



# Employment Law 101

Eric D. Chapman, General Counsel, Community Housing Partners Corporation

James "Jim" K. Cowan, Jr., CowanPerry PC

Brittany M. Haddox, Strelka Employment Law

# Most Common Federal Claims

- ◆ FLSA
- ◆ Title VII / Section 1981 / EPA
- ◆ USERRA
- ◆ NLRA
- ◆ FMLA / FFCRA
- ◆ ADA
- ◆ ADEA
- ◆ WARN Act



# Most Common State Claims

- ◆ Virginia Human Rights Act, as amended by the Virginia Values Act
- ◆ Whistleblower / *Bowman*
- ◆ Wage and Hour Laws:
  - ◆ VA Minimum Wage Act
  - ◆ VA Wage Payment Act
  - ◆ VA Overtime Act
  - ◆ Misclassification of Workers



# Virginia Values Act (Expanded Coverage)

- ◇ Covers ALL employers with 15 or more employees.
- ◇ VHRA still covers employers with between 6 and 14 employees, but only prohibits unlawful discharge based on a protected characteristic.
- ◇ Also now extends to:
  - ◇ Employment agencies
  - ◇ Labor organizations
  - ◇ State agencies
  - ◇ School boards

# Virginia Values Act (Protects More Classes)

- ◇ Pre-Virginia Values Act protections based on race
  - ◇ On March 4, 2020, definition of “race” in VHRA was amended.
  - ◇ Discrimination based on race now includes discrimination based on *traits historically associated with race*.
  - ◇ These include:
    - ◇ Hair texture
    - ◇ Hair type
    - ◇ Protective hairstyles (such as braids, locks, and twists)
  - ◇ Virginia was only the 4<sup>th</sup> state to prohibit discrimination based on hairstyles.

# Virginia Values Act (Protects More Classes)

- ◇ Virginia Values Act amends VHRA to prohibit discrimination on more classes of workers.
- ◇ Discrimination is now prohibited on basis of:
  - ◇ **Sexual orientation**
    - ◇ “[A] person’s actual or perceived heterosexuality, bisexuality, or homosexuality.”
  - ◇ **Gender identity**
    - ◇ “[T]he gender-related identity, appearance, or other gender-related characteristics of an individual, with or without regard to the individual’s designated sex at birth.”
  - ◇ **Lactation**
    - ◇ Now specifically included within the class of “pregnancy, childbirth, and related medical conditions.”
  - ◇ **Veteran status**

# Important Items to Know

- ◆ Employee Access to Personnel Records
- ◆ NDA & Sexual Assault
- ◆ Written Pay Statements
- ◆ Non-competes & Low-Wage Earners
- ◆ Pay Transparency Law



# Employee Access to Personnel Records

- ◆ Va. Code § 8.01-413.1
- ◆ Effective July 1, 2019
- ◆ Upon employee (or attorney's) written request, employer MUST provide documents showing:
  - ◆ (1) Dates of employment;
  - ◆ (2) Wages or salary;
  - ◆ (3) Job description and title; and
  - ◆ (4) Injuries sustained in the course of employment.



# Employee Access to Personnel Records

- ◆ Request must be written.
- ◆ Records must be produced within **30 days** of written request.
- ◆ **BUT** the law does not create an obligation to keep particular records or to keep personnel files for a particular length of time.
- ◆ Limited exception:
  - ◆ Employers not required to produce records if doing so would reasonably endanger the employee or another person.

# Nondisclosure Agreements and Sexual Assault

- ◇ Va. Code § 40.1-28.01
- ◇ Effective July 1, 2020
- ◇ Employers **may not** require that job applicants or employees sign a “non-disclosure or confidentiality agreement that has the purpose or effect of concealing the details relating to a claim of sexual assault.”
- ◇ Any such agreement would be void and unenforceable as contrary to public policy.
- ◇ “Sexual assault” is not defined. However, the statute applies to claims arising under Virginia laws on rape (Va. Code § 18.2-61), forcible sodomy (§ 18.2-67.1), aggravated sexual battery (§ 18.2-67.3), and sexual battery (§ 18.2-67.4).

# Nondisclosure Agreements and Sexual Assault


- ◇ BUT relates only to such agreements being made “as a condition of employment.”
- ◇ Therefore, the law does not apply to agreements with *former* employees.
- ◇ Nondisclosure and confidentiality provisions in severance and settlement agreements are not affected by the new law, as long as the employee signs the agreement after the end of employment.

- ◇ Effective January 1, 2020
- ◇ Pay statement must include the following:
  - ◇ (1) The name and address of the employer;
  - ◇ (2) The number of hours worked during the pay period;
  - ◇ (3) The rate of pay;
  - ◇ (4) The gross wages earned by the employee during the pay period; and
  - ◇ (5) The amount and purpose of any deductions.
- ◇ Per the Virginia Department of Labor & Industry (DOLI), the law applies to ALL employees, exempt and non-exempt.
- ◇ No request from employee is required.

# Written Pay Statements

# New Pay Transparency Law

- Effective July 1, 2020
- *“No employer shall discharge from employment or take other retaliatory action against an employee because the employee (i) inquired about or discussed with, or disclosed to, another employee any information about either the employee’s own wages or other compensation or about any other employee’s wages or other compensation or (ii) filed a complaint with the Department [of Labor and Industry] alleging a violation of this section.”*

A hand is shown at the top right, holding a coin. Below it, a bar chart consists of five stacks of coins that increase in height from left to right. The background is a gradient from light yellow at the top to dark grey at the bottom.

# Minimum Wage Law (Incremental Increases)

- \$9.50 effective May 1, 2021
- \$11.00 effective January 1, 2022
- \$12.00 effective January 1, 2023
- \$13.50 effective January 1, 2025
- \$15.00 effective January 1, 2026
- The 2025 and 2026 increases are contingent upon General Assembly's approval by July 1, 2024.

# Cannabis and Employment

Lawful use of cannabis oil may be protected: what does this mean in the real world?

