to vote by secret ballot on labor organization representation;

v. Section 40.1-29(C) of the Code of Virginia, to the extent that an alleged violative conduct concerns improper withholding of any dues, fees, or other charges of any kind for any labor organization, no local government public employer shall withhold any part of the wages or salaries of any employee except for payroll, wage, or withholding taxes or in accordance with law without the written and signed authorization of the employee; and

vi. Section 40.1-29(C) of the Code of Virginia, to the extent that alleged violative conduct concerns improper withholding of any dues, fees, or other charges of any kind for any labor organization, § 40.1-29(A), (E) through (H), and (F) of the Code of Virginia shall apply to local government public employers.

Section 3.00 Procedures for the Certification and Decertification of Exclusive Bargaining Representatives

Section 40.1-57.2 of the Code of Virginia provides that any ordinance adopted by a local government that authorizes collective bargaining with recognized bargaining representatives "shall provide for procedures for the certification and decertification of exclusive bargaining representatives, including reasonable public notice and opportunity for labor organizations to intervene in the process for designating an exclusive representative of a bargaining unit."

Note: As a means of providing guidance and assistance to local governments interested in pursuing an ordinance which authorizes collective bargaining for local government employees, the Department has developed reference materials concerning employee rights and statutory requirements. For more information, refer to **Appendix A – Local Government Union Requirements Reference Guide.**

Section 4.00 Employee Rights

A. Section 40.1-54.3(B) of the Code of Virginia, Right to vote by secret ballot on labor organization representation, provides that " [i]n any procedure providing for the designation, selection, or authorization of a labor organization to represent employees, the right of an individual employee to vote by secret ballot in such a procedure is a fundamental right that shall be guaranteed from infringement."

Pursuant to 16VAC15-70-10, a "secret ballot" means "the expression by ballot, voting machine, or otherwise, but in no event by proxy, of a choice with respect to any election or vote taken upon any matter, which is cast in such a manner that the person expressing such choice cannot be identified with the choice expressed." To that end, the mechanism commonly referred to as "card check," where individual employees sign cards indicating an affirmative vote and the ultimate result is determined by the number of employees who have signed cards, would not comply with the "secret ballot" requirement, as each employee's signature would identify them and their choice. Employers and labor organizations should take all precautions to ensure that the secrecy of each employee's response (or nonresponse) is maintained throughout the selection process so as to avoid potential violations of § 40.1-54.3(B) of the Code of Virginia.

B. Section 40.1-63 of the Code of Virginia provides "[a]ny person who may be denied employment or be deprived of continuation of his employment in violation of §§ 40.1-60, 40.1-61 or 40.1-62 or of one or more of such sections, shall be entitled to recover from such employer and from any other person, firm, corporation or association acting in concert with him by appropriate action in the courts of this Commonwealth such damages as he may have sustained by reason of such denial or deprivation of employment."

C. 16VAC15-70-20(B) provides that "[p]ursuant to § 40.1-29(C) of the Code of Virginia, to the extent that an alleged violative conduct concerns improper withholding of any dues, fees, or other charges of any kind for any labor organization, no local government public employer shall withhold any part of the wages or salaries of any employee except for payroll, wage, or withholding taxes or in accordance with law without the written and signed authorization of the employee."

Section 5.00 Employer Responsibilities and Rights

A. 16VAC15-70-20(C) provides that "[t]o the extent that alleged violative conduct concerns improper withholding of any dues, fees, or other charges of any kind for any labor organization, § 40.1-29(A), (E) through (H), and (L) of the Code of Virginia shall apply to local government public employers."

i. Section 40.1-29(A) of the Code of Virginia requires employers to pay an employee their earned wages on or before their scheduled pay date.

ii. Section 40.1-29(E) of the Code of Virginia provides for criminal penalties if "[a]n employer who willfully and with intent to defraud fails or refuses to pay wages in accordance with this section or § 40.1-29.3, unless the failure to pay was because of a bona fide dispute between the employer and its employee."

iii. Section 40.1-29(F) of the Code of Virginia provides that the Commissioner "may institute on behalf of an employee to enforce compliance with this section, and to collect any moneys unlawfully withheld from such employee that shall be paid to the employee entitled thereto." It also provides that "[u]pon entry of a final order of the Commissioner, or upon entry of a judgment, against the employer, the Commissioner or the court shall assess attorney fees of one-third of the amount set forth in the final order or judgment."

iv. Section 40.1-29(G) of the Code of Virginia provides that "any employer who fails to make payment of wages in accordance with subsection A shall be liable for the payment of all wages due, and an additional equal amount as liquidated damages, plus interest at an annual rate of eight percent accruing from the date the wages were due."

v. Section 40.1-29(H) of the Code of Virginia provides that "[a]ny employer who knowingly fails to make payment of wages in accordance with subsection A or § 40.1-29.3 shall be subject to a civil penalty not to exceed $1,000 for each violation."

vi. Section 40.1-29(L) of the Code of Virginia provides that "[a]n action under this section shall be commenced within three years after the cause of action accrued. The period for filing is tolled upon the filing of an administrative action under subsection F until the employee has been informed that the action has been resolved or until the employee has withdrawn the complaint, whichever is sooner."

B. Section 40.1-60 of the Code of Virginia provides that "[n]o person shall be required by an employer to become or remain a member of any labor union or labor organization as a condition of employment or continuation of employment by such employer."

C. Section 40.1-61 of the Code of Virginia provides that "[n]o person shall be required by an employer to abstain or refrain from membership in, or holding office in, any labor union or labor organization as a condition of employment or continuation of employment."

D. Section 40.1-62 of the Code of Virginia provides that "[n]o employer shall require any person, as a condition of employment or continuation of employment, to pay any dues, fees or other charges of any kind to any labor union or labor organization."

E. Section 40.1-65 of the Code of Virginia provides that "[a]ny agreement, understanding or practice which is designated to cause or require any employer, whether or not a party thereto, to violate any provision of this article is hereby declared to be an illegal agreement, understanding or practice and contrary to public policy."

F. Section 40.1-66 of the Code of Virginia provides that "[a]ny person, firm, association, corporation, or labor union or organization engaged in lockouts, layoffs, boycotts, picketing, work stoppages or other conduct, a purpose of which is to cause, force, persuade or induce any other person, firm, association, corporation or labor union or organization to violate any provision of this article shall be guilty of illegal conduct contrary to public policy…."

Section 40.1-66 of the Code of Virginia further specifies that "…provided that nothing herein contained shall be construed to prevent or make illegal the peaceful and orderly solicitation and persuasion by union members of others to join a union, unaccompanied by any intimidation, use of force, threat of use of force, reprisal or threat of reprisal, and provided that no such solicitation or persuasion shall be conducted so as to interfere with, or interrupt the work of any employee during working hours.

Note: Questions are often raised about the rights and responsibilities of supervisors, as management can be seen as both employees and representatives of the employer. Section 40.1-66 of the Code of Virginia does not differentiate between "employees" and "supervisors" in use of the term "union member", which implies that a supervisor who is a union member is permitted to engage in "peaceful and orderly solicitation" under the statute. However, a complaint may be filed with the Department should a union member supervisor engage in conduct alleged to be

"intimidation, use of force, threat of use of force, reprisal or threat of reprisal" as prohibited in the statute.

The Department's evaluation of any complaints alleging a violation of § 40.1-66 of the Code of Virginia will be based on the job duties of the employees and the business processes of the employer, as well as the activities of those individuals alleged to have interrupted or interfered with the work of an employee.

It is the Department's position that § 40.1-66 of the Code of Virginia does not contain a blanket ban of solicitation for union membership of employees during working hours, instead suggesting that they are permissible so long as they do not interfere with or interrupt the work of any employee. That is not to say that an employer may not run afoul of the statute if, for instance, they call a mandatory meeting of employees at which otherwise peaceful and orderly solicitation occurs, if an employee can demonstrate that it was interrupting or interfering with their work. As noted above, the Department's determination as to whether a complaint is a violation of the law will be based on the facts uncovered during the investigation, the employer's work processes, and the Department's legally supportable application of the statute to those facts and processes.

Section 6.00 Acceptance of Complaint

Complaints and claims filed with the Department involving local government union issues fall into three areas:

i. Title 40.1, Chapter 4, Article 3, Denial or Abridgement of Right to Work, §§ 40.1-58 to -69 of the Code of Virginia, which shall be processed in accordance with procedures in **Field Operations Manual Chapter Six, Right to Work**;

ii. Section 40.1-29 of the Code of Virginia, payment of wage claims involving alleged improper withholding of any dues, fees, or other charges of any kind for any labor organization, which shall be processed in accordance with **Field Operations Manual Chapter Ten, Payment of Wage**; and

iii. Title 40.1, Chapter 4, Articles 1, 2, 2.1, and 4 of the Code of Virginia, which shall be processed in accordance with procedures in this Chapter.

If the Department is contacted by an individual who wishes to file a complaint for alleged violation of Title 40.1, Chapter 4, Articles 1, 2, 2.1, and 4 of the Code of Virginia, they shall be directed to write a letter documenting all information regarding the alleged violation. The letter shall be mailed to the Division for processing and review. All complaints will be assigned to a Compliance Officer for review and investigation.

Section 7.00 Investigation

Upon assignment of a complaint for investigation, the Compliance Officer shall first contact the complainant to gather additional information about the nature of the complaint. The interview

will clarify, verify, and expand any statement of facts provided within the complaint letter. The Compliance Officer shall specifically attempt to determine the legal entity which is alleged to have violated the law (e.g., a local government public employer or a labor organization) and what consequences, if any, the complainant suffered due to the alleged violation. If, in the course of the interview, it becomes apparent that the cause of complaint would not be considered a violation of Title 40.1, Chapter 4, Articles 1, 2, 2.1, and 4 of the Code of Virginia, or that the complaint does not involve a local government public employer, employee, or labor organization, the Compliance Officer shall notify the complainant that the investigation will be closed, the basis for closure, and what alternative remedies may be available to them.

If the complainant's allegation appears founded, the Compliance Officer shall proceed to a formal investigation by sending a complaint notification letter to the legal entity via United States Postal Service (USPS) First-Class Mail. The letter shall include a request that the entity furnish any and all documentation relevant to the investigation and that an appropriate representative of the legal entity contact the Compliance Officer to discuss the investigation.

In the event that further investigation finds the complainant's allegation unfounded or otherwise not pursuable, the Compliance Officer shall notify the complainant in writing of the results of the investigation and what alternative remedies may be available to them.

Section 8.00 Formal Determination

If the Compliance Officer concludes their investigation and determines that the complaint is valid and that the statute has been violated, the Compliance Officer shall notify the legal entity of such determination via a notice of violation letter. This letter shall be sent by USPS Certified and First-Class Mail. The notice of violation letter shall summarize the Compliance Officer's investigation and the basis for the determination. Prior to issuing the notice of violation letter, the Compliance Officer shall discuss the investigation with the Director and determine the severity of the violation.

Depending on the severity of the violation, the Department may first request that the legal entity cease and desist all unlawful behavior and take corrective action, as appropriate. The Department may request that the legal entity provide proof of abatement within 15 days of the date of the notice of violation letter.

Should the violation be determined to be severe, or should the legal entity fail to provide proof of abatement within the appropriate time period, the Department may take appropriate civil or criminal action. Should the violated statute be a matter of civil law, the Commissioner may petition a court of competent jurisdiction for injunctive relief pursuant to § 40.1-49.4(F)(2) of the Code of Virginia. Should the violated statute be a matter of criminal law, the Commissioner may request prosecution by the appropriate Attorney for the Commonwealth, pursuant to 16-VAC-70-30. The Compliance Officer should be prepared to give testimony and appear in court as requested by the Attorney for the Commonwealth.

Statutory provisions applicable to local governments that provide criminal penalties for which the Commissioner may request prosecution include, but are not limited to:

i. Section 40.1-53 of the Code of Virginia, Preventing persons from pursuing lawful vocations, etc.; illegal picketing: "Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and punished accordingly."

ii. Section 40.1-54 of the Code of Virginia, Payment of certain charges by carriers or shippers to or for benefit of labor organization: "Any corporation, association, organization, firm or person who agrees to pay, or who does pay, or who agrees to receive, or who does receive, any payment described hereinabove shall be guilty of a misdemeanor and shall be fined not less than $100 nor more than $1,000 for each offense. Each act of violation, and each day during which such an agreement remains in effect, shall constitute a separate offense."

iii. Section 40.1-54.2 of the Code of Virginia, Strikes and work stoppages at hospitals prohibited; penalty: "Any person violating any of the provisions of this section shall be guilty of a misdemeanor and punished accordingly."

iv. Section 40.1-69 of the Code of Virginia, Violation a misdemeanor: "Any violation of any of the provisions of this article [Article 3 of Chapter 4 of Title 40.1, §§ 40.1-58 to-69] by any person, firm, association, corporation, or labor union or organization shall be a misdemeanor."

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APPENDIX A
LOCAL GOVERNMENT UNION REQUIREMENTS
REFERENCE GUIDE

The following is a reference for local government employers, employees, and labor organizations directed at assuring compliance with applicable statutory requirements.

1. Employee Written Authorization Required for Union Dues Withholding: § 40.1-29 of the Code of Virginia, withholding wages.

In accordance with § 40.1-29(C) of the Code of Virginia, an employer may only withhold an employee's union dues from the wages or salaries of the employee with the written and signed authorization of the employee.

2. Notice to Employees Regarding Payment of Union Dues and Employee Rights.

The Department recommends that local governments provide the following notice to employees regarding payment of union dues and employee rights:

NOTICE TO EMPLOYEES:

Your right to join and pay dues to, or to refrain from joining and paying dues to, a labor union is protected by Virginia law. By signing this form, you are authorizing your employer to withhold [$X] from your wages or salary per [pay period/month/etc.] to be paid for your union dues. You may revoke this authorization at a later date in accordance with procedures established by your employer.

Note: The above language has been provided as a model example and is not mandatory for local government employers to provide to employees who are members of a labor organization. However, an employee must, in some way, provide written and signed authorization to the employer which gives consent for their union dues to be withheld from their wages or salary.

3. Right to Work: § 40.1-53 of the Code of Virginia, Preventing persons from pursuing lawful vocations, etc.; illegal picketing.

No person shall singly or in concert with others interfere or attempt to interfere with another in the exercise of his right to work or to enter upon the performance of any lawful vocation by the use of force, threats of violence or intimidation, or by the use of insulting or threatening language directed toward such person, to induce or attempt to induce him to quit his employment or refrain from seeking employment.

No person shall engage in picketing by force or violence, or picket alone or in concert with others in such manner as to obstruct or interfere with free ingress or egress to and from any premises or obstruct or interfere with free use of public streets, sidewalks or other public ways.

4. Secret Ballot Elections: § 40.1-54.3 of the Code of Virginia, Right to vote by secret ballot on labor organization representation.

The designation, selection, or authorization of a labor organization to represent employees shall be conducted by secret ballot as that term is defined in 16VAC15-70-10.

5. Strikes: § 40.1-55 of the Code of Virginia, Employee striking terminates, and becomes temporarily ineligible for, public employment.
Any employee who, in concert with two or more other such employees, for the purpose of obstructing, impeding or suspending any activity or operation of his employing agency or any other governmental agency, strikes or willfully refuses to perform the duties of his employment shall, by such action, be deemed to have terminated his employment and shall thereafter be ineligible for employment in any position or capacity during the next 12 months by any county, city, town or other political subdivision of the Commonwealth, or by any department or agency of any of them.

6. Union Membership Cannot be Required: § 40.1-60 of the Code of Virginia, Employers not to require employees to become or remain members of union.

An employer cannot require any person to become or remain a member of any labor union or labor organization as a condition of employment or continuation of employment by such employer.

7. Union Membership Cannot be Prohibited: § 40.1-61 of the Code of Virginia, Employers not to require abstention from membership or officeholding in union.

No person shall be required by an employer to abstain or refrain from membership in, or holding office in, any labor union or labor organization as a condition of employment or continuation of employment.

8. Dues Payment Not Required: § 40.1-62 of the Code of Virginia, Employer not to require payment of union dues, etc.

An employer cannot require any person, as a condition of employment or continuation of employment, to pay any dues, fees or other charges of any kind to any labor union or labor organization.

9. Solicitation to Join Union: § 40.1-66 of the Code of Virginia, Conduct causing violation of article illegal; peaceful solicitation to join union.

The peaceful and orderly solicitation and persuasion by union members of others to join a union is permitted provided that it is unaccompanied by any intimidation, use of force, threat of use of force, reprisal or threat of reprisal, and provided that no such solicitation or persuasion shall be conducted so as to interfere with, or interrupt the work of any employee during working hours.