

#39.30

2/22/71

Third Supplement to Memorandum 71-6

Subject: Study 39.30 - Attachment, Garnishment, Execution (Earnings
Protection Law)

The First Supplement to Memorandum 71-6 had attached a letter from the Legal Section of the Department of Human Resources Development. Attached is another letter from the same source reporting further developments. The result reached in this situation by virtue of the application of the federal law is another clear demonstration of the need for the enactment of something like our earnings withholding law.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT

SACRAMENTO 95814



February 16, 1971

REFER TO:

53:19:ml

California Law Revision Commission
Stanford University School of Law
Stanford, California 94305

Attention: John H. De Moulouy
Executive Secretary

Gentlemen:

ATTACHMENT AND GARNISHMENT PROCEDURES

On January 19, 1971, we sent you a letter in response to your letter of November 27, 1970, to persons interested in the Law Revision Commission's study relating to attachment and garnishment. In this letter we suggested that Code of Civil Procedure, Section 710, requires further amendment as a result of the Federal Consumer Credit Protection Act.

In that letter we commented on an application of the federal garnishment limitations in the state payroll procedures manual which gave a result which appeared unreasonable to us. We have since written to Robert D. Moran, Administrator of the Wage and Hour Division of the U. S. Department of Labor, for the federal agency's interpretation of the applicable limitation when a garnishment is attempted early in the month and reaches only a week's wages although the individual is paid on a monthly pay period. The interpretation of the Department of Labor which has been given by Mr. Moran is different from that which we had expressed in my letter to you. The procedure employed by the State Controller and set forth in the payroll procedures manual appears to be in agreement with the interpretation given by the Department of Labor. Attached for your information is our request for a federal interpretation and the response which has been received from the Department of Labor.

We remain of the opinion that Section 710 of the Code of Civil Procedure is in need of correction in this and other respects and that the

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ATTACHMENT AND GARNISHMENT PROCEDURES

February 16, 1971

interpretation given by the Department of Labor in their February 5, 1971 letter is not supported by the statutory limits expressed in the Consumer Credit Protection Act (15 USC 1673(a)).

Sincerely,

THOMAS M. GRIFFIN, CHIEF, LEGAL SECTION



BY: WILLIAM D. SCOTT, ASSOCIATE TAX COUNSEL

Enc

cc: Richard L. Braden, Chief, Division of Disbursements, State Controller,
1227 O Street, Room 600, Sacramento, California 95814



U.S. DEPARTMENT OF LABOR
WORKPLACE STANDARDS ADMINISTRATION
WASHINGTON, D.C. 20210

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FEB 5 1971

OFFICE OF THE ADMINISTRATOR

Mr. William D. Scott
State of California
Department of Human Resources Development
Sacramento, California 95814

Dear Mr. Scott:

This is in reply to your letter of January 25, 1971, regarding Title III, Restriction on Garnishment, of the Consumer Credit Protection Act.

The multiple prescribed in section 870.10(c)(2) of Regulations Part 870 for a monthly period is, as you indicated, \$208 and consequently no part of the \$200 of disposable earnings earned in the first week of the pay period would be subject to garnishment in the situation you describe. However, the creditor would not be barred from obtaining another order at the end of the monthly pay period. If he were to do so, the 25% formula would apply.

Sincerely,

Robert D. Moran
Administrator

Enclosure ✓

by Ben P. Robertson
Deputy Administrator
Wage and Hour Division

January 25, 1971

53:19:jd

Mr. Robert D. Moran, Administrator
Wage and Hour and Public Contracts
Section
U.S. Department of Labor
Washington, D. C. 20210

Dear Mr. Moran:

ATTACHMENT AND GARNISHMENT PROCEDURES

A question of interpretation of the limitations on garnishment as a result of Title III of the Consumer Credit Protection Act, Public Law 90-321 (15 USC 671, et seq.), and the regulations thereunder (Title 29, Code of Federal Regulations, Part 870) has arisen. May we have an interpretation of the law and regulations in the following situation.

Under Section 710 of the California Code of Civil Procedure a judgment creditor may seek an execution of a judgment against the wages of a public employee. As the California law has been interpreted, the judgment can reach only the wages due and owing to the employee at the time the execution documents are received by the state agency, which may be early in the month. Most California state employees are paid once a month at the end of the month, at which time the appropriate amount reachable by the creditor is sent to the court which rendered the judgment.

What is the applicable limitation under the federal law and regulations in the following situation: Assume that an employee earns \$200 in "disposable earnings" during the first week of the month. At the end of the first week the execution documents are received by the state agency so that these \$200 in disposable earnings can be subject to the garnishment. The employee continues to work for the duration of the month, earning a total of \$1,200 in disposable earnings which would be payable to him at the end of the month, less any amount payable to the judgment creditor as a result of the garnishment.

Mr. Robert D. Moran
January 25, 1971
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Would the creditor be entitled to receive 25% (\$50) of the employee's disposable earnings for the first workweek of the month? Or, would the creditor be entitled to receive nothing because the state employee was paid on a monthly pay period and the \$200 of disposable earnings for that week are less than the \$208 "multiple" set forth in the regulations (Title 29, Code of Federal Regulations, Section 970.10(c)(2))?

Sincerely,

THOMAS M. GRIFFIN, CHIEF, LEGAL SECTION

BY: WILLIAM D. SCOTT, ASSOCIATE TAX COUNSEL