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.1

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. 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, monitoring” 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.2

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, publishes a Virginia Legal Reference Series of three paperback volumes: Labor & Employment
In employment and labor law, the BNA publishes the major loose-leaf service ($685). These are not inexpensive volumes, but they do 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.virtualmli.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, 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, 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.elinfonet.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, 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, 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, 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.5

Just as Virginia CLE dominates Virginia-specific titles, the Bureau of National Affairs leads in more general employment law resources.

BNA publishes the major loose-leaf service in employment and labor law, the Labor Relations Reporter, www.bna.com/products/labor/elrw.htm, ($6,175 per year and available in all eight Virginia law school libraries, the Norfolk Law Library and Virginia Commonwealth University’s Cabell Library). This is updated weekly and comprises twenty large binders, with sections on labor law, wages and hours, fair employment practices, individual employment rights and the Americans 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).3

**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, and the Equal Employment Opportunity Commission, 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, is every bit as valuable.

The Web site for the Virginia Department of Labor and Industry, 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.virtualmli.com, provides extensive sets of statistical data and analyses on industries, occupations, wages and Virginia cities and counties.

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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* ([www.valawyersweekly.com](http://www.valawyersweekly.com)) ($289 per year) regularly to keep track of new developments. VZW 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 VZW’s Weekly Practice-Area Alert for Employment Law Cases. This is a VZW 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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