

Divorce impacts the bottom line in any closely held business, whether the divorce is that of an hourly employee or a principal of the company. Business owners should include divorce impact survival in their corporate planning, as with any other potential liability.

The standard separation period in Virginia to enable a couple to divorce is one year.¹ Typically, however, the breakdown of the marriage precedes the separation by quite some period of time. The length of time between marital breakdown and divorce in many cases is measured in terms of years. The impact of divorce upon a company during the period between marital breakdown and divorce depends upon the employment level of the divorcing party and the structure of the entity itself. Whether employees are hourly wage earners, salaried, or ownership participants, the burden of divorce on the employing entity impacts the employee as well as the administrative structure of the entity.

At a personal level, most employees will experience a loss in productivity due to time out of the office to attend to the details of their case; court time as necessary; and general emotional distraction. Modern conveniences such as email have dramatically improved the ability of attorneys to connect with clients without interfering in their regular work day for much of the duration of the case. Nonetheless, there is rarely any alternative to missing time at work for a client who must participate in a deposition, hearing or mediation session. Newly single parents, too, frequently experience higher rates of absenteeism in the absence of a second parent to help juggle children's schedules and illnesses.

Many divorces place additional administrative burdens on the employer. For example, Virginia support statutes provide that child and spousal support must be paid via income deduction order unless the parties mutually agree otherwise. An income deduction order may simply require the automatic deposit of funds from an employee's paycheck into a designated bank account each month by a certain date. However, such an order may require instead that payments be made through the Virginia Department of Child Support Enforcement ("DCSE"). Income deduction orders involving DCSE subject employers to strict performance requirements including, but not limited to:

- calculation and deduction of proper support amounts;
- inclusion of children and/or spouses on health and insurance benefits and making appropriate deductions for associated premiums;
- timely payment to DCSE;
- support withholding and payment to DCSE until the first to occur of entry of a new order; notice from DCSE; or termination of the employee;
- obligation to notify DCSE upon the employee's termination; and
- liability for support payments which are not properly deducted and/or timely paid.²

The earning capacities of the parties, including their employment histories and causes for any lack of employment, are significant issues in any divorce. Such information is properly discoverable in Virginia, and may be sought via interrogatories, requests for production of documents, records subpoenas and/or deposition of corporate officers. Any employer should be prepared to provide in response to discovery requests copies of employment agreements; payroll records; employee files including disciplinary records; insurance plan documents; and {00023162.DOCX;1}

retirement/profit sharing/stock option plan documents, at a minimum. Should a divorcing party be an owner of the entity, discoverable materials include organizational documents; entity tax records; profit and loss statements and other accounting information and reports; partnership documents; and bank records. If the value of the ownership interest is at issue in the divorce, the entity may also be subjected to an appraisal by one or more professional business appraisers.

Business owners can reduce the impact of an employee divorce upon their entity by understanding the personal and administrative impact of employee divorce and planning for it in advance. Company leave policies should be clearly stated in a handbook or other official company publication,³ and absences should be carefully documented in an employee's file. Human Resources personnel should be trained in proper handling procedures for payroll deduction orders and be familiar with online resources available to them at the DCSE website.⁴

Corporate counsel should always be contacted immediately when discovery or a witness or document subpoena is served on the entity. Business owners should also consider consulting with a reputable divorce attorney who is well versed in business affairs to determine corporate obligations and alternatives when the divorcing employee is an ownership participant in the entity.

Divorce is lamentably frequent and often spills over into the work environment of the divorcing parties. Planning for the possibility of employee divorce can reduce the loss of time and talent in the event that it occurs. Advance planning by the business entity for the eventuality of its administrative obligations in the event of employee divorce can minimize the administrative and financial impact of employee divorce upon the business entity.

1. Certain circumstances, such as adultery or a divorce between parties who have a signed property settlement agreement resolving all issues between them and no minor children, trigger shorter separation period requirements, but the typical divorce in Virginia is granted based upon the parties having remained separate and apart for a period in excess of one year.

2. Section 20-79.3 of the 1950 Code of Virginia, as amended, setting out the rights and responsibilities of employers with reference to income deduction orders entered pursuant to Section 20-79.1 of the Code.

3. The Family Medical Leave Act does not apply to absences due to separation and divorce. 29 U.S.C.A. §2612.

4. Employer-specific information, including payment service resources and frequently asked questions, is provided by DCSE at <http://www.dss.virginia.gov/family/dcse/employers/index.cgi>. A complete User Guide for Electronic Child Support Payments is published by DCSE at http://www.dss.virginia.gov/files/division/dcse/employers_payroll_processors/intro_page/2007_1_egislation/childsupp_userguide_5.pdf.