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OBSOLESCENCE OF VIRGINIA CODE § 60.2-114.1

**Issue:** At the June 26 meeting, Frank Munyan, Senior Attorney, Division of Legislative Services, presented the issue of Virginia Code § 60.2-114.1, which requires an employer, at the time of initial hiring, to request that an employee disclose the existence of an income withholding order pursuant to § 20-79.1 or § 63.2-1924 of the Code of Virginia.

The issue was brought to the attention of the Code Commission by Dawn Flora of the City of Virginia Beach's Finance Payroll Division. Ms. Flora requested that the Code Commission review § 60.2-114.1 and make a determination as to whether it is obsolete or needs revision. Ms. Flora stated:

With the enactment of Virginia Code § 63.2-1946 and per the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, 42 U.S.C. § 653A, employers are now mandated to report all newly hired and re-hired employees to a state directory within 20 days of their hire date. Prior to the passing of mandatory new hire reporting, Virginia employers were required to complete a child support reporting form and forward the information to the appropriate agencies if the individual declared he or she had a child support withholding order. The Virginia New Hire Reporting Center, the Virginia Division of Child Support Enforcement, and the Virginia Unemployment Commission no longer require a wage withholding order survey form to be completed. The new hire reporting process supersedes the use of the wage withholding order survey form; however the applicable state code has never been revised or updated to reflect these changes. This leads to duplication of an employer's efforts and wasted resources.

**Section 60.2-114.1:**

**§ 60.2-114.1. Notification of withholding order.** When an individual is hired for employment, the employer shall, at the time of the initial hiring, request that the employee disclose whether he has an income withholding order pursuant to § 20-79.1 or § 63.2-1924. When an employee discloses that he owes child support that is required to be withheld, the employer shall begin withholding according to the terms of the order. Information disclosed under this section shall not be divulged except to the extent necessary for the administration of the child support enforcement program or when otherwise authorized by law. (1993, c. 165)

**Summary of staff findings:** Mr. Munyan's research of this section included reviewing the drafting file, searching for formal Attorney General opinions and reported circuit court or appellate court decisions, and consulting with the Virginia Employment Commission (VEC) and the Director of Legal Operations at the Department of Social Services' Division of Child Support Enforcement.

Mr. Munyan stated that his research shows that § 63.2-1946 reflects the current treatment of these matters and appears to supersede § 60.2-114.1.

**Summary of discussion at June meeting:** Senator Edwards inquired if the provision should be retained and relocated to Title 63.2 of the Code. Judge Lilley stated that the section appears to be outdated and has been replaced by § 63.2-1946. Kathy Weaver, Acting Chief of Benefits at VEC, spoke to the issue and advised that states report new hires on a nationwide system, that the process is fully automated, and that paper forms are obsolete. In response to a question, Ms. Weaver advised that VEC submitted an agency legislative proposal to the administration requesting that the section be repealed; however, the recommendation was not approved as part of VEC's legislative package. Mr. Hopkins reported that the Governor's Office has no objection to the Commission proceeding with legislation to repeal § 60.2-114.1.

Mr. Oksman will follow up with the Attorney General's Office to determine whether there are any concerns regarding the repeal of this section, and a vote on the matter was deferred until the August meeting.

**Office of Attorney General's response:** By email to Senator Edwards dated June 26, 2017, Mr. Oksman stated that the Office of the Attorney General does not object to a possible repeal of § 60.2-114.1