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Myerson **Family**

Our Guide to Employment and Divorce

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Welcome

We understand the complexities of modern life and, therefore, everything we do is ultimately about you, and it is important you get to know the team that will be working with you every step of the way. It's a deep source of satisfaction that so many clients choose Myerson as their trusted adviser.

Why Myerson?

Our highly experienced and discreet family lawyers, provide clear and supportive legal advice, tailored towards your individual family needs.

As a Top 200 UK Law Firm, we are also proud to be ranked as '**Top Tier**' in the prestigious international directory **The Legal 500**, and commended by The Times '**Best Law Firms 2023**'. This means you can be certain that you will be receiving the highest quality legal advice.

Being a full-service law firm means we are well placed to provide wide-ranging, tailored legal advice to meet your individual needs. We work closely with other departments internally including Real Estate, Corporate, Commercial and Private Wealth Lawyers to ensure that your needs are protected comprehensively.

You can find out more about our **Family Team** by clicking [here](#).



Employment and Divorce

Divorce can be complex when personal and professional lives overlap, particularly in situations where spouses work together or share interests in a family business.

Understanding your rights and responsibilities in this area is important to making informed decisions and protecting your future. This guide explains how employment law and divorce overlap, offering insight where you are employed by your spouse's company or hold a directorship or shareholding in a business owned by your spouse.

If you work for your spouse's company

If you work at your spouse's company, you may be considered an employee or a worker and therefore have employment rights. For example, you're likely to be an employee if you have a written employment contract, you are paid through PAYE and have regular working hours and duties.

Employment law rights apply to spouses employed in a family business, in the same way they apply to any other employee, regardless of any breakdown in the marriage. Therefore, while employed, you are still entitled to: pay (which meets at least National Minimum Wage) and for this to not be unlawfully deducted, at least 5.6 weeks' paid holiday, statutory sick pay (or more, if your contract permits) and, if applicable, statutory family leave and pay.

If your spouse's business has employed you for at least two years, you may have acquired the right not to be unfairly dismissed. This means that your spouse cannot dismiss without a fair reason and without following a fair process. In particular, your spouse cannot dismiss you just because you are considering a divorce.



Additionally, if you feel that you have been forced to resign from the business because of the deterioration of the working relationship, you may have a constructive dismissal claim.

Although you may agree to depart from the company on divorce, careful consideration needs to be given to your employment position in the interim period pending a final divorce order being made to ensure your income stream can be suitably protected.

If termination of your employment is appropriate, you should also make sure that all the usual payments owed to an employee on termination are accounted for, such as notice pay, redundancy pay (if applicable), outstanding wages and any accrued but untaken holiday pay as well as considering whether a compensation payment is appropriate.

If you are a director of your spouse's company

All directors of limited companies in England and Wales have certain duties and responsibilities that must be complied with under the Companies Act 2006. For example, directors have a duty to promote the company's success and act in the company's best interests.

Therefore, if you are a director of your spouse's company but have no active role, you must ensure you are not at risk and are complying with your legal duties and responsibilities.

If you have not been involved in the company's day-to-day running, company decisions may have been made without your consent, particularly if no other directors are within the business. Therefore, certain company decisions may need to be reviewed to consider if they have been properly made.

Certain protections will also need to be considered on divorce to protect you against any liability which may arise from decisions made which you have not been actively involved with.



Can a spouse be terminated as a director?

A director can be removed under the Companies Act 2006, however, the process to do so must follow proper notice and procedures. Removal of a director, whether a spouse or not, must not be done unfairly or in bad faith. If it is, the removed director may have remedies under company law.

Depending on whether your spouse is a shareholder, and if so, what number and class of shares they hold, they may be able to terminate your directorship lawfully without your consent. Specific procedures must be followed to do this lawfully.

If your directorship has already been terminated unreasonably, you may have claims against the company, such as an unfair prejudice petition (if the conduct has been unfairly prejudicial to your interests) or for compensation or damages. You may also have claims under employment law as an employee of the company.

Naturally, it is preferable to prevent this step from being taken before it can happen, and therefore early legal advice is key if you are getting divorced and are a co-director with your spouse.

If you are a shareholder of your spouse's company

Companies are governed by their articles of association and provisions under the Companies Act 2006. If a company has bespoke articles of association and a spouse does not want you to remain a shareholder in the business, then these will need to be carefully reviewed to consider the provisions as to how any shares can be transferred or sold.

Whether it is appropriate to remain a shareholder in your spouse's business depends on the circumstances of your case.

If you have not been actively involved in the company's running, then it may be agreed that it is sensible for you to step away from the company to not interfere with its operations moving forwards on divorce.



It may be agreed that you will remain a company shareholder but without voting rights.

If you have been involved in the running of the business, then it may be agreed you should remain a shareholder.

Tax consideration must be given to any intended transfer or sale of shares on divorce.

Can you receive shares in your spouse's company on divorce if you are not currently a shareholder?

The Family Court has the power to order a transfer of shares on divorce, as they may be treated as a matrimonial asset. However, whether this is appropriate or possible depends on the circumstances of the case.

If the business is to remain trading (and it is not to be sold), then the Family Court will want to ensure that any changes made to the ownership or management of the company on divorce are not likely to jeopardise its future success.

There are several considerations to be made when deciding how a business should be treated on divorce, and the company's constitutional documents will need to be reviewed. For example, some company articles of association are drafted to include transfer restrictions, which prohibit or limit who shares can be transferred to where the business owners wish to retain control of its ownership. Or the company articles could specifically prohibit transfers of shares to ex-husbands or ex-wives.

If shares are to be transferred on divorce, consideration will need to be given as to what rights will attach to those shares to be held, such as whether they will have voting rights and whether you will be entitled to income from those shares.

It may be agreed that although you will be entitled to receive income by way of any issued dividends, you will not be entitled to vote if you have had no previous involvement in the running of the company.



Receiving shares in your spouse's company is only one consideration on divorce, and other considerations need to be given as to how you may be entitled to income on divorce. It may be that there are other non-business assets on divorce which can be re-allocated, or it may be that an order for spousal maintenance payments moving forward is more appropriate.

Tax consideration will also be important in determining the best way to treat a business asset on divorce.

Is it advisory for divorcing couples to remain in business together?

If you are to remain in business after divorce, there are inherent risks to your future in the company that may never have been considered during the marriage.

You may be concerned about your ability to secure sufficiently lucrative employment elsewhere if you have been working in the family business for many years with little experience outside of the company. Equally, you may be close to retirement and not wish to change the status quo.

You may consider your separation to be amicable and consider that you can continue an effective professional relationship together. If you remain in business together, ensuring that your role in the business is sufficiently protected on divorce is paramount.

It may be that the company articles of association need to be amended, and consideration will need to be given as to whether you should enter into a new or amended shareholders agreement. For example, you must agree on issues such as when shares can be transferred or issued, how a director can be terminated, and how new directors can be appointed.

If you are equal shareholders and directors, it is important to try and protect against a risk of deadlock in decision-making, where decisions will require both of you to agree. The likelihood of reaching a deadlock on decision-making will likely increase after divorce. You must also ensure that your entitlement to pay, benefits and holidays are protected more formally than



may have been necessary during the marriage, such as by entering into director's service agreements.

Therefore, consideration needs to be given to how decision-making will be handled so it does not jeopardise the success and effective running of the business moving forward.

Practical steps

- If you are an employee of your spouse's company, you should check if you have a written employment contract which should set out your role, pay, hours and benefits just as it would for any other employee.
- Keep a record of your payslips, dividend statements, emails and any other correspondence about your role.
- Document your contributions to the business, whether helping to build the business or running the business.
- Remain professional and don't use business communications for personal disputes.
- Seek legal advice early, ideally from solicitors experienced in both employment law and family law, such as Myerson.



You're in safe hands!

If you would like further information about how we can help you with **Employment and Divorce**, or if you have any questions, please don't hesitate to contact a member of our **Family Law Team** today.

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