

#39.30

1/25/71

Memorandum 71-10

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

Attached (Exhibit I) is a revision of Section 300 of the Labor Code, relating to wage assignments. The revision makes assignments of unearned wages or salary revocable at any time by the maker of the assignment. An assignment of wages or salary earned at the time of assignment is irrevocable and takes priority over any subsequent wage withholding order.

Attached (Exhibit II) are sections from the Financial Code that concern the use of wage assignments as security for loans. We do not propose to amend these sections since they do not purport to authorize wage assignments.

Section 300, as revised, would be included in the bill the Commission recommends to enact the Earnings Protection Law.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT I

Labor Code § 300 (amended)

Sec. 8. Section 300 of the Labor Code is amended to read:

300. (a) No assignment of ~~,-er-order-for~~ wages or salary, earned or to be earned, ~~shall-be~~ is valid unless all of the following conditions are satisfied :

(a) (1) ~~Such~~ The assignment is contained in a separate written instrument, signed by the person by whom the ~~said~~ wages or salary have been earned or are to be earned, and identifying specifically the transaction to which the assignment relates ~~,-and~~ .

(b) (2) Where ~~such~~ the assignment ~~of,-er-order-for-wages-or-salary~~ is made by a married person, the written consent of the husband or wife of the person making ~~such~~ the assignment ~~er-order~~ is attached to ~~such~~ the assignment ~~er-order,-and~~ .

(c) (3) Where ~~such~~ the assignment ~~er-order-for-wages-or-salary~~ is made by a minor, the written consent of a parent or guardian of ~~such~~ the minor is attached to ~~such-order-or~~ the assignment ~~,-and~~ .

(d) (4) Where ~~such~~ the assignment ~~of-er-order-for-wages-or-salary~~ is made by a person who is unmarried or who is an adult or who is both unmarried and adult, a written statement by the person making ~~such~~ the assignment ~~er-order~~ , setting forth such facts, is attached to or included in ~~such~~ the assignment ~~er-order,-and~~ .

(e) (5) No other assignment ~~er-order~~ exists in connection with the same transaction or series of transactions and a written statement by the person making ~~such~~ the assignment ~~er-order~~ to that effect , is attached ~~thereto to~~ to or included ~~therein,-and~~ in the assignment.

~~{f}~~ (6) A copy of ~~such-an~~ the assignment ~~er-order~~ and of the written statement provided for in ~~subdivision-(a)-hereof~~ paragraph (4) , authenticated by a notary public, ~~shall-have-been~~ is filed with the employer, accompanied by an itemized statement of the amount then due to the assignee ~~;~~ .

(7) ~~provided,-that-at-such-time~~ At the time the assignment is filed with the employer, no other assignment er-order for the payment of any wages or salary of the employee is subject to payment , and no attachment er-levy-on-execution earnings withholding order against said his wages or salary is in force.

(b) ~~Any-valid-assignment,-when~~ When filed in accordance with the provisions ~~contained-herein,-shall-have~~ of this section, a valid assignment of wages or salary which, at the time of the making of the assignment, have been earned has priority with respect to any subsequently filed assignment ~~er-order~~ or subsequent ~~attachment-er-levy-on-execution earnings withholding order~~ . ~~Any-power-of-attorney-to-assign-er-select wages-er-salary-shall-be-revocable-at-any-time-by-the-maker-thereof.~~

~~No-assignment-of,-er-order-for-wages-er-salary-shall-be-valid-unless at-the-time-of-the-making-thereof,-such-wages-er-salary-have-been-earned, except-for-the-necessities-of-life-and-then-only-to-the-person-er-persons furnishing-such-necessities-of-life-directly-and-then-only-for-the-amount needed-to-furnish-such-necessities---Under-any-assignment-of,-er-order for-wages-er-salary-to-be-earned,-a-sum-not-to-exceed-50-per-centum-of the-assigner's-wages-er-salary,-and-not-to-exceed-25-per-centum-of-the assigner's-wages-er-salary,-upon-the-showing-that-such-wages-er-salary~~

~~are necessary for the support of his mother, father, spouse, children or other members of his family, residing in this State and supported in whole or in part by his labor, shall be collectible from the assignor's employer at the time of each payment of such wages or salary.~~

(c) The employer ~~shall be~~ is entitled to rely upon the statements of fact in the written statement provided for in ~~subdivisions (d) and (e) hereof~~ paragraphs (4) and (5) of subdivision (a) , without the necessity of inquiring into the truth thereof, and the employer shall incur no liability whatsoever by reason of any payments made by him to an assignee under any assignment ~~or order~~, in reliance upon the facts so stated.

(d) An assignment of wages or salary to be earned is revocable at any time by the maker thereof. Any power of attorney to assign or collect wages or salary is revocable at any time by the maker thereof.

(e) No assignment of ~~or order for~~ wages or salary , earned or to be earned ~~, shall be~~ is valid under any circumstances , if the wages or salary earned or to be earned are paid under a plan for payment at a central place or places established under the provisions of Section 204a of this code .

(f) This section ~~shall~~ does not apply to deductions which the employer may be requested by the employee to make for the payment of life, retirement, disability or unemployment insurance premiums, for the payment of taxes owing from the employee, for contribution to funds, plans or systems providing for death, retirement, disability, unemployment, or other benefits, for the payment for goods or services furnished by the

Labor Code § 300

employer to the employee or his family at the request of the employee, or for charitable, educational, patriotic or similar purposes.

Comment. Section 300 is amended to make the section consistent with the Earnings Protection Law (Code Civ. Proc. §§ 723.10 et seq.).

Subdivision (a). Paragraphs (1) through (6) of subdivision (a) continue without substantive change provisions formerly contained in Section 300. Paragraph (7) of subdivision (a) continues without substantive change a provision formerly contained in Section 300 except that the former reference to the attachment or levy on execution against wages or salary is replaced by a reference to an earnings withholding order to conform to the procedure provided by the Earnings Protection Law.

Subdivision (b). Subdivision (b) continues a provision formerly found in Section 300 except the preference it provides is limited to assignments of earned wages or salary. The preference formerly given to an assignment of unearned wages or salary is not continued because this preference would permit a judgment debtor to give preference to one creditor and to defeat the claims of other creditors who seek to collect on their judgments under the Earnings Protection Law. The preference given to assignments of earned wages or salary will permit such assignments to continue to be used to secure certain loans. See Financial Code Sections 18659, 22009, 22471, and 24472.

Subdivision (c). Subdivision (c) continues without substantive change a provision formerly found in Section 300.

Subdivision (d). The first sentence of subdivision (d), which makes an assignment of unearned wages or salary revocable at any time by the maker

Labor Code § 300

thereof, replaces the former provision of Section 300 which made assignment of unearned wages or salary invalid unless earned or for necessities or for support and restricted the amount of unearned wages or salary that could be assigned. Although there are no limits on the amount of wages or salary that can be assigned, subdivision (d) will permit the person making the assignment of wages or salary to be earned to revoke the assignment at any time, and subdivision (b) gives an earnings protection order preference of any assignment of unearned wages or salary. The effect of this revision of Section 300 is to require persons having judgments, including support orders, to use the procedure provided in the Earnings Protection Law--rather than Section 300--to enforce their judgments.

Subdivisions (e) and (f). Subdivisions (e) and (f) continue without substantive change provisions formerly contained in Section 300. Other statutes may authorize deductions from employees' wages or salary without compliance with this section. E.g., Govt. Code §§ 1158, 12420, 13922, 20135.

EXHIBIT II**INDUSTRIAL LOAN REGULATIONS****§ 18659. Wage assignments**

The payment of money, credit, goods, or things in action as consideration for any sale or assignment of, or order for, the payment of wages, salary, commissions, or other compensation for services, whether earned or to be earned, is, for the purposes of regulation under this division, a loan secured by such assignment, and the amount by which the assigned compensation exceeds the amount of consideration actually paid is interest and charges upon or for such loan from the date of payment to the date the compensation is payable. This section does not modify or affect existing statutes governing wage assignments in this State, or authorize such assignments. (Stats.1951, c. 364, p. 1123, § 18659.)

PERSONAL PROPERTY BROKERS**§ 22009. Personal property broker; activities included**

"Personal property broker," includes all who are engaged in the business of lending money and taking in the name of the lender, or in any other name, in whole or in part, as security for such loan, any contract or obligation involving the forfeiture of rights in or to personal property, the use and possession of which property is retained by other than the mortgagee or lender, or any lien on, assignment of, or power of attorney relative to wages, salary, earnings, income, or commission. (Stats.1951, c. 364, p. 1132, § 22009.)

§ 22471. Wage assignments

The payment by any person in money, credit, goods, or things in action as consideration for any sale or assignment of, or order for, the payment of wages, salary, commissions, or other compensation for services, whether earned or to be earned, is for the purposes of regulation under this division, a loan secured by such assignment, and the amount by which the assigned compensation exceeds the amount of the consideration actually paid is interest and charges upon or for the loan from the date of payment to the date the compensation is payable. This section shall not be construed as modifying or affecting existing statutes governing wage assignments in the State, or as authorizing such assignments. (Stats.1951, c. 364, p. 1140, § 22471.)

SMALL LOANS**§ 24472. Wage assignments**

The payment of one thousand dollars (\$1,000) or less by a lender or broker in money, credit, goods, or things in action as consideration for any sale or assignment of, or order for, the payment of wages, salary, commissions, or other compensation for services, whether earned or to be earned, is for the purposes of regulation under this division, a loan secured by such assignment, and the amount by which the assigned compensation exceeds the amount of the consideration actually paid is interest and charges upon or for the loan from the date of payment to the date the compensation is payable. This section shall not be construed as modifying or affecting existing statutes governing wage assignments in the state, or as authorizing such assignments. (Stats. 1951, c. 364, p. 1153, § 24472, as amended Stats.1965, c. 1202, p. 3024, § 6.)