

# A Piece of Work: Employment Law Research in Virginia

by Kent C. Olson

The term “employment law” includes issues from the beginning of the employment process (recruiting practices, immigration issues) through the day-to-day business (wages and hours, employee policies and occupational safety) to the end of employment (wrongful dismissal and discrimination), and beyond (unemployment compensation, the Consolidated Omnibus Budget Reconciliation Act and reference inquiries). The field is governed by federal and state authorities, including labor relations laws, civil rights statutes, common-law contract and tort doctrines, and fair labor standard regulations. Virginia is more than an employment-at-will state.

This article surveys the major published texts, free Web sites with which employment lawyers should be familiar, and other sources. It is based in part on suggestions from several leading Virginia employment law practitioners.<sup>1</sup>

## Books

Thomson West publishes an extensive roster of a dozen titles in its *Virginia Practice* series, but none of these focus on employment law. The major player in this area is Virginia CLE, [www.vacle.org](http://www.vacle.org). The acknowledged bible in the field is Virginia CLE’s two-volume loose-leaf *Employment Law in Virginia*, edited by R. Mark Dare, Bayard E. Harris, and William V. Hoyle Jr., with contributions from more than thirty Virginia lawyers. Now in its second edition

(2002, with a 2005 supplement), this set costs \$165 and, like other Virginia CLE titles, can be purchased in print, on CD-ROM or by download from the Virginia CLE Web site. Topics covered include employment discrimination under federal and state law, the at-will doctrine, employment agreements, wage and hour law, and a range of other issues, such as privacy and testing, occupational safety and health, the Employment Retirement Income Security Act and unemployment compensation. *Employment Law in Virginia* may be the best source on Virginia employment law. It was written by leading employment lawyers in the state.

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*Employment Law in Virginia* is most accessible to those who refer to it regularly. It is organized by doctrinal area rather than stages of the employment relationship, so it helps to know specific issues. Relevant issues are covered in the chapters on antidiscrimination laws (in volume one) and privacy and testing (in volume two). An extensive index is included in each volume, but it can yield its references grudgingly. There are no index entries for “e-mail monitoring” or “overtime”; subheadings have broad entries such as “employee—communications, monitor-

ing” and “wage and hour law—overtime compensation.” Volume two includes a table of authorities that list statutes, cases and regulations. The table may provide more convenient access for those aware of at least one relevant source.<sup>2</sup>

Virginia CLE also publishes *Virginia Employment Practice and Forms* (2002 with 2005 supp., \$110), by Edward Lee Isler and Steven W. Ray. Although designed as a forms handbook, it is a useful text. The book discusses a more limited number of topics, with five chapters covering the hiring process, employment agreements, covenants not to compete,

personnel policies and termination. Because many topics are omitted or barely mentioned, this book is a source for guidance in specific areas rather than comprehensive coverage.

Virginia CLE is not the only publisher of Virginia employment law books. Other works are written for employers or human resources professionals rather than lawyers. The Virginia Chamber of Commerce, [www.vachamber.com](http://www.vachamber.com), publishes a *Virginia Legal Reference Series* of three paperback volumes: *Labor & Employment*

*Law in Virginia: A Business Guide for Employers*, by Thomas R. Bagby and Thomas M. Winn III (2004, \$127); *A Virginia Employer's Guide to Hiring, Firing, and Discipline*, by Troutman Sanders LLP (2004, \$99); and *Virginia Wage and Hour Handbook: A Practical Guide for Management*, by Ray & Isler PC (2005, \$78). These are current works by leading Virginia employment law attor-

neys and excellent examples of jargon-free client communication, with practical suggestions on topics such as drug testing and age discrimination. These texts are not blemished by footnotes or citations to statutes or cases. The books' value as research tools is minimal. Apparently, legal researchers' craving for citations is more than matched by nonlawyers' aversion to them.<sup>3</sup>

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Just as Virginia CLE dominates Virginia-specific titles, the Bureau of National Affairs leads in more general employment law resources. BNA Books, [www.bnabooks.com](http://www.bnabooks.com), publishes dozens of texts on employment issues—from arbitration to whistle-blower protection. Many of these are produced in collaboration with the American Bar Association's Section of Labor and Employment Law. Attorneys frequently recommend *Covenants Not to Compete: A State-by-State Survey* (Brian M. Malsberger ed., 4th ed. 2004 with 2005 supp., 2 vols. \$595), and close runners-up include Barbara Lindemann and Paul Grossman, *Employment Discrimination Law* (3d ed. 1996 with 2002 supp., 2 vols. \$575) and *The Developing Labor Law* (Patrick Hardin ed., 4th ed. 2001 with 2004 supp., 2 vols. \$685). These are not inexpensive volumes, but those who use them on a daily basis say they are worth every penny.

BNA publishes the major loose-leaf service in employment and labor law, the *Labor*

with Disabilities Act. It combines the explanatory functions of a treatise with notice of new developments and the texts of federal and state statutes and cases. New cases appear first in the binders and then in six series of bound reporters, each with its own specialized digest system—an excellent way to find cases or to make sure that an online key word search hasn't missed anything. Volume 4A of the loose-leaf set (*State Laws*) includes summaries of Virginia labor relations, wage/hour and child labor laws; other Virginia material appears in volumes 8B (*Fair Employment Practices Manual*) and 9A (*Individual Employment Rights Manual*).<sup>4</sup>

### Free Web Sites

The Web sites that employment law practitioners most often mention as indispensable are those of two federal government agencies: the Department of Labor, [www.dol.gov](http://www.dol.gov), and the Equal Employment Opportunity Commission, [www.eeoc.gov](http://www.eeoc.gov). Both have extensive explanations of the laws they enforce, with links to statutes, regulations and other materials such as enforcement guidance, policy documents and fact sheets. Both are arranged by topic and are searchable. For lawyers working with organized labor issues, the National Labor Relations Board site, [www.nlrb.gov](http://www.nlrb.gov), is every bit as valuable.

The Web site for the Virginia Department of Labor and Industry, [www.dli.state.va.us](http://www.dli.state.va.us), is not as extensive as its federal counterpart,

but it does include information on topics such as labor law, child labor, garnishment and payment of wages, with links to the *Code of Virginia* sections. The Virginia Employment Commission's Virginia's Electronic Labor Market Access (VELMA) system, [velma.virtuallmi.com](http://velma.virtuallmi.com), provides extensive sets of statistical data and analyses on industries, occupations, wages and Virginia cities and counties.

Numerous nongovernmental employment law Web sites are available, although many have little more than links to the same lists of government sources. Perhaps the best-organized directory site is Cornell's Legal Information Institute, [www.law.cornell.edu/topics/employment.html](http://www.law.cornell.edu/topics/employment.html), which provides access to primary sources and major Web sites in several specific areas within employment law. The Virginia Bar Association's Labor Relations and Employment Law Section has a useful collection, [www.vba.org/section/labor/lablinks.htm](http://www.vba.org/section/labor/lablinks.htm), with more than one hundred links to relevant sites, including some two dozen specialized offices in the Department of Labor.

A few major Web sites are worth singling out. The Employment Law Information Network, [www.elinonet.com](http://www.elinonet.com), provides access to employment law articles from law firm sites, arranged topically and by jurisdiction. The site can be monitored through daily or weekly e-mail updates. For employer-side counsel, the Alexander Hamilton Institute's Employment Law Resource Center, [www.ahipubs.com](http://www.ahipubs.com), provides reports and quick answers on a wide variety of issues, as well as a free biweekly newsletter by e-mail. For employee advocates, the National Employment Lawyers Association's Workplace Fairness site, [www.workplacefairness.org](http://www.workplacefairness.org), provides practical information, news of court cases and legislative developments, and a "Today's Workplace" blog. The focus of Professor Ross Runkel's Employment Law Memo, [www.lawmemo.com](http://www.lawmemo.com), is a subscription-based e-mail newsletter issued three times each week (\$300 per year), but the site also provides some information for free, including a variety of articles and an employment law blog.<sup>5</sup>

### Other Current Awareness Sources

The most valuable way to learn about new developments, according to most lawyers, is not by reading or monitoring Web sites but by attending relevant conferences and seminars—in particular the Virginia CLE Annual Employment Law Update each May and The Virginia Bar Association's annual Labor Relations and Employment Law Conference each September. John M. Bredehoft of Venable LLP said, "New lawyers wanting to practice in this field should attend these conferences and introduce themselves to the speakers. The employment law bar is cordial—plaintiff and defendant—and we love to kibbitz about these issues! I really find that I learn as much—or more—from the connections I have made at CLE and bar meeting sessions than I do from the formal treatises."

Several attorneys singled out the VBA conference in particular as the key annual event for new lawyers. Elizabeth A. Lalik of Hunton & Williams LLP said, "It is an excellent way to hear some of the best labor/employment lawyers in this region talk about the hottest and most current issues in the field. Many of the sessions provide basic information about an array of employment law topics as well. The annual meeting also provides an opportunity to meet or to reconnect with employment lawyers from around Virginia, which is terrific for so many reasons." Thomas M. Winn III of Woods Rogers PLC echoes Lalik's sentiments. "The section puts on a first rate seminar each fall with a comprehensive agenda that is beneficial both for rookies and veterans. It is an excellent opportunity to meet labor/employment practitioners (both employer and employee-side) from across the state," Winn said.

The course materials for continuing legal education seminars are also useful surveys of recent developments. Virginia CLE employment law volumes (\$55–70) generally provide articles ranging from very specific topics to overviews of new court decisions. The Virginia CLE Web site, provides detailed information about the contents of recent collections of materials.<sup>6</sup>

Another comprehensive source for monitoring developments is the labor and employment law section of the "Annual Survey of Virginia Law" in the November issue of *University of Richmond Law Review* (\$20). The most recent contribution, covering developments in 2004–05, was written by W. David Paxton and Gregory R. Hunt, and appears at 40 U. Rich. L. Rev. 241 (2005).<sup>7</sup> *The Virginia Employment Law Letter* is a monthly update written by lawyers at LeClair Ryan and published by M. Lee Smith Publications, [www.hrhero.com/vaemp.shtml](http://www.hrhero.com/vaemp.shtml) (\$287 per year, available through Westlaw and Lexis).<sup>8</sup>

Two subscription-based resources available both online or in print are mentioned repeatedly as leading resources for current employment law awareness. The majority of attorneys surveyed at larger law firms report that they read the BNA's *Daily Labor Report*, [www.bna.com/products/labor/dlr.htm](http://www.bna.com/products/labor/dlr.htm) (\$9,264 per year, online version available to patrons in the University of Richmond and Washington & Lee University law libraries) and find it an ideal way to keep up on the latest developments. Like other BNA newsletters (such as the weekly *Employment Discrimination Report and Workplace Law Report*), the *DLR* provides summaries of new legislation, court decisions and agency actions. Its broad range and lack of Virginia focus, however, is noted by John Bredehoft: "While it is often amusing to find out what courts in Idaho or San Francisco think about employment law issues, it really does not help my practice on a day-to-day basis."

Most employment lawyers also read the *Virginia Lawyers Weekly* (VLW), [www.valawyersweekly.com](http://www.valawyersweekly.com) (\$289 per year) regularly to keep track of new developments. VLW subscribers can opt to receive e-mail notices of new decisions. Thomas Winn says, "An excellent way to stay on top of the latest developments is to sign up for VLW's Weekly Practice-Area Alert for Employment Law Cases. This is a VLW service that compiles the week's employment law cases, if any, and sends the summaries along to you by e-mail."

The Internet has not changed the way a lawyer becomes an expert in a field of law. The best path to knowledge and expertise is still to get involved, attend conferences, make connections, talk to other lawyers and gain experience. Steven D. Brown of Williams Mullen said, "Lawyers should resort to the lost art of talking with other lawyers about research issues. Many lawyers today are too consumed with searching for the answer on the computer and many of the answers come from experience." Word of mouth can still be the most effective source for new information. As Harris D. Butler III of Butler Williams & Skilling PC said, "Virginia has a fairly small and close-knit employment bar and news travels fast when a new opinion hits." ☞

#### Endnotes:

- 1 In addition to the people named in the article, A. Neal Barkus and Thomas P. Murphy of Hunton & Williams LLP; Agnis C. Chakravorty and Bayard E. Harris of Woods Rogers PLC; R. Mark Dare of Reed Smith LLP; Laura Effel and David E. Nagle

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- of LeClair Ryan; Merrell Renaud of Squire, Sanders & Dempsey; and Dana L. Rust and Rodney A. Satterwhite of McGuire Woods provided helpful comments.
- 2 Virginia CLE also publishes an abridged paperback compiled by its staff and based on *Employment Law in Virginia*. Entitled *An Employment Law Guide: Employee Rights and Employer Responsibilities in Virginia* (3d ed. 2004, \$45), this streamlined version has a structure that may be more accessible to the nonspecialist. It is organized around the employment process rather than areas of law, beginning with issues in hiring and proceeding through employee conduct and rights to termination and post-termination considerations. Much of the text comes directly from the larger work, and it includes footnotes to statutes and cases. The material has also been reindexed in a simpler, more straightforward format. On the other hand, there is neither a table of authorities nor any cross-reference table indicating where one can find a fuller discussion in the larger work.
  - 3 Another volume, *Virginia Employer's Guide: A Handbook of Employment Laws and Regulations* (Michele A. Potts ed., updated annually, \$149.50) is available from Aspen Publishers, [www.aspenpub.com](http://www.aspenpub.com). It provides a straightforward overview of basic concerns such as hiring, termination, employment discrimination and hours and pay. The editor is also responsible for *Employer's Guides* for California, Illinois and Wisconsin, and the publisher produces similar guides for several other states—leaving one to wonder just how well the titles reflect the intricacies of state law. Supreme Court of Virginia decisions are discussed, but the text does not include case names. These and other references can be found only in “For Further Information” sections at the end of each chapter. Virginia cases are cited only to S.E.2d, not to the *Virginia Reports*.
  - 4 One might consider looking to Supreme Court of Virginia opinions to see what employment law treatises the justices have found valuable, but it appears that only one such work has ever been cited by the Court (and that in two cases): Henry H. Perritt, Jr., *Employee Dismissal Law and Practice* (Aspen, now in its 4th ed. 1998 with 2005 supp., 3 vols. \$350). Earlier editions of Perritt were cited in *Jordan v. Clay's Rest Home, Inc.*, 253 Va. 185, 194, 483 S.E.2d 203 (1997), and *Progress Printing Co. v. Nichols*, 244 Va. 337, 341,

421 S.E.2d 428 (1992).

- 5 The Workplace Fairness and Employment Law Memo blogs are just two of a growing number of Web logs focusing on employment law. Others include The Employment Law Bulletin, [texasemploymentlaw.blogspot.com](http://texasemploymentlaw.blogspot.com) (which, despite its URL, is not limited to Texas law) and *Workplace Prof Blog*, [lawprofessors.typepad.com/laborprof\\_blog](http://lawprofessors.typepad.com/laborprof_blog) (covering developments in academe such as newly published scholarship). Jottings By An Employer's Lawyer, [employerslawyer.blogspot.com](http://employerslawyer.blogspot.com), is one of several blogs representing the management-side perspective and Drama, Conflict, Despair & Victory at Work, [employeeightsatty.blogspot.com](http://employeeightsatty.blogspot.com), focuses on employee rights litigation. If you locate one relevant blog, it will generally provide links to related blogs of interest.
- 6 The National Business Institute, [www.nbi-sems.com](http://www.nbi-sems.com), also offers several CLE seminars each year on employment law issues and sells its course materials as well (generally \$99). Its Web site lists the authors for each course, but not the specific topics of their contributions.
- 7 Another source for case summaries is “News from the Frontlines”: *Recent Developments in Virginia and Federal Employment Law*, by Harris D. Butler III, Lynn F. Jacob and Edward D. Isler. It is available for free download from the Virginia Bar Association Web site, [www.vba.org/section/labor.htm](http://www.vba.org/section/labor.htm), and covers cases decided in 2002 and early 2003.
- 8 Other Virginia law firms provide analyses of recent employment law developments and guidance for clients through free mailed or electronic newsletters. Among these are the quarterly *Employment Law Outlook* from Willcox & Savage, [www.wilsav.com](http://www.wilsav.com) (click on “News, Events & Publications”) and the semiannual *Employment Law Update* from Hunton & Williams, [www.hunton.com](http://www.hunton.com) (click on “News and Events”). Firms with Web site updates also include McGuireWoods, [www.mcguirewoods.com](http://www.mcguirewoods.com) (“Press Room”) and WoodsRogers, [www.woodsrogers.com](http://www.woodsrogers.com) (“Articles and News”).

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