

# Licensed Operator Waiver

## What Is It and How to Qualify for It?

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## Temporary Licensed Operator Waiver

- Law went into effect July 1, 2024. [Code of Virginia § 32.1-172.1](#).
- Creates a statutory requirement for a licensed operator of the appropriate class of license.
- Previously, a properly licensed operator was only a requirement in the Waterworks Regulations and not part of the Code of Virginia.
- The law allows a temporary waiver of the licensed operator requirement if there is an unexpected vacancy in the operator position.

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## Temporary Licensed Operator Waiver

- What is an “unexpected vacancy”?
  - Death
  - Extended illness
  - Firing for cause
  - Resignation
  - Or “similar cause” – ODW will look at whether the reason is similar to those listed in the law
- Was the vacancy unexpected and could not have been anticipated?

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## Temporary Licensed Operator Waiver

- When is there a “vacancy”?
  - Must be seeking to hire a new properly licensed operator for the temporary waiver to potentially apply
- What about waterworks that require multiple properly licensed operators to meet all attendance obligations?
  - Still eligible to take advantage of the temporary licensed operator waiver if there is an unexpected vacancy causing the waterworks to be unable to meet the operator attendance requirement.

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## Qualifying for the Waiver

- Requirements to qualify for the temporary waiver
  1. Within 5 days of the vacancy, notify ODW in writing of another licensed operator who will be responsible for operations during the vacancy
  2. Within 10 days of the vacancy, notify ODW in writing of the plan to hire a replacement operator holding the necessary license
  3. Implement the hiring plan diligently
  4. Provide ODW with a monthly report on the implementation and progress of the hiring plan

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## Designating a Licensed Operator

1. Within 5 days of the vacancy, designate another licensed operator in writing to ODW
  - The interim operator must have a waterworks operator's license
  - The interim operator's waterworks operator license is of a lower class than the classification of the waterworks

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## Submission of a Hiring Plan

2. Within 10 days of the vacancy, provide ODW with a written plan to hire a properly licensed operator to fill the vacancy
  - The hiring plan shows a good faith effort to state a hiring plan that is reasonably calculated to fill the vacancy

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## Implementation of the Hiring Plan and Submitting the Monthly Report

3. The hiring plan must be implemented diligently
  - Constantly working to hire an operator based on the hiring plan
4. Submit a monthly report on the implementation and progress of the hiring plan
  - The report explains the progress in implementing the hiring plan and shows continuous efforts to fill the vacancy

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## Revocation of the Waiver

- The waiver can be revoked if VDH finds that continued operation under the waiver “presents a public health threat due to statutory, regulatory, or permit violations”
- Any violation of the Public Water Supplies Law, the Waterworks Regulations, or a waterworks’ operation permit can result in the revocation of the waiver if VDH determines that the violation threatens public health

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## Other Options

- If a waterworks does not qualify for the waiver, two options are available to assist a waterworks with an operator shortage
  1. Variance – a request must be made in writing and must include the 7 elements found in [12VAC5-590-140 B](#)
  2. Ask VDH to reduce the operator attendance requirement (not as simple as it sounds)

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## 1. Variance

- 7 required elements – all 7 must be covered in the request:
  1. A citation to the regulation from which a variance is requested; for operator attendance, this would be [12VAC5-590-461](#)
  2. The nature and duration of the variance requested
  3. Relevant analytical results of water quality sampling of the waterworks, including results of relevant tests conducted pursuant to the requirements of the Waterworks Regulations
  4. A statement of the hardship to the owner and the anticipated impacts to the public health and welfare if a variance were granted
  5. Suggested conditions that might be imposed on the granting of a variance that would limit its detrimental impact on public health and welfare
  6. Other information, if any, believed by the owner to be pertinent to the request
  7. Any other information as may be required by the State Health Commissioner to make the determination

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## 2. Ask VDH to Reduce Attendance

- Considered on a case-by-case basis
- VDH's decision is based on the facts of the waterworks' situation
- For additional guidance, see the list of criteria in [12VAC5-590-461 D 3.](#)

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## QUESTIONS?



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## CONTACT INFORMATION

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