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LABOR AND EMPLOYMENT LAW

Anna Richardson Smith *

I. INTRODUCTION

This article summarizes Virginia labor and employment law cases and statutory activity from the past year. Judicial developments have been limited and largely unremarkable this year. Section II describes recent Virginia cases interpreting employment agreements. Section III considers cases interpreting Virginia's employment-at-will doctrine. Section IV focuses on cases analyzing business torts in an employment context. Finally, Section V provides an overview of legislative activity during the 2008 Virginia General Assembly session. Arguably, the most significant practical impact on Virginia employers has been the need to comply with the long-anticipated increase in the federal minimum wage. Given this significant legislation, this article concludes with a summary of its graduated pay requirements.

II. EMPLOYMENT AGREEMENTS

Virginia circuit courts continued in the past year to grapple with fact-specific analyses of restrictive covenants. In Virginia, such covenants are disfavored as restraints of trade.¹ A three-part test is used to assess the validity of a non-compete agreement. First, courts consider whether the restraint imposed by the agreement is only as great as necessary to protect the legitimate business interests of the employer.² Second, courts consider

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1. *Simmons v. Miller*, 261 Va. 561, 581, 544 S.E.2d 666, 678 (2001).

2. *See Omniplex World Servs. Corp. v. U.S. Investigations Servs., Inc.*, 270 Va. 246,

whether the agreement is unduly harsh and oppressive in limiting the employee's legitimate efforts to earn a livelihood.³ Third, courts consider whether the restraint is consistent with sound public policy.⁴ Generally, this test appears in the case law as a reasonableness analysis of the duration, geographic scope, and breadth of activity restrained by the agreement.⁵

In March of 2008, the Virginia Beach City Circuit Court analyzed the non-compete provision of an agreement between business partners using the reasonableness analysis of an employer-employee restrictive covenant.⁶ In *Miran v. Merullo*, plaintiff Wahsei Miran agreed to provide his services to defendants Alan Merullo and Greg Smith in support of their newly opened martial arts training facility.⁷ The parties memorialized their relationship in a September 2004 operating agreement.⁸ Miran agreed to allow the defendants to market their facility using the name of his existing martial arts academy.⁹ Miran would teach two martial arts sessions a month at the facility, as well as provide the defendants with lessons for their own professional development.¹⁰ In exchange, the two defendants agreed to pay Miran ten percent of their facility's monthly profit.¹¹

The operating agreement also contained a non-compete clause that penalized the defendants if they opened another martial arts facility that did not include Miran.¹² The financial penalty was \$15,000, and the provision explicitly remained "in effect indefinitely."¹³ Despite this restraint, the two defendants stopped paying Miran in March of 2007, at which time they changed the name of their martial arts facility and declined to continue Miran's involvement in their venture.¹⁴ The defendants continued,

249, 618 S.E.2d 340, 342 (2005).

3. *Id.*

4. *Id.*

5. *See, e.g., Simmons*, 261 Va. at 581, 544 S.E.2d at 678.

6. *Miran v. Merullo*, No. CL07-5878, 2008 Va. Cir. LEXIS 37 (Cir. Ct. Mar. 10, 2008) (Virginia Beach City).

7. *Id.* at *1.

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.* at *1-2.

13. *Id.* at *2.

14. *Id.*

however, to use Miran's name and likeness in their marketing materials and to use a unique symbol that Miran created solely for use in his own facility.¹⁵

Miran sued the defendants, seeking a variety of damages as well as attorneys' fees.¹⁶ The defendants argued in their motion for partial summary judgment that the restrictive covenant was not enforceable.¹⁷ While recognizing that the restraint's language did not "fall neatly within the definition for a covenant not to compete," the court was able to identify the agreement's time-frame and protected interest.¹⁸ Specifically, the court noted that the duration of the restrictive covenant was the "*cooperative business relationship*" of the parties.¹⁹ The restrained conduct was the opening of "a *similar martial arts school* without affording [the plaintiff] the *opportunity to participate*."²⁰

Given these parameters, the court found that the agreement was properly analyzed as a non-compete agreement between an employer and an employee.²¹ In analyzing the agreement, the court first found the agreement to be reasonable in duration.²² Although the provision explicitly stated that it was to remain in effect "indefinitely"—typically fatally overbroad durational language²³—the court construed the non-compete clause only to remain in effect while the parties maintained a business relationship.²⁴ The court acknowledged that this involved "splicing . . . the language of the [non-compete] clause," but taken as a whole, the wording did not restrain the defendants' conduct once the relationship ended.²⁵

Next, the court found the non-compete clause to be reasonable in the scope of restrained conduct because it did not "wholly prevent the defendants from pursuing another business venture,"

15. *Id.*

16. *Id.*

17. *See id.*

18. *Id.* at *5.

19. *Id.* at *4.

20. *Id.*

21. *See id.* at *5.

22. *See id.* at *7.

23. *See, e.g.,* *Simmons v. Miller*, 261 Va. 561, 581, 544 S.E.2d 666, 678 (2001).

24. *Miran*, 2008 Va. Cir. LEXIS 39, at *7.

25. *Id.*

even during their business relationship with Miran.²⁶ The financial penalty of \$15,000 for pursuing other business without Miran's involvement did not amount to an injunction against such conduct.²⁷

The court's analysis of the geographic scope of the covenant, like its analysis of the durational scope, was notable for its contextual complexity. The court first acknowledged that the covenant contained no geographic limitation on the competition restricted²⁸—again, a potentially fatal flaw.²⁹ The court then reviewed the historic development of the geographic scope analysis, noting that the purpose of the geographic scope analysis was to prevent an employer from harshly restraining an employee's ability to earn a living once the employment relationship ended.³⁰ The court noted that where the parties are sophisticated and stand on equal bargaining ground, the disadvantages that usually prevent employees from protecting their interests in future employment are absent.³¹ Further, in the contract at hand, the concerns the court usually would have had as to a restraint on an employee's future employment were absent because the non-compete clause did not, on its face, restrain any conduct *after* the end of the business relationship.³²

After analyzing these points, the court denied the motion for partial summary judgment and found the non-compete clause to be valid.³³ The court's analysis of the restraint as a whole agreement, to be understood in the context of the goals and bargaining power of its parties, demonstrates a broad and relatively flexible approach to the typical reasonableness inquiry found in covenant cases.

A more traditional and straightforward application of the Virginia three-part reasonableness test is found in the Richmond City Circuit Court's analysis in *Pace v. Retirement Plan Adminis-*

26. *Id.* at *9.

27. *Id.*

28. *Id.* at *7.

29. *See, e.g.,* Power Distrib., Inc. v. Emergency Power Eng'g, Inc., 569 F. Supp. 54, 57 (E.D. Va. 1983) (applying Virginia law).

30. *Miran*, 2008 Va. Cir. LEXIS 37, at *7.

31. *Id.* at *9.

32. *Id.*

33. *Id.* at *10.

*trative Service, Ltd.*³⁴ The *Pace* non-compete clause also demonstrates classic problems in drafting. In *Pace*, the plaintiff left her employer to work for a competing business.³⁵ After her employer advised her that it would seek to enforce her non-compete clause, she sought a declaratory judgment on the validity of the clause, taking the position that it was overly broad and therefore invalid.³⁶

The court cited and emphasized the leading cases that require narrow drafting of a non-compete clause to protect only the employer's legitimate business interests.³⁷ This concept is often discussed using a "janitor" metaphor—if a non-compete clause is drafted so broadly that it restricts, for example, a salesperson from later working in *any* capacity for a competitor, it likely is unreasonably broad.³⁸ After all, the employee likely would not pose a competitive threat if he worked for a competitor as a janitor. The *Pace* plaintiff's non-compete clause prevented her from competing with the employer in *any* business activities within the agreement's geographic scope or during its time limits.³⁹ The court found that this provision was too broad because it did not limit the restraint on employment to "competition with other businesses that compete with [the employer's] business."⁴⁰

The *Pace* plaintiff's non-compete clause also prevented her from soliciting "referral sources" in her subsequent employment, but the clause did not limit the term to only the "referral sources" of the employer.⁴¹ This restriction, in attempting to prevent plaintiff's post-employment interaction with *any* referral source, was too broad to protect the employer's relationships with only *its* referral sources.⁴²

34. 74 Va. Cir. 201 (Cir. Ct. 2007) (Richmond City).

35. *Id.* at 201.

36. *Id.* at 201–02.

37. *Id.* at 203 (citing *Omniplex World Servs. Corp. v. U.S. Investigations Servs., Inc.*, 270 Va. 246, 249, 618 S.E.2d 340, 342 (2005); *Modern Env'ts, Inc. v. Stinnett*, 263 Va. 491, 493, 561 S.E.2d 694, 695 (2002)).

38. *See, e.g.*, *Cliff Simmons Roofing, Inc. v. Cash*, 49 Va. Cir. 156, 157 (Cir. Ct. 1999) (Rockingham County).

39. *Pace*, 74 Va. Cir. at 203.

40. *Id.* at 203–04.

41. *Id.* at 203.

42. *Id.*

In sum, the reasonableness of the restrictions as to geography and duration could not save the *Pace* non-compete clause where it attempted to restrict employment activities beyond the legitimate business needs of the employer.⁴³ The overbreadth of both the non-solicit and the non-compete portions of the *Pace* agreement demonstrates the primary drafting problem in unenforceable agreements of this type—lack of attention to definitional narrowness, which sometimes may be connected to the drafter's failure to communicate to the client the scrutiny for overbreadth that Virginia courts are likely to give any non-compete clause.

III. EMPLOYMENT-AT-WILL DOCTRINE

A key characteristic of Virginia employment law is its comprehensive emphasis on employment-at-will. An employer generally may discharge an employee for any reason, so long as that reason is not contrary to the commonwealth's established public policy or a specific statute.⁴⁴ The "public policy"—based exceptions to this doctrine arise where an employee is discharged for exercising a statutorily created right; for a reason against public policy as explicitly provided by statute; or because of the employee's refusal to perform an unlawful act.⁴⁵ Since the doctrine was first formulated in *Bowman v. State Bank of Keysville*,⁴⁶ cases typically have focused on whether the statutory right or unlawful act alleged to undergird the claim is adequate as a matter of law.

Consistent with this trend, in 2007 the Fairfax County Circuit Court held that an employee's allegation that she was asked by an employer to act in a way that violated Virginia's obstruction of justice statute does not constitute a basis for an exception to the employment-at-will doctrine.⁴⁷ Virginia's obstruction of justice statute prohibits a person from obstructing "any law-enforcement

43. *Id.* at 205. Without extensive analysis, the court also stated that the non-compete's blue pencil, assignment, and remedies provisions rendered it unenforceable. *Id.* That holding is arguably unsupported by existing Virginia law.

44. See, e.g., *Mitchem v. Counts*, 259 Va. 179, 189–90, 523 S.E.2d 246, 252 (2000); *Miller v. SEVAMP, Inc.*, 234 Va. 462, 467, 362 S.E.2d 915, 918 (1987); *Bowman v. State Bank of Keysville*, 229 Va. 534, 539–40, 331 S.E.2d 797, 801 (1985).

45. See *Rowan v. Tractor Supply Co.*, 263 Va. 209, 213–14, 559 S.E.2d 709, 711 (2002).

46. See *Bowman*, 229 Va. at 540, 331 S.E.2d at 801.

47. *Carr v. Bus. Sys. Mgmt., Inc.*, 73 Va. Cir. 459, 463 (Cir. Ct. 2007) (Fairfax County).

officer in the performance of his duties . . . without just cause.”⁴⁸ In *Carr*, the plaintiff-employee argued that she was terminated from employment because she refused to violate the statute at her employer’s request.⁴⁹ Specifically, she alleged that her supervisor asked her to sign a letter to the supervisor’s probation officer falsely asserting that his business address had changed and then meet with that probation officer to support the content of the letter.⁵⁰ Her supervisor’s goal, the plaintiff asserted, was to allege an address in a different county so that he would be assigned a probation officer who was not as strict.⁵¹ Although she drafted the letter, she ultimately refused to sign it or to meet with the probation officer.⁵²

In analyzing the claim, the circuit court acknowledged that any exception to the employment-at-will doctrine under *Bowman* and its progeny is to be narrowly construed and should extend only to “specifically enumerated public policies.”⁵³ The court then provided two explanations for why the plaintiff’s claim could not be supported by the obstruction of justice statute. First, the court concluded that a probation officer is not a law enforcement officer; therefore, the plaintiff’s allegation of coerced conduct against a probation officer could not violate Virginia’s obstruction of justice statute.⁵⁴ That statute prohibits a person from knowingly obstructing any “law enforcement officer” in the performance of his duties.⁵⁵ Because neither the Virginia Code nor any case law determined that a probation officer is a “law enforcement officer,” the court relied on the definition of “law enforcement officer” used in Virginia’s assault and battery statute.⁵⁶ In that statute, a law enforcement officer is expressly defined “as an employee of a police department or sheriff’s office, conservation officer, game

48. VA. CODE ANN. § 18.2-460(A) (Cum. Supp. 2008).

49. *Carr*, 73 Va. Cir. at 459–60.

50. *Id.*

51. *Id.*

52. *Id.* at 460.

53. *Id.* at 461 (citing *Rowan v. Tractor Supply Co.*, 263 Va. 209, 213, 559 S.E.2d 709, 711 (2002)).

54. *Id.* at 461–62.

55. VA. CODE ANN. § 18.2-460(A) (Cum. Supp. 2008).

56. *Carr*, 73 Va. Cir. at 461–62.

warden, jail warden, deputy sheriff, auxiliary police officer, and auxiliary deputy sheriff.”⁵⁷

After outlining these definitions, the court analyzed whether a probation officer could be considered a law enforcement officer for purposes of the obstruction of justice statute. Although the court found that a probation officer and a law enforcement officer have many duties in common—such as conducting investigations and effectuating arrests—the court declined to read the position of probation officer into the statutory definition of law enforcement officer.⁵⁸ Because her allegations could not support an obstruction of justice claim under the statutory definition (albeit under a different statute), the plaintiff’s claim could not survive a demurrer.⁵⁹

The court went on to note that, historically, an obstruction of justice claim has not been allowed by the Supreme Court of Virginia as a basis for a plaintiff’s *Bowman* claim.⁶⁰ The Supreme Court of Virginia has on two occasions declined to allow use of the obstruction of justice statute as the basis for an exception to the employment-at-will doctrine.⁶¹ The *Carr* Court relied on both the specific definitional problem with a “probation officer” and this second, precedential rationale to sustain the defendant’s demurrer to Carr’s claim.⁶² It is perhaps a measure of the fluid nature of this tort under Virginia law that the *Carr* Court felt it appropriate to resolve the definitional issue as an independent basis for decision.

IV. BUSINESS TORTS

Virginia employers may resort to a variety of common law and statutory claims to seek compensation for damages caused by unlawful competitive activities undertaken by employees or former employees. Although these claims often involve the interpretation of restrictive covenants, employers may also seek relief from the

57. *Id.* at 461 (citing VA. CODE ANN. § 18.2-57 (Cum. Supp. 2008)).

58. *Id.* at 461–62.

59. *Id.* at 463.

60. *See id.* at 462.

61. *See Rowan v. Tractor Supply Co.*, 263 Va. 209, 215, 559 S.E.2d 709, 712 (2002); *City of Va. Beach v. Harris*, 259 Va. 220, 233–34, 523 S.E.2d 239, 245–46 (2000).

62. *Carr*, 73 Va. Cir. at 463.

wrongful acts of those employees who were not subject to such covenants through the application of various business tort principles. These torts include common-law and statutory conspiracy, tortious interference with actual and prospective business relations, breach of fiduciary duty, misappropriation of trade secrets, and conversion. In *Banks v. Mario Industries of Virginia, Inc.*, the Supreme Court of Virginia analyzed several recurring problems faced by those asserting these torts.⁶³

In *Banks*, the plaintiff, Mario Industries of Virginia, Inc. (“Mario”), employed defendant Troy Cook as its sales division manager.⁶⁴ Mario also contracted with defendant Bette Banks to provide sales services in Virginia, Maryland, and the District of Columbia.⁶⁵

Cook later left Mario to set up his own competing business.⁶⁶ Prior to leaving, he contacted a previous Mario warehouse manager about forming his new business, and enlisted Banks’ aid to gain client referrals.⁶⁷ Cook also prepared a document that outlined some of his intentions for his business.⁶⁸ Cook’s document included confidential information about Mario, such as its yearly sales totals, target price points for customers, vendor lists, margins, commissions, and other trade secrets.⁶⁹ Cook then resigned.⁷⁰

After Cook’s resignation, Mario’s computer forensics expert searched the hard drive of Cook’s work computer, which contained deleted e-mails, quotes, and files that related to the formation of Cook’s competing business.⁷¹ The expert also found the document Cook had written prior to his resignation that outlined his intentions for his business.⁷² All of these documents had been printed out from the computer Cook had used while at Mario.⁷³

63. 274 Va. 438, 447, 650 S.E.2d 687, 692 (2007).

64. *Id.* at 444, 650 S.E.2d at 690.

65. *Id.*

66. *Id.* at 445–46, 650 S.E.2d at 691.

67. *Id.*, 650 S.E.2d at 691–92.

68. *Id.* at 445, 650 S.E.2d at 691.

69. *Id.*

70. *Id.*

71. *Id.* at 446, 650 S.E.2d at 691.

72. *See id.*

73. *Id.*

Meanwhile, Banks supported Cook's new venture in a variety of ways. She sent quotes to Cook's new company instead of sending them to Mario.⁷⁴ She diverted several projects from Mario to Cook before ending her services as an independent contractor with Mario.⁷⁵ Not surprisingly, she moved to Cook's company after being offered a ten percent commission.⁷⁶ Mario sued Banks, Cook, and others involved in the formation of Cook's competing company based on theories of (1) tortious interference with business relations; (2) common-law conspiracy; (3) statutory conspiracy; (4) breach of fiduciary duty (against Cook, Banks, and one other defendant); (5) misappropriation of trade secrets (against Cook and two other defendants); and (6) conversion (against Cook and two other defendants).⁷⁷

In upholding a jury verdict for Mario, the Supreme Court of Virginia made several rulings relevant to procedural and evidentiary problems typically encountered by parties litigating business torts. First, the court affirmed the trial court's instruction to the jury that if it found an agency relationship between Mario and Cook, then Cook owed a fiduciary duty to Mario.⁷⁸ On appeal, Cook challenged this instruction based on his position that the determination of whether he owed a fiduciary duty of loyalty to Mario was a question of law for the court and had been incorrectly submitted to the jury.⁷⁹ The court clarified that pursuant to these jury instructions, once an agency relationship is established, the agent necessarily owes a fiduciary duty to the principal.⁸⁰ The existence of an agency relationship is a question of fact for the jury.⁸¹

74. *Id.*, 650 S.E.2d at 692.

75. *Id.* at 447, 650 S.E.2d at 692.

76. *Id.*

77. *Id.*

78. *Id.* at 452-53, 650 S.E.2d at 695.

79. *Id.* at 452, 650 S.E.2d at 694-95.

80. *Id.* at 453, 650 S.E.2d at 695.

81. *Id.* at 452, 650 S.E.2d at 695. The trial court instructed the jury as follows:

Agency is a fiduciary relationship between two parties in which one party agrees to act on behalf of and subject to the control of the other party. In an agency agreement, the parties agree that the agent shall act on behalf of and subject to the control of the principal. If a party is not an agent, that party is not a fiduciary.

Id. at 452-53, 650 S.E.2d at 695.

The court also examined an interesting question of attorney-client privilege raised by Cook. A provision in Mario's employee handbook provided that employees should have no expectation of privacy on employer computers.⁸² Perhaps unthinkingly, but as many other employees do, Cook used his office computer for personal messages—including communications to his lawyer, which Cook argued were privileged. The court disagreed: even though the employees were permitted to use the computers for personal business, any document drafted on the employer's computer would not be protected by the attorney-client privilege during discovery.⁸³ The court stated that "the [attorney-client] privilege is waived where the communication takes place under circumstances such that persons outside the privilege can overhear what is said."⁸⁴ Therefore, an employee who prepares and/or stores personal documents using his employer's information technology is effectively sharing the content of the documents with his employer (as well as waiving applicable privileges, perhaps even in litigation with persons *other* than his employer).

Next, in the context of evaluating damages for lost profit(s), the court discussed case law requiring a company to show that its business had been injured, interrupted, or destroyed.⁸⁵ After such a showing, "the measure of damages is the diminution in value of the business by reason of the wrongful act, measured by the loss of the usual profits from the business."⁸⁶ With this background, the court considered whether Cook had caused Mario to lose contracts before his last day of employment with Mario. Specifically, Mario alleged that Cook's failure to perform according to the requirements of his job in quoting figures on jobs that he was negotiating on behalf of Mario *before* he left Mario—but after he had decided to develop his competing business—resulted in Mario's later failure to obtain those jobs.⁸⁷ The court concluded that because Cook had not performed according to his job obligations on two contracts that he was negotiating before leaving Mario, there

82. *Id.* at 453–44, 650 S.E.2d at 695.

83. *Id.*, 650 S.E.2d at 695–96.

84. *Id.* at 454, 650 S.E.2d at 695–95 (citing *Clagett v. Commonwealth*, 252 Va. 79, 92, 472 S.E.2d 263, 270 (1996)).

85. *See id.* at 455, 650 S.E.2d at 696 (citing *Saks Fifth Ave., Inc. v. James, Ltd.*, 272 Va. 177, 188, 630 S.E.2d 304, 311 (2006)).

86. *Id.* (quoting *Saks*, 272 Va. at 188, 630 S.E.2d at 311).

87. *Id.* at 457–58, 650 S.E.2d at 697–98.

was sufficient evidence for the jury to conclude that the contract losses were damages caused by Cook to Mario.⁸⁸

Finally, the court addressed the issue of punitive damages. Specifically, the court supported the trial court's use of a jury instruction that defined "actual malice" as "a sinister or corrupt motive such as hatred, personal spite, ill will, or a desire to injure the plaintiff."⁸⁹ Where Cook had formed a competing company while he was still employed at Mario, and where he admitted that he intended to compete with Mario, a jury "could have concluded and did conclude that Cook had the requisite malice to injure Mario."⁹⁰ The trial court's failure to set aside a punitive damages award, therefore, was not error.⁹¹

Not all business torts appear in unlawful competition cases, however. In a case that considered the threshold factual showing for a prima facie case of tortious interference with a contract, the Norfolk City Circuit Court analyzed the claim of an employee who contended tortious interference led to her forced resignation.⁹² In *Wilson v. Modjadidi*, the plaintiff, a dental assistant, sued a dentist with whom she worked, claiming that he tortiously interfered with her contractual relationship with her employer, the dental practice.⁹³ The defendant dentist filed a demurrer alleging that the plaintiff did not state a cause of action for tortious interference with her employment contract.⁹⁴

The court first noted that to state a claim for tortious interference with her employment contract, the plaintiff was required to allege intentional interference with the contract by the use of improper methods by the defendant dentist.⁹⁵ An allegation of improper methods is required where the underlying contract is terminable at will.⁹⁶ The court explained that improper methods could be demonstrated where the defendant violated a law; threatened, intimidated, bribed, defamed, or breached a fiduciary relationship; or engaged in some conduct that violated an "estab-

88. *Id.* at 457, 458, 650 S.E.2d at 697, 698.

89. *Id.* at 460, 650 S.E.2d at 699.

90. *Id.*

91. *Id.*

92. *Wilson v. Modjadidi*, 74 Va. Cir. 279, 279, 282 (Cir. Ct. 2007) (Norfolk City).

93. *Id.*

94. *Id.* at 280.

95. *Id.* at 281-82.

96. *Id.*

lished standard of a trade or profession,” such as conduct that would be unethical under the standards of the profession.⁹⁷

The *Wilson* plaintiff alleged that the defendant dentist had used improper methods to interfere with her employment contract where he “stated his intention to compel [her] to” resign.⁹⁸ For example, the plaintiff alleged that the dentist told her, “You are next,” after another employee quit due to the dentist’s wrongful conduct.⁹⁹ The plaintiff also alleged that after her resignation, the dentist “openly bragged about his having caused [her] to lose employment.”¹⁰⁰ The court found that these facts were sufficient to show improper methods, and accordingly sufficient for the plaintiff to state a *prima facie* case of tortious interference with her employment contract.¹⁰¹ She had alleged that the dentist had “intended to force her to resign and actually made specific threats of those intentions.”¹⁰²

Tortious interference claims generally arise where the business damage is experienced by a company.¹⁰³ *Wilson* demonstrates the somewhat creative use of this tort to state a claim in a personal employment context, in addition to providing an example of a *prima facie* showing in such a context.

V. SIGNIFICANT LEGISLATIVE DEVELOPMENTS

In Virginia legislative activity, Virginia Code section 2.2-4311.1 was amended to add a provision requiring that all public bodies provide in each written contract with a state contractor that the contractor does not, and will not during performance of the con-

97. *Id.* at 282 (quoting *Duggin v. Adams*, 234 Va. 221, 227–28, 360 S.E.2d 832, 836–37 (1987)).

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *See, e.g., Simbeck, Inc. v. Dodd-Sisk Whitlock Corp.*, 44 Va. Cir. 54, 57 (Cir. Ct. 1997) (Winchester City) (“It is important to note that [tortious interference] is an economic tort designed to punish both unlawful and sharp *competitive* business practices, and it generally arises . . . where one wrongfully expropriates a business opportunity for himself or improperly intervenes in another’s business relationships to expand his own business.” (emphasis added)).

tract, "knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986."¹⁰⁴

The Unemployment Compensation Act of Virginia was amended to provide that the Commissioner of the Virginia Employment Commission may recoup overpayments of benefits.¹⁰⁵ Such overpayments may be "recorded, enforced, and satisfied as orders or decrees of a circuit court upon certification" by the Commissioner of the Virginia Employment Commission.¹⁰⁶

A Virginia Senate bill allowing employers to pay employees by credit or a prepaid debit card or card account was carried over to the 2009 session.¹⁰⁷

Although there was no change during the 2008 General Assembly session to Virginia's statute setting its minimum wage at the rate set by the Fair Labor Standards Act, the federal minimum wage did change, thereby impacting virtually all Virginia employers. The Fair Minimum Wage Act of 2007 provided for phased increases in the federal minimum wage.¹⁰⁸ The federal minimum wage rose from \$5.15 per hour to \$5.85 per hour for work performed from July 24, 2007 to July 23, 2008.¹⁰⁹ As of July 24, 2008, and continuing to July 23, 2009, the federal minimum wage will be \$6.55 per hour.¹¹⁰ Work performed on or after July 24, 2009 must be compensated at the minimum wage of \$7.25 per hour.¹¹¹

VI. CONCLUSION

No specific Virginia legislation or case of the past year appears to have significantly modified existing patterns in Virginia labor and employment law, although the change to the federal minimum wage has had and will continue to have a significant practical impact on most Virginia employers. In general, Virginia

104. VA. CODE ANN. § 2.2-4311.1 (Repl. Vol. 2008).

105. VA. CODE ANN. § 60.2-633 (Cum. Supp. 2008).

106. *Id.*

107. See S.B. 223, Va. Gen. Assembly (Reg. Sess. 2008).

108. See Fair Minimum Wage Act of 2007, Pub. L. No. 110-28, tit. VIII, § 8102(a), 121 Stat. 188, 188 (codified as amended at 29 U.S.C. § 206(a)(1)).

109. *See id.*

110. *See id.*

111. *See id.*

courts have continued to address the recurring issues of Virginia's core employment claims: exceptions to the employment-at-will doctrine; the family of business torts available to those involved in employment contracts; and the contours of the non-compete landscape.
