Judicial Council of California • Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

W13-03

Title	Action Requested
Civil Practice and Procedures: Revision of Wage Garnishment Form Instructions	Review and submit comments by January 25, 2013
Proposed Rules, Forms, Standards, or Statutes	**Proposed Effective Date**
Revise form WG-002	July 1, 2013
Proposed by	**Contact**
Civil and Small Claims Advisory Committee Hon. Dennis Perluss, Chair	Anne Ronan, 415-865-8933 anne.ronan@jud.ca.gov

Executive Summary and Origin

Assembly Bill 1775 (Wieckowski, 2012) (AB 1775) changes the method of computing the amount of a judgment debtor's earnings that may be garnished under an earnings withholding order. AB 1775 mandates that the Judicial Council revise the instructions to employer concerning such computation by July 1, 2013. This proposal implements that mandate.

The Proposal

Statute limits the amount of earnings of a judgment debtor that may be subject to an earnings withholding order. (See Code Civ. Proc., § 706.050.) Currently, the California statute adopts the federal statutory limits on wage garnishments, exempting from withholding all amounts that federal law exempts, unless certain exceptions apply. AB 1775 amends that statute to expressly provide how to calculate the maximum amount that may be garnished, rather than referring the parties to federal law for that calculation. Federal law limits the amount that may be withheld to the lesser of (1) 25 percent of an individual's weekly disposable earnings or (2) the amount by which the individual's disposable earnings for a week exceed 30 times the federal minimum hourly wage. (See 15 U.S.C. § 1673(a).) AB 1775 adopts a calculation similar to the federal calculation, but changes this calculation in two ways:

- The new law uses the California minimum hourly wage (currently $8.00 an hour) rather than the lower federal rate (currently $7.25);and
- The new law calculates the amounts to be exempted based on a 40-hour workweek, rather than the 30-hour week used in the federal statute.[1]

This proposal revises the *Earnings Withholding Order (Wage Garnishment)* (form WG-002), which provides instructions to employers regarding their duty upon receipt of the order, including the duty to withhold the correct amount of earnings, and instructions on how to calculate that amount. Form WG-002 has been changed in several ways to reflect the change in law, with all substantive revisions on the second page of the form, [2] in the *Instructions to Employer on Earnings Withholding Orders*. The revisions proposed are as follows:

- Minor changes have been made to the text, to add cites to the amended statute and references to state, rather than federal, minimum wage rates. The paragraphs with changes have been highlighted on the attached form.
- The dollar amounts in the chart provided for employers showing how much to withhold have been changed to reflect the higher amounts that will be exempt as of July 1 under the amended statute.
- The chart has been reformatted, to clarify the information provided, with a title added, fewer row dividers in the table (so more white space), and the conflation of the weekly and daily pay periods (because the computation is the same for both).

Alternatives Considered

The proposed changes to form WG-002 are required by law. Hence the only alternative that the committee considered was not whether to revise the form, but how. The textual changes required by the statutory amendments were straightforward and minimal. The one revision that the committee considered not making was the change to the format of the chart. However, the committee determined that the new version of the chart was clearer and easier to follow, so recommends changing the format along with changing the numbers.

Implementation Requirements, Costs, and Operational Impacts

This form is generally prepared by parties or levying officers, so implementation of this proposal should not have any cost burden or operational impact on the courts.

---

[1]AB 1775 also adds a definition of "disposable income" to the California statutes. (See amended Code Civ. Proc. § 706.011.) Because this definition—that disposable income is that portion of income remaining after deducting all amounts required by law to be withheld—is essentially the same as that in the federal law, this part of the amended law does not require any change to the current form.

[2] A formatting correction has also been made on page 1 of the form to correct the number of the second item.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Form WG-002 is attached at pages 4–5.
2. Assembly Bill 1775 may be seen at http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_1751-1800/ab_1775_bill_20120923_chaptered.pdf

ATTORNEY OR PARTY WITHOUT ATTORNEY (*Name, State Bar number, and address*): TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*Name*):	LEVYING OFFICER (*Name and address*): **DRAFT 11/30/12 Not approved by Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
EARNINGS WITHHOLDING ORDER (Wage Garnishment) — LEVYING OFFICER FILE NO.:	COURT CASE NO.:

EMPLOYEE: *KEEP YOUR COPY OF THIS LEGAL PAPER.* **EMPLEADO:** *GUARDE ESTE PAPEL OFICIAL.*

EMPLOYER: Enter the following date to assist your recordkeeping.
Date this order was received by employer (specify the date of personal delivery by levying officer or registered process server or the date mail receipt was signed):

TO THE EMPLOYER REGARDING YOUR EMPLOYEE:

Name and address of employer

Name and address of employee

Social Security No. ☐ on form WG-035 ☐ unknown

1. A judgment creditor has obtained this order to collect a court judgment against your employee. You are directed to withhold part of the earnings of the employee (*see instructions on reverse of this form).* Pay the withheld sums to the **levying officer** *(name and address above*).

   If the employee works for you now, you must **give the employee a copy of this order and the *Employee Instructions* (form WG-003)** within 10 days after receiving this order.

   Complete both copies of the form *Employer's Return* (form WG-005) and **mail them to the levying officer** within 15 days after receiving this order, whether or not the employee works for you.

2. The total amount due is: $

   Count 10 calendar days from the date when you received this order. If your employee's pay period ends before the 10th day, **do not** withhold earnings payable for that pay period. **Do** withhold from earnings that are payable for any pay period ending on or after that 10th day.

   Continue withholding for all pay periods until you withhold the amount due. The levying officer will notify you of an assessment you should withhold in addition to the amount due. Do not withhold more than the total of these amounts. Never withhold any earnings payable before the beginning of the earnings withholding period.

3. The judgment was entered in the court on (*date):*

   The judgment creditor *(if different from the plaintiff)* is *(name):*

4. The *INSTRUCTIONS TO EMPLOYER* on the reverse tell you how much of the employee's earnings to withhold each payday and answer other questions you may have.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE)

☐ LEVYING OFFICER ☐ REGISTERED PROCESS SERVER

(Employer's Instructions on reverse)

INSTRUCTIONS TO EMPLOYER ON EARNINGS WITHHOLDING ORDERS

The instructions in paragraph 1 on the reverse of this form describe your early duties to provide information to your employee and the levying officer.

Your other duties are TO WITHHOLD THE CORRECT AMOUNT OF EARNINGS (if any) and PAY IT TO THE LEVYING OFFICER during the *withholding period.*

The withholding period is the period covered by the *Earnings Withholding Order* (this order). The withholding period begins ten (10) calendar days after you receive the order and continues until the total amount due, plus additional amounts for costs and interest (which will be listed in a levying officer's notice), is withheld.

It may end sooner if (1) you receive a written notice signed by the levying officer specifying an earlier termination date, or (2) an order of higher priority (explained on the reverse of the *EMPLOYER'S RETURN)* is received.

You are entitled to rely on and must obey all written notices signed by the levying officer.

The *Employer's Return* (form WG-005) describes several situations that could affect the withholding period for this order. If you receive more than one *Earnings Withholding Order* during a withholding period, review that form *(Employer's Return)* for instructions.

If the employee stops working for you, the *Earnings Withholding Order* ends after no amounts are withheld for a continuous 180-day period. If withholding ends because the earnings are subject to an order of higher priority, the *Earnings Withholding Order* ends after a continuous two-year period during which no amounts are withheld under the order. **Return the Earnings Withholding Order to the levying officer with a statement of the reason it is being returned.**

WHAT TO DO WITH THE MONEY

The amounts withheld during the withholding period must be paid to the levying officer by the 15th of the next month after each payday. If you wish to pay more frequently than monthly, each payment must be made within 10 days after the close of the pay period.

Be sure to mark each *check with the case number, the levying officer's file number, if different, and the employee's name so the money will be applied to the correct account.*

WHAT IF YOU STILL HAVE QUESTIONS?

The garnishment law is contained in the Code of Civil Procedure beginning with section 706.010. Sections 706.022, 706.025, 706.050, and 706.104 explain the employer's duties.

The Federal Wage Garnishment Law and federal rules provide the basic protections on which the California law is based. Inquiries about the federal 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 in the U.S. Government listing.

THE CHART BELOW AND THESE INSTRUCTIONS APPLY UNDER NORMAL CIRCUMSTANCES. THEY DO NOT APPLY TO ORDERS FOR THE SUPPORT OF A SPOUSE, FORMER SPOUSE, OR CHILD.

The chart below shows *HOW MUCH TO WITHHOLD* when the state minimum wage is $8.00 per hour, for different amounts of *disposable earnings* (as described in the Computation Instructions) and different pay periods. If the minimum wage changes in the future, the levying officer will provide a chart showing the new withholding rates

COMPUTATION INSTRUCTIONS

State and federal law limits the amount of earnings that can be withheld. The limitations are based on the employee's disposable earnings, which are different from gross pay or take-home pay.

To determine the CORRECT AMOUNT OF EARNINGS TO BE WITHHELD (if any), compute the employee's *disposable earnings.*

(A) Earnings include any money (whether called wages, salary, commissions, bonuses, or anything else) that is paid by an employer to an employee for personal services. Vacation or sick pay is subject to withholding as it is received by the employee. Tips are generally not included as earnings since they are not paid by the employer.

(B) *Disposable earnings* are the earnings left after subtracting the part of the earnings a state or federal law requires an employer to withhold. Generally these required deductions are (1) federal income tax, (2) federal social security, (3) state income tax, (4) state disability insurance, and (5) payments to public employee retirement systems. Disposable earnings will change when the required deductions change.

After the employee's *disposable earnings* are known, use the chart below to determine what amount should be withheld. In the column listed under the employee's pay period, find the employee's disposable earnings. The amount shown below that is the amount to be withheld. For example, if the employee is paid disposable earnings of $1000 twice a month (semi-monthly), the correct amount to withhold is 25 percent each payday, or $250.

The chart below is based on the state minimum wage that is in effect on July 1, 2013. It will change when the minimum wage changes. Restrictions are based on the minimum wage effective at the time the earnings are payable.

Occasionally, the employee's earnings will also be subject to a *Wage and Earnings Assignment Order,* an order available from family law courts for child, spousal, or family support. The amount required to be withheld for that order should be deducted from the amount to be withheld for this order.

IMPORTANT WARNINGS

1. IT IS AGAINST THE LAW TO FIRE THE EMPLOYEE BECAUSE OF *EARNINGS WITHHOLDING ORDERS* FOR THE PAYMENT OF ONLY ONE INDEBTEDNESS. No matter how many orders you receive, so long as they all relate to a single indebtedness (no matter how many debts are represented in that judgment), the employee may not be fired.
2. IT IS ILLEGAL TO AVOID AN *EARNINGS WITHHOLDING ORDER* BY POSTPONING OR ADVANCING THE PAYMENT OF EARNINGS. The employee's pay period must not be changed to prevent the order from taking effect.

   IT IS ILLEGAL NOT TO PAY AMOUNTS WITHHELD FOR THE *EARNINGS WITHHOLDING ORDER* TO THE LEVYING OFFICER. Your duty is to pay the money to the levying officer who will pay the money in accordance with the law that applies to this case.

   IF YOU VIOLATE ANY OF THESE LAWS YOU MAY BE HELD LIABLE TO PAY CIVIL DAMAGES AND YOU MAY BE SUBJECT TO CRIMINAL PROSECUTION!

MAXIMUM WITHHOLDING FROM DISPOSABLE EARNINGS BY PAY PERIOD

MINIMUM WAGE: $8.00 per hour **(Beginning July 1, 2013)**

Daily or Weekly	Every Two Weeks	Twice a Month	Monthly
$320.00 or less in workweek: No withholding	$640.00 or less: No withholding	$693.33 or less: No withholding	$1386.67 or less: No withholding
From $320.01 to $426.66: Amount above $320.00	From $640.01 to $853.32: Amount above $640.00	From $693.34 to $924.39: Amount above $693.33	From $1386.68 to $1852.36: Amount above $1386.67
$426.67 or more: 25% of disposable earnings	$853.33 or more: 25% of disposable earnings	$924.39 or more: 25% of disposable earnings	$1852.37 or more: 25% of disposable earnings