

# 2021 BUSINESS DAY

# GENERAL ASSEMBLY

# UPDATE

## Participating Organizations



# What Session Will Look Like

- **Virtual**
- **How long?**

# Tax Conformity – PPP Loans

## **SB 1394 (Petersen & Pillion) - Income Tax Exclusion & Deductibility for Paycheck Protection Plan Loan Forgiveness**

- Unless the General Assembly bring Virginia's tax policy in line with the federal tax code (known as conformity) your forgiven Paycheck Protection Program (PPP) loan will be considered taxable income and you will not be able to deduct PPP forgiven expenses on your state income taxes.
- Secretary of Finance Layne announced on last Friday, the Administration was recommending NOT to include the deductibility piece.
- Says it will have "significant revenue impact on the Commonwealth" - \$500 million over 2 years
- House Finance Committee passed HB 1935 (Watts) which is the normal conformity bill **WITHOUT** the deductibility provision
- Senate Finance was supposed to hear SB 1146 (Howell) in committee yesterday but Chairwoman Howell deferred it to next week

# Procurement

- **Liability of General Contractor for Wages of Subcontractor's Employees – SB 1209 (Petersen)**
  - Provides that there is a valid defense to a claim of nonpayment of wages by a general contractor to a subcontractor's employees if the general contractor obtains a written certification that
    - (i) the subcontractor and each of his sub-subcontractors has paid all employees all wages due for the period during which the wages are claimed for the work performed on the project and
    - (ii) to the subcontractor's knowledge all sub-subcontractors have also paid their employees.
  - Provides that the terms "general contractor" and "subcontractor" shall not include persons solely furnishing materials for the purposes of the liability of a contractor for wages due to a subcontractor's employees.
- **Project Labor Agreement Reform - SB 1419 (Marsden) & HB 2237 (McQuinn)**
  - Protects public bodies in the Commonwealth that choose to utilize PLAs for transportation projects from potential litigation and project delays by requiring these public bodies to establish objective criteria for utilizing PLAs.
  - The criteria could include considerations such as cost, quality, maintenance of a skilled labor force, and advancing minority-owned and woman-owned businesses.

# Paid Sick Days

- **At least 2 bills so far to institute some type of paid leave**
  - **Paid Sick Days – HB 2137 (Guzman)**
    - Requires employers to provide 40 hours of paid sick leave for essential workers who works on average at least 20 hours per week or 90 hours per month.
    - Earned paid sick leave may be used for (i) an employee's or family member's mental or physical illness, injury, or health condition; an employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an employee's need for preventive medical care
    - Provides for a hardship waiver for employers that demonstrate that providing paid sick leave threatens the financial viability of the employer, jeopardizes the ability of the employer to sustain operations, significantly degrades the quality of the employer's business operations, or creates a significant negative financial impact on the employer.
    - Civil penalty could be tiered or as high as of \$1,000 per violation or allow employee to sue employer

# Paid Sick Days

## ▪ **Paid Sick Days - HB 2103 (Reid)**

- Requires public and private employers to provide eligible employees earned paid sick time and paid sick time.
- Exempts employers with less than 35 full-time equivalent employees
- Provides for an eligible employee to earn up to 40 hours of earned paid sick time depending on the number of hours the eligible employee has averaged over the previous year or, for a new employee, is projected to work.
- Limits employee to no more than 40 hours of earned paid sick time in a year, unless the employer selects a higher limit.
- Provides that earned paid sick time may be used (i) for an eligible employee's mental or physical illness, injury, or health condition; an eligible employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an eligible employee's need for preventive medical care; or (ii) to provide care to an eligible employee's family member, defined in the bill, under similar circumstances.
- Delayed effective date until January 1, 2023.
- Prohibits employers from taking certain retaliatory actions against employees
- While fines and possible civil action are allowed an aggrieved employee is required to seek redress through the employer's human resources department prior to filing an administrative complaint or civil action.

# Family Medical Leave

- **Family Medical Leave Insurance Program – SB 1330 (Boysko) and HB 2016 (Ayala)**
  - Establishes an insurance program similar to unemployment benefits where an employee could apply for family medical leave benefits that pays 80% of one's weekly wages (not to exceed 80% of state weekly wage).
  - Funded by payroll taxes from employers and employees starting in 2023
  - Caps duration of paid leave at 12 weeks in any application year
  - Provides self-employed individuals option of participating
  - Virginia Employment Commission to implement by January 1, 2024

# Repeal of Right to Work

- **HB 1755 (Carter) – Repeals Right to Work statute**
- **HB 1780 (Carter) – Removes prohibition of school employees from striking.**
- **Fair share fees – waiting to see if it is introduced**
  - Authorizes an employer, pursuant to an agreement between employer and labor union, to require as a condition of employment any employee who is not a member of such labor union to pay a fair share fee to compensate the labor union for the costs of representing the nonmember employee.
  - Defines "fair share fee" as the pro rata share of the portion of a labor union's dues attributable to activities stemming from representing all employees in a collective bargaining unit without regard to membership in the labor union
  - In no case will the fair share fee exceed 60 percent of dues



# Other Labor and Employment Legislation

- **Heat Illness Prevention – SB 1358 (Hashmi) and HB 1785 (Ward)**
  - Authorizes Va Department of Labor to implement heat illness prevention regulations that go beyond current OSHA standards
  - Examples: provide shade; provide water at a specific temperature
- **Virginia Equal Pay Act - SB 1228 (Boysko)**
  - Prohibits public and private employers from discriminating between employees on the basis of membership in a protected class in the payment of wages or other compensation, including benefits, by paying compensation to employees of a protected class at a rate less than employees not of the protected class
  - Establishes criteria for when wage differentials between employees are permitted, but requires an employer to (i) provide a prospective employee with the wage range for the position for which the prospective employee is applying upon request or prior to inquiring about the prospective employee's wage expectations or providing an offer of compensation and (ii) maintain records of the wages and wage rates, job classifications, and other terms and conditions of employment for a period of three years.
  - Prohibits asking for salary history
  - Provides for private cause of action to go to state courts

# Hazard Pay

## Hazard Pay & PPE for Essential Workers – HB 2015 (Ayala)

- Requires, during a State of Emergency that includes a stay-at-home or shelter-in-place order, employers shall (i) compensate each of their essential workers at a rate not less than 1.5 times the essential worker's regular rate of pay for any hours worked during the closure order and (ii) provide their essential workers with personal protective equipment
- Defines "essential worker" as an individual employed as a health care provider, home care provider, or airport worker or by an essential retail business, as specified in the bill.
- Subjects violators to the same civil penalties and provides the same cause of action for an employer's failure to pay the required hazard pay, as are currently imposed for failing to pay wages generally.

# Mandated Retirement Program

- **Establishes VirginiaSaves Program – HB 2174 (Torian)**
  - Directs Virginia College Savings Plan Board to establish an automatic enrollment payroll deduction individual retirement account (IRA) retirement savings program,
  - Participation in the Program to set up for the automatic payroll deduction is mandatory for eligible employers, defined in the bill as self-employed individuals, sole proprietors, and nongovernmental employers having five or more employees that do not offer a qualified retirement plan to their employees.
  - However, employers are NOT required to contribute
  - Employees may OPT OUT otherwise they will contribute 5%
  - Gives broad authority to the Board on setting up the specifics
  - The Program shall be established, and enrollment shall begin, no later than July 1, 2023.

# Taxes

- **Re-Instate the Estate Tax – HB 2157 (Watts)**
  - Reinstates the estate tax for persons dying on and after July 1, 2020.
  - Does not impose estate tax on a gross estate if the majority of the assets of the estate are an interest in a closely held business or a working farm
  - Designates revenues from the estate tax to be used for health care purposes.

# How to be Your Own Advocate

- **Attend Small Business Day – THIS THURSDAY at 7:30am – 9:30am**
- **Tips when Meeting with Your Legislators**
  - Know your issue
  - Be clear on the goal and define your ask
  - Share your story – personalize the issue and keep it short
  - Research you legislator
  - Be friendly with the gatekeepers
  - Connect your issue to the legislator’s district
  - Never go off message
- **Contact Your Elected Officials when Alerted**
- **Use Social Media**
- **Invite Legislators to Tour Your Business Outside of Session**

**Questions?**