

SERVICE OF GARNISHMENT SUMMONS

Being served with a garnishment summons that orders an employer to garnish the wages of its employee is a standard business practice for most companies. However, under Virginia law, if a garnishee fails to comply with a garnishment summons, then judgment may be entered against the garnishee. *Va. Code. 8.01-516.1*. While most companies are probably familiar with this penalty, the way in which a garnishment summons is served in Virginia is different, and more expansive, than the normal rules governing service of process. If a business is not familiar with Virginia's service laws for garnishment summons, it can quickly find itself responsible for the wages it failed to garnish.

In Virginia, service on a domestic or foreign corporation is most commonly effectuated by personal service on any officer, director or registered agent. *Va. Code Ann. 8.01-299; Va. Code Ann. 8.01-301*. In certain circumstances a foreign corporation may also be served through personal service of an agent within the Commonwealth of Virginia,

the Virginia State Corporation Commission, the Secretary of the Commonwealth, by personal service outside the Commonwealth of Virginia, or by order of publication. *Va. Code Ann. 8.01-301*. However, in a garnishment proceeding, Virginia has eased the burden and broadened the ways service may be properly effectuated.

Service in a garnishment proceeding is governed by *Va. Code Ann. 8.01-513*, which states that when effectuating service on a corporation, the summons shall be served upon an officer, an employee designated by the corporation, or if no such person is designated or cannot be found, upon a managing employee. *Va. Code Ann. 8.01-513*. Effectuating service on an LLC must be made upon a member, manager, or employee designated by the LLC for the purpose of such service, or if no such person is designated or cannot be found, upon a managing employee. *Id.* The code goes on to define a managing employee as someone who controls operations and supervises employees at the business location where process is sought. *Id.*

Assuming that many national and regional companies have not designated someone specifically to accept service

under this section, service of a garnishment summons would be proper on any managing employee that can be located within the Commonwealth of Virginia. This means that if you need to garnish the wages of an employee at a Fairfax, Virginia restaurant, you could serve a managing employee at the same restaurant in Roanoke, Virginia. Realistically, the managing employee in Roanoke will have never heard of the employee named in the garnishment summons and may disregard the summons in its entirety or forward the summons on to someone else, who is also unfamiliar with the legal process, and who forwards it on to someone else, thus starting a chain reaction that does not get the summons to the correct person, or does so too late. While most companies' registered agents, officers and directors are intimately familiar with what to do if they are served with legal documents and the time constraints involved, it is unlikely that all of the "managing employees" are familiar with how to proceed. This puts the company in jeopardy of not properly responding to a garnishment summons and thus subjecting itself to being liable for the judgment against the judgment debtor.



While the Supreme Court has not offered any further guidance on who would qualify as a managing employee, there are some Circuit Court opinions that address the point. Service on the manager of a tire and service center was considered proper. McClenahen v. McNabb, 54 Va. Cir. 489, 490 (Va. Cir. Ct. 2001). The court held that since the manager was in charge of the business activities in the absence of owners, then he would be considered a managing employee. At the end of the spectrum, a graduate assistant who has no supervisory responsibilities would not be considered a managing employee, as a managing employee “at a minimum must

possess some authority or supervisory responsibilities.” First Sec. Nat’l Bank & Trust Co. v. Siragy, 22 Va. Cir. 201, 201-202 (Va. Cir. Ct. 1990).

Given the guidance in the code section and the Circuit Court cases, businesses should be educating any employee who manages, supervises, or has authority over other employees, as well as an employee who would be considered in charge of a specific business premises, on what to do if served with a legal summons. This should include who to send the summons to, in what manner it should be sent, and how any correspondence should be titled to ensure the legal summons

gets the necessary attention it deserves.



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