

Virginia Labor and Employment Law

September 12, 2006

Statutory Authority

- Virginia Code Title 40.1
 - §40.1-2.1 Title does not apply to the Commonwealth or its agencies

What is “at will” employment and is “at will” still alive in Virginia?

- Doctrine comes down to us from English Common Law
- Employers are free to establish the policies and practices that best suit their businesses needs
- Can fire without notice or cause
- Employees are free to leave without notice or cause

Exceptions to the “at will” doctrine

- Statutory exclusions
 - One can not discharge an employee because employee filed a complaint or gave testimony for a complainant
- Implied contract arising from various employment doctrines
- Public policy wrongful discharge claims

May a Virginia employer require an employee to take a polygraph test as a condition of employment?

- Generally not
- Two restriction in the Code of Virginia
- §40.1-51.4:4 No polygraphs in law enforcement
- §40.1-51.4:3 No “sexual activity” questions
- Much greater restrictions under federal law.

May an employer require employee or applicant to submit to a medical examination?

- Requiring a medical exam is not prohibited
- Va. Code §40.1-28 prohibits requiring the employee to pay for the examination or the cost of furnishing medical records
- The Americans with Disabilities Act (ADA)
 - No pre employment physical until conditional offer
 - Denial of employment based on exam must show
 - Business necessity
 - No reasonable accommodation available

What does Right –to-Work mean?

- Va. Code §40.1-60: employer can not require employees to become members of a union as a condition of employment
- Va. Code §40.1-61: employer can not require employees to abstain from or refrain from membership in a union as a condition of employment

Is Virginia a Right-to-Work state?

- YES

Must an employer provide rest periods or lunch breaks?

- Child labor laws require employees under the age of 16 to be provided 30 minute break after five hours
- No other requirement for breaks in Virginia labor law
- Occupation-specific requirements may exist

Can an employer require an employee to work seven consecutive days?

- Yes, with the repeal of §40.1-28.1 The General Assembly eliminated Virginia's Day of Rest Law

May an employer withhold funds from an employee's paycheck?

- Payment of Wages in Virginia is governed by §40.1-29
- No withholding without written and signed authorization
- Authorization can not be a condition of employment
- Blanket authorizations are almost always illegal
- Even with a signed authorization wages can not be below minimum wage

Does an employer have the right to release wages under a wage assignment?

- Yes, provided appropriate written and signed authorization has been obtained
- Va. Code §40.1-31 contains very specific requirements that must be met before a wage assignment is permitted

Can an employer require an employee absent from employment use sick leave or vacation time?

- Yes, with one exception – Jury duty
- Nothing in the Code of Virginia or federal law prohibits employers from requiring employees to use leave to cover absences
 - including employer forced absences such as temporary closings and disciplinary suspensions

May an employer require an employee to accept his or her paycheck by direct deposit?

- Generally no
- Employers have the option of paying employees by direct deposit if the employee designates an account into which the deposit may be made
- Amusement park operators can pay an employee with a pay card