

#39

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Memorandum 71-6

Subject: Study 39 - Attachment, Garnishment, Execution (Interpretation of Federal Consumer Credit Protection Act)

We have obtained the attached material, published by the Wage and Hour Division of the U.S. Department of Labor, interpreting the Consumer Credit Protection Act. You should study this material with care. It will be referred to constantly in our work on the various statutes we are drafting.

You should note that the federal act has been given a restrictive interpretation in the materials. For example, the concept of "disposable earnings" is restrictively interpreted; the act apparently is interpreted to apply only to true "employees"; nothing is mentioned concerning earnings deposited in bank accounts. Note also the discussion of the meaning of the discharge for garnishment prohibition.

Respectfully submitted,

John H. DeMouly
Executive Secretary

THE FEDERAL WAGE-GARNISHMENT LAW

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Workplace Standards Administration
Wage and Hour Division

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THE FEDERAL WAGE GARNISHMENT LAW

The Federal Wage Garnishment law, which became effective July 1, 1970, limits the amount of an employee's disposable earnings which may be garnished in any one week, and protects him from discharge because of garnishment for any one indebtedness. It does not change other matters related to garnishment, such as the rights of a creditor to collect the full amount owed him, most garnishment procedures established by State laws or rules, or the priority of garnishment orders when more than one is served on the employer.

COVERAGE

This law (Title III of the Consumer Credit Protection Act, Public Law 90-321) applies wherever Federal and State courts have jurisdiction. Thus, it is applicable in the 50 States, Puerto Rico, the District of Columbia, the Canal Zone, and all United States territories and possessions.

The restrictions do not apply to the wages of most Federal employees. Salaries of most Federal employees were not subject to garnishment prior to this law, and the law made no changes in this regard. Whether city, county or State employee's earnings are subject to garnishment depends on the applicable State law.

This law is effective July 1, 1970 and applies to garnishment orders in effect on that date. The restrictions apply to amounts that may be withheld from an employee's wages subsequent to July 1, 1970, regardless of the fact that the garnishment proceeding was started before that date.

WHAT IS GARNISHMENT?

"Garnishment" means any legal or equitable procedure through which earnings of any individual are required to be withheld for the payment of any debt. It refers to a court proceeding through which a creditor seeks to reach an employee's earnings before they are paid to him, so that they may be applied to the satisfaction of a claim against the employee. Since a wage assignment is a transfer of the right to receive wages ordinarily effected by means of a contract, wage assignments are not within the scope of this law. If a legal proceeding to enforce a wage assignment results in a judgment with a garnishment order, the law would then be applicable.

WAGES SUBJECT TO GARNISHMENT

The law's restrictions on garnishment are based on the employee's disposable earnings, which are different than his gross pay or his take-home pay.

The term "earnings" means compensation paid or payable for personal services, whether called wages, salary, commission, bonus, or otherwise, and includes periodic-payments pursuant to a pension or retirement program.

An employee's "disposable earnings" means that part of his earnings remaining after the deduction from those earnings of any amount required by law to be withheld. Examples of such deductions are:

1. Federal income tax withholding deductions
2. Federal social security tax deductions
3. State and city tax withholding deductions
4. State unemployment insurance taxes

Deductions which are not considered to be required by law are, among others, the following:

1. Deductions to purchase savings bonds
2. Deductions for contributions to religious, eleemosynary, or educational organizations
3. Deductions for union dues and union initiation fees
4. Deductions for health and welfare premiums, including retirement programs
5. Deductions for board, lodging, or other facilities furnished to an employee by an employer
6. Deductions for the purchase of stock in the employer's corporation
7. Deductions pursuant to an assignment of earnings
8. Deductions to repay loans or payroll advances made by the employer
9. Deductions for merchandise purchased from the employer

RESTRICTIONS ON GARNISHMENT AMOUNT

The maximum part of the total disposable earnings of an individual which is subject to garnishment in any workweek may not exceed the lesser of:

- (a) 25 percent of the disposable earnings for that week;

OR

- (b) The amount by which his disposable earnings for that week exceeds 30 times the Federal minimum hourly wage prescribed by Section 6(a)(1) of the Fair Labor Standards Act in effect at the time earnings are payable (currently this is \$1.60 an hour or \$48 a week).

Stated differently, when an employee's disposable earnings are more than \$64 a week, up to 25 percent of his disposable earnings may be garnished. Where the disposable earnings are \$64 or less, only the amount over \$48 may be garnished. No garnishment can be made if the employee's disposable earnings are \$48 or less.

These restrictions represent the maximum amount subject to garnishment, regardless of the number of garnishment orders received by the employer. Thus, if \$25 of an employee's pay is the maximum amount subject to garnishment and that amount is being withheld to satisfy a current garnishment order, no further withholding can be made from that pay if a second garnishment order is received.

In the case of employees paid monthly or semi-monthly, the \$48 figure (30 times the \$1.60 minimum wage) is translated to \$208 a month or \$104 for a semi-monthly pay period. For this purpose, a month is considered to consist of 4 1/3 weeks. Thus, if an employee is paid semi-monthly, no garnishment may be made where the semi-monthly disposable earnings are \$104 or less. It makes no difference if these earnings were \$80 in one week and the rest in other weeks of the period - the semi-monthly period is treated as a unit.

It is not permissible, however, to break the \$48 figure down to a daily basis. If an employee whose wage rate is \$20 a day works only 2 days in a week, for example, his week's earnings of \$40 cannot be garnished in any amount.

The law specifies that restrictions on the maximum amount that may be garnished do not apply to court orders for the support of any person, bankruptcy court orders under Chapter XIII of the Bankruptcy Act, and debts due for State or Federal taxes. Included in this group are local school taxes and municipal occupation taxes. Also included are court orders for child support and for alimony.

A levy against wages for a Federal tax debt by the Internal Revenue Service, pursuant to its tax collection authority, is not restricted by this law. Collection of taxes is covered by other Federal laws and procedures that provide certain protection for the taxpayer.

EXAMPLES OF AMOUNT SUBJECT TO GARNISHMENT

The following examples illustrate the statutory tests for determining the amounts subject to garnishment.

- (a) An employee's earnings may not be garnished in any amount where his disposable earnings in a particular week are \$48 or less. (For those paid on a monthly basis, this amount is \$208, and for those paid semi-monthly, it is \$104.)
- (b) An employee's gross earnings in a particular week are \$70; after deductions required by law, his disposable earnings are \$60. Since only the amount over \$48 may be garnished where the disposable earnings are \$64 or less, only \$12.00 may be garnished in this week. \$48 would be paid to the employee.
- (c) An employee's gross earnings in a particular workweek are \$115; after deductions required by law, his disposable earnings are \$100. In this week 25 percent of the disposable earnings may be garnished, or \$25. \$75 would be paid to the employee.

EFFECT ON STATE LAWS

The Federal Wage Garnishment Law does not annul, alter, or affect, or exempt any person from complying with State Laws which prohibit garnishments or provide for more limited garnishments than are allowed under the Federal law. Any provision of a State law that subjects less of an individual's earnings to garnishment than does the Federal law will be the one that is applied under a garnishment order. On the other hand, the Federal provision is applied if it results in a smaller garnishment.

For example, where a State law restriction on garnishment to a class of individuals such as householders results in a lesser amount subject to garnishment than under the Federal law, that law rather than the Federal restriction will be applicable. This rule applies even though the State law in other respects imposes restrictions on garnishment less favorable than the Federal law. In those respects, the State provisions will be preempted by the Federal restriction, and the maximum amount subject to garnishment will be determined under the Federal law.

PROCEDURAL REQUIREMENTS IN STATE LAWS

There are no procedures that must be followed under the Federal law, such as filing an affidavit or an application for exemption, in order for the limitations on garnishment to apply. A requirement in a State law that the employer or employee must affirmatively claim an exemption as a condition to receiving it, or any other procedural requirement of similar effect, may not be applied to defeat the Federal limitations.

Where a State restriction on garnishment is more favorable to the employee than under Federal law, however, the State provision will be applicable even though its availability is conditional on such a procedural requirement. In cases where the employer or employee fail to follow the procedure and thus lose a more favorable State law provision, the provisions of the Federal law will become applicable.

GARNISHMENT BEFORE JUDGMENT

In the case of *Sniadach v. Family Finance Corp of Bay View* (89 S. Ct. 1820 (1969)), the Supreme Court of the United States held that wage garnishment is not permitted until a judgment is obtained, in order that the debtor or wage earner will have the opportunity to be heard and tender any defense he might have. It was held that wage garnishment prior to trial on a suit for judgment constituted taking property without the procedural due process of law which is required by the 14th Amendment to the Constitution. The Wage and Hour Division believes the implementation of this decision is not within the purview of this law, but is a matter for the courts that issue wage garnishment orders.

EXEMPTION FOR STATE-REGULATED GARNISHMENTS

The Secretary of Labor may exempt from the garnishment provisions of this Act, garnishments under the laws of any State if he determines that the laws of that State provide restrictions on garnishments which are substantially similar to those provided in this Act. Regulations, Part 870, specify the procedures and standards under which State laws will be found to be "substantially similar". When a State's garnishment law is determined to be "substantially similar" to the Federal law, all of the provisions of the State law relating to the restrictions on the amount that may be garnished will be applied, and the Federal formula will not come into play. Enforcement of garnishment restrictions will rest with the State.

In the absence of a determination that the State's garnishment law is "substantially similar" to the Federal law, any section or provision of the State law that results in a smaller garnishment amount is to be applied. Conversely, the Federal provision is applicable where the Federal restriction results in a smaller amount.

PROTECTION AGAINST DISCHARGE

The Federal law prohibits an employer from discharging any employee because his earnings have been subject to garnishment for any one indebtedness. The term "one indebtedness" refers to a single debt, regardless of the number of levies made or the number of proceedings brought for its collection. A distinction is thus made between a single debt and the garnishment proceedings brought to collect it.

If several creditors combine their debts in a single garnishment action, the joint amount is considered as "one indebtedness". In the same vein, if a creditor joins several debts in a court action and obtains a judgment and writ of garnishment, the judgment would be considered a single indebtedness for purposes of this law. Also, the protection against discharge is renewed with each employment, since the new employer has not been a garnishee with respect to that employee.

LIMITS OF DISCHARGE PROVISION

The restriction on discharge applies to all garnishments as that term is defined in the law. Accordingly, if a tax debt results in a court proceeding through which the employee's earnings are required to be withheld, a discharge for such a first-time garnishment would be in violation of the law. The same would be true of a court order for the withholding of wages for child support or alimony. Also, since the discharge provision is a protection against "firing," a suspension for an indefinite period or of such length that the employee's return to duty is unlikely may well be considered as tantamount to firing and thus within the term discharge as used in the law.

Some employers have a rule that the employee will be given warnings for the first two garnishments and will be discharged for the third garnishment in a year. Where at least two of the actions relate to separate debts, discharge would not be prohibited by the law since the warning and discharge would be based on garnishment for more than one indebtedness.

In some cases employers set up plans which prescribe disciplinary actions for violations of company standards of conduct, with discharge if for example the employee violates three of the standards in a year. One of the actions considered as a violation is "garnishment of wages". If only one of these violations relates to garnishment, discharge would be prohibited by the law since the discharge would result from garnishment for only one indebtedness. In other words, regardless of the employer's disciplinary plan, no discharge may be based either wholly or in part on a first time garnishment.

The law does not prohibit discharge if there are garnishment proceedings pursuant to a second debt. However, as in the case of the limitations on the amount that may be garnished, the law does not affect or exempt any person from complying with a State law that prohibits discharge because an employee's earnings have been subjected to garnishment for more than one indebtedness.

"SUBJECTED TO GARNISHMENT"

An individual's earnings are "subjected to garnishment" for purposes of this law when the garnishee (employer) is bound to withhold earnings and would be liable to the judgment creditor if he disregards the court order.

The law does not expressly provide any time limitation between a first and second garnishment. Where a considerable time has elapsed between garnishments, it may be that the employee is actually being discharged for the current indebtedness. The first indebtedness may no longer be a material consideration in the discharge. Determinations in such cases will be made on the basis of all the facts in the situation.

ENFORCEMENT

The Federal Wage Garnishment Law is enforced by the Wage and Hour Division of the Department of Labor, except in those States where an exemption for State-regulated garnishment has been granted.

Section 303(c) provides that no court of the United States or any State may make, execute, or enforce any order or process in violation of the restrictions on the amount of an employee's disposable earnings subject to garnishment.

Anyone who willfully violates the discharge provisions of this law may be prosecuted criminally and fined up to \$1,000, or imprisoned for not more than one year, or both.

ADDITIONAL INFORMATION

Inquiries about the Federal Wage Garnishment Law will be answered by mail, telephone, or personal interview at any office of the Wage and Hour Division of the U. S. Department of Labor. Offices are listed in the telephone directory under the U. S. Department of Labor of the U. S. Government listing. These offices also supply publication free of charge.

This publication is for general information and is not to be considered in the same light as official statements of position formally adopted and published in the Federal Register.