

Helping People, Families, and Businesses Solve Problems and Pursue Opportunities
3050 Chain Bridge Road, Suite 200, Fairfax, VA 22030

703-865-7480 – Call or Text Us!

Summer 2020 Newsletter

Coronavirus, New Partner, New Virginia Statutes. And No Baseball? What Has Happened to the World?

Friends:

These are indeed strange times. We lost the first part, and maybe all, of a baseball season with the *World Champion* Nationals. And what did we get in return? The worst virus in 100 years. Not a good trade. And it came at such a busy time!



Our new entry way to Suite 200

We are sending out this newsletter to share our good news and inform you of our growing practice. We also have some articles on the huge changes coming to Virginia Employment Law and an article from our new partner on one of the understated effects of the coronavirus – an increase in the incidence of domestic violence. And we are celebrating two of our partners – John Cook and Broderick Dunn – who were again selected to the Virginia SuperLawyers list (and for John the District of Columbia list, as well).

We hope you will take a few minutes to review these articles. We appreciate your referrals and enjoy our interactions with you in our everyday practices. Stay safe and keep in touch.

Cook Craig & Francuzenko

Here at CCF we added a new partner (Welcome Alanna!) We added a whole new area of practice (Domestic Relations) as we continue to evolve into a broad, general practice firm with specialty practice areas. We almost doubled our office space (Open House coming when it is no longer illegal!) to accommodate our growing practices. And then the Virginia General Assembly completed an extremely consequential session which, regardless of your political affiliation, you need to know put into place the biggest changes to Virginia Employment law in a generation. So much is going on!



Our newly redesigned lobby



is pleased to announce



Alanna Williams

has become a Partner in the Firm.

Ms. Williams is a member of the American Academy of Matrimonial Lawyers and has been practicing law since 1991. She focuses her practice on family law issues of divorce, custody, and equitable distribution.

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Huge Day for Employee Rights in Virginia

By: John C. Cook and Broderick C. Dunn



Saturday April 11 was a great day for employee rights in Virginia as [Governor Northam](#) signed the [SB 868](#), the Virginia Values Act, into law.

The [Virginia Values Act](#) not only prohibits discrimination on the basis of sexual orientation and sexual identity in employment and public accommodations, it also creates a state court cause of action for discrimination on those bases along with the previously-identified prohibited

characteristics of race, gender, national origin, age, religion, and disability. Such a state court action in some ways will mirror the current federal actions under the Civil Rights Act of 1964.

A complainant must first file an administrative charge with a new state agency and receive a right to sue letter before filing in court. Importantly, however, cases in court are not subject to a cap on damages, as is the case in federal claims. Bringing such cases in state court gives plaintiff employees the added benefit of avoiding the [summary judgment](#) proceedings that are so common in U.S. District Court, where many plaintiffs' cases are lost. Prevailing plaintiffs in state court under the Virginia Values Act may also be awarded their attorneys' fees.

In addition, the law covers some employers not currently covered by federal law. All employers with 15 or more employees are subject to the law. But wrongful discharge claims may be brought against employers with five or more employees. Age discrimination cases alleging wrongful discharge are limited to employers between 5 and 20 employees.

This ground-breaking law will significantly change the legal landscape in Virginia employment law. Look for a significant number of cases to be filed in state court. Also look for employers to settle significant numbers of cases, since they will no longer be able to rely on the employer-friendly summary judgment procedure that has stymied Virginia plaintiffs in federal court for decades. Also look for some interesting verdict amounts as the federal caps, in place since 1991, do not apply.

The Hidden Danger of COVID-19 Domestic Violence

By: Alanna Williams



There has been a surge in domestic violence throughout the country over the past month. COVID-19 is a playground for batterers who can isolate their spouse or partner from their family, friends, and doctors. Victims are afraid to go to the hospital in fear of catching the virus.

Between March 30 and April 4, 2020, the Fairfax County Police responded to 77 domestic dispute calls. The average number of calls for help is approximately 200 per month¹. If the reported cases continue at 77 every five days, the increase in domestic disputes, with police intervention, is over 333 for the month. There are also countless cases that go unreported.

Like COVID-19, domestic violence knows no boundaries. It affects the affluent and the poor. It affects people of all backgrounds and religions. It affects the educated and the less educated. The perpetrators are both men and women.

During our lockdown, most people are experiencing an enormous amount of stress as they lose their jobs, the children are out of school, and alcohol consumption is increasing. Children are home all day and parents are trying to keep them entertained and educated. There are no social outlets for adults or children. Restaurants, malls, and parks are all closed. Unfortunately, for some, this is a recipe for violence.

The [Power and Control Wheel](#) depicts the power and control a perpetrator uses against his or her spouse or partner. An abuser often starts out slowly, generally with emotional and psychological manipulation in order to make their partner feel helpless, weak, and never good enough. By the time the physical abuse begins, many times the victim has low self-esteem, feels guilty, or responsible for being abused. The victim makes excuses for the bruises and is emotionally and many times economically dependent on the abuser. The perpetrator, on the other hand, is extremely jealous, blames others for their actions, never accepts responsibility, is unable to deal with stress, lacks impulse control, and believes violence is a way to solve problems.

If you are in an abusive relationship, please get help now. No one deserves to be belittled, hit, punched, strangled, slammed against a wall, or forced to have sex against their will.

Fairfax County has a 24-hour domestic & sexual violence hotline which is (703) 360-7273. There is also the Fairfax County Domestic Violence Action Center at (703) 246-4573.

Online information is at:

<https://www.fairfaxcounty.gov/familyservices/domestic-sexual-violence> and www.fairfaxdvcommunity.org

¹ Fairfax County Domestic Violence Prevention Policy & Coordinating Council.

Should Your 18-Year-Old Have an Advanced Medical Directive?

By: Christopher T. Craig



The best estate plans include the adoption of a robust Advanced Medical Directive (AMD). AMDs are legally binding documents that provide direction into your personal healthcare decisions and often focus on end of life decisions - when you cannot make those decisions yourself. An AMD is a Living Will and a Health Care Power of Attorney, all rolled in one document.

A person adopting an AMD sets forth their desired health care treatment in the event that he or she were to lose their ability to direct their own care (Living Will). It also designates an Agent with proper state and federal authority to make health care decisions on behalf of the incapacitated person (Health Care Power of Attorney). AMDs are of course "standard" in estate planning for adults starting out, those with small or growing families and older Americans or those planning a hospital visit.

But what about YOUNG ADULTS between 18 and 26?

It is difficult to conceive but young people do get sick, injured and admitted to hospitals and other health care facilities... and in many cases they have never signed an AMD. The parents of 18 or 19 year old adults are often surprised when they are told that the doctor or other health care professional cannot legally provide information to, or seeking guidance from, a parent that could help with the treatment of their child without signed authority in the form of an AMD. Why? Because an 18-year-old person is an adult. And worse yet, this news may come up at a very bad time: when the 18 or 19-year-old becomes ill or injured.

While wills, trusts, powers of attorney, family limited partnerships and limited liability companies, beneficiary statements and other traditional estate planning tools are often very pre-mature or not necessary for an 18 to 26-year-old, it's never too soon to have an AMD. For more information about AMDs, see the following [National Institute of Health web page](#).

If you are interested in having an Advanced Medical Directive, will, Power of Attorney, or a trust created for you or a loved one, please do not hesitate to contact us at 703-865-7480.

Virginia Enacts Sweeping Whistleblower Protection Law

By: John C. Cook and Broderick C. Dunn



On April 11, 2020, Governor Ralph Northam signed yet another bill which fundamentally changes the employment law landscape in the Commonwealth of Virginia. [HB798](#) is a comprehensive whistleblower protection law which prevents an employer from discharging, disciplining, threatening, discriminating against, or penalizing an employee because he or she:

- Reports a violation of any federal or state law or regulation to a supervisor or to any governmental body or law enforcement official;
- Participates in an investigation, hearing or inquiry requested by a governmental body or law enforcement official;
- Refuses to engage in a criminal act that would subject the employee to criminal liability;
- Refuses an employer's order to perform an action that violates any federal or state law or regulation and the employee informs the employer that the order is being refused for that reason; or
- Provides information to or testifies before any governmental body or law-enforcement official conducting an investigation, hearing, or inquiry into any alleged violation by the employer of federal or state law or regulation.

In addition to its broad scope, HB798 permits an employee to bring an action in state court within one year of the employer's prohibited, retaliatory action. Further, the whistleblower protection law allows a prevailing employee to obtain remedies including injunctive relief, reinstatement, lost wages and benefits, and reasonable attorneys' fees and costs.

From a practical standpoint, HB798 creates a new, broad wrongful discharge cause of action in Virginia. Prior to HB798, alleged whistleblowers had to rely on the Supreme Court of Virginia's *Bowman* doctrine—the narrow public policy exception to Virginia's at-will employment rule. In the four decades since *Bowman v. State Bank of Keysville*, 331 S.E.2d 797 (Va. 1985) was decided, the Court has recognized a wrongful discharge action in only three situations: 1) the employer violates a public policy enabling the exercise of an employee's statutorily-created right; 2) the public policy violated by the employer is explicitly expressed in a statute and the employee is a member of the class of persons entitled to protection thereunder; and 3) the discharge is based upon an employee's refusal to commit or participate in a criminal act.

Virginia Enacts Sweeping Whistleblower Protection Law, Cont.

HB798 turns *Bowman* on its head. Consider this hypothetical:

Cher is an administrative assistant at an accounting firm. Sonny is Cher's co-worker. One day, in the presence of numerous co-workers, Sonny threatens Cher to the point where Sonny has to be restrained. Cher reports Sonny's threats to management to no avail. Fearing for her personal safety, Cher obtains a Preliminary Protective Order against Sonny. Shortly thereafter, Cher's supervisor at the accounting firm terminates her employment because she "no longer fits the vision of the organization."

In a 2017 case with facts similar to the hypothetical, *Francis v. National Accrediting Commission of Career Arts & Sciences, Inc.*, 293 Va. 167 (2017), the Court declined to extend *Bowman* and held that the Francis' termination after she received a preliminary protective order against her co-worker did not violate public policy. Under Virginia's new whistleblower protection law, however, the employee in the hypothetical would be protected and would have a state law cause of action against her employer.

Successful cases may not need to be that colorful. What about the assistant who is riding in the car with her boss and complains that he is speeding? What about refusing the sexual advances of a boss when one of you is married, i.e., refusing to commit adultery? Or the produce worker in the grocery store who complains that the store is keeping food on the shelves after the expiration date? The term "any violation of federal or state law or regulation" is very broad indeed.

Look for employees to file more and more whistleblower claims in state court where they can avoid the summary judgment proceedings that are so common in U.S. District Court, where many plaintiffs' cases are lost.

We Welcome Your Referrals!

Cook Craig and Francuzenko Practices in the Following Areas:

Employment Law

- Employment contracts
- Unpaid wages and overtime
- Noncompetition clauses
- Workplace discrimination
- Racial, sexual and other harassment
- Unemployment benefits
- Wrongful Termination
- Severance Review
- ERISA (Employee Benefits)
- #MeToo

Family Law

- Alimony & Spousal Support
- Custody & Visitation
- Division of Marital Assets/Equitable Distribution
- Child Support
- Arbitration and Mediation
- Property Settlement Agreements
- Prenuptial Agreements
- Divorce and Separation
- Domestic Violence and Neglect
- Protective Orders/Restraining Orders

Tort Law

- Constitutional rights
- Personal injury
- Medical malpractice
- Insurance defense

Business Law

- Commercial litigation
- Business formation
- Nonprofits
- Contracts
- Corporate Counsel
- Trademark and Copyright Law

Estate Planning and Administration

- Asset Protection
- Estate and Trust Planning
- Estate and Trust Administration
- Wills, Trusts, and Prenuptial Agreements
- Guardianship and Conservatorship Proceedings
- Planning for Lifetime Gifts and Disposition of Assets at Death
- Powers of Attorney and Advanced Medical Directives

Campaigns and Elections

- Federal and State Political Action Committee (PAC) Counsel
- Counsel to Section 527 Organizations, Federal and State Candidate Campaign Committees, Campaign consultants, pollsters and advertisers
- Federal and State Election Compliance

We Welcome Your Referrals!

Cook Craig and Francuzenko Practices in the Following Areas:

Contracts

- Employment Contracts
- Non-Disclosure Agreements
- Confidentiality Agreements
- Business Contracts

Alternative Dispute Resolution

- Arbitration and Mediation
- Employment Disputes
- Landlord Tenant Matters
- Construction Disputes

Corporate Counsel

- Organization and Governance
- Corporate, LLC, Partnership, Sole Proprietorship Counsel

Non-Profit/Tax Exempt Entities

- Organization and Governance
- Charitable Entities and Social Welfare Action Orgs
- Compliance with IRS and State Regs
- Donations and Solicitations

Trademark and Copyright Law

- Trademarks
- Copyrights

Federal False Claims Act / Qui Tam Actions

Federal and State Civil Litigation