



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: April 25, 2014

Title

Civil Forms: Revision of Wage Garnishment Forms to Reflect Change in Minimum Wage

Agenda Item Type

Action Required

Effective Date

July 1, 2014

Rules, Forms, Standards, or Statutes Affected

Revise forms WG-002 and WG-030

Date of Report

April 2, 2014

Recommended by

Civil and Small Claims Advisory Committee
Hon. Patricia M. Lucas, Chair

Contact

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Executive Summary

The Civil and Small Claims Advisory Committee recommends the amendment of two wage garnishment forms. Assembly Bill 10 (Stats. 2013, chap. 351) increases the minimum wage effective July 1, 2014. This change in minimum wage will change the maximum amount of a judgment debtor's earnings that may be garnished under an earning withholding order. Two mandatory Judicial Council forms, *Earning Withholding Order (Wage Garnishment)* (form WG-002) and *Earnings Withholding Order for Elder or Dependent Adult Financial Abuse (Wage Garnishment)* (form WG-030) include instructions to employers describing the maximum amounts that may be garnished. These forms should be amended effective July 1, 2014, so that they will describe the correct amounts to be garnished based on the increased minimum wage. No other changes are recommended.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council amend *Earnings Withholding Order (Wage Garnishment)* (form WG-002) and *Earnings Withholding*

Order for Elder or Dependent Adult Financial Abuse (Wage Garnishment) (form WG-030) to reflect new minimum wage amounts effective July 1, 2014.

The two revised forms are attached at pages 6–10. Each includes the same revisions.

Prior Council Action

The council first adopted mandatory wage garnishment forms in 1980. In July 2009, form WG-002 was revised to reflect an increase in the federal minimum hourly wage. In January 2012, these forms, along with other wage garnishment forms, were revised so that a judgment debtor's Social Security number would not be included on the publicly accessible forms but instead limited to a confidential form. In July 2013, the forms were further revised to reflect a new method of computing the maximum amount to be garnished, based on state minimum wage rather than federal minimum wage. At that time, the format of the chart on the forms was also revised.

Rationale for Recommendation

Statute limits the amount of earnings of a judgment debtor that may be subject to an earnings withholding order. See Code Civ. Proc. § 706.050.¹ California 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 40 times the state minimum hourly wage. Therefore the change in the minimum wage amount provided in AB 10² will change the maximum dollar amount of earnings that can be garnished.

Statute also mandates that the Judicial Council develop instructions to employers as to how to implement wage garnishment orders, and to revise or supplement these instructions to reflect changes in the law or rules regulating the withholding of earnings. (§ 706.127(a).) If these instructions are not on the forms that statute requires be provided to the employer by the levying officer, then the council must separately publish and provide copies of such instructions to the levying officer. § 706.127(b).

For this reason, the employer's instructions developed by the council have always been included on the back of the *Earnings Withholding Order (Wage Garnishment)* (form WG-002) and *Earnings Withholding Order for Elder or Dependent Adult Financial Abuse (Wage Garnishment)* (form WG-030). These forms include instructions to employers regarding their duty upon receipt of the order, including the duty to withhold the correct amount of earnings. It is the instructions regarding the correct amount of earnings to withhold that the advisory committee is recommending be revised to reflect the new minimum wage levels that will go into effect July 1, 2014.

¹ All statutory references hereafter are to the Code of Civil Procedure, unless otherwise noted.

² AB 10 may be accessed at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB10.

All the proposed revisions are on the second (back) page of the two forms, in the “Instructions to Employer on Earnings Withholding Orders,” primarily in the chart showing the maximum amounts of disposable income the employer is to withhold,³ where the dollar amounts have been revised to reflect the change in minimum wage. In addition, minor changes have been made to the text, to reflect the new minimum wage amount and the date the new amount is going into effect. The changes have been highlighted on the attached forms.

Alternatives Considered and Policy Implications

The advisory committee considered several alternatives to its final recommendation, which are described below.

1. Removing the Instructions as to the maximum amounts of withholding from the form

In light of comments received from the council’s Rules and Forms Committee (RUPRO) upon its initial review of this proposal, the advisory committee considered substantively amending the forms by removing the chart in the instructions showing the maximum amounts and instead including a pointer to a web page on the Judicial Council website where such information could be found. A RUPRO member requested that this change be considered because of concerns about the expense of having to amend these forms on an on-going basis, whenever the Legislature raised the minimum wage.

The committee decided not to recommend this alternative for several reasons, the primary one being that, upon further inquiry, the committee confirmed that revisions to these forms would not have a direct impact on courts, because the forms—although described as “orders” — are not issued or created by the court, and are not filed with the court. Instead, the Earnings Withholding Orders are issued by levying officers, generally the sheriff’s office. Thus changes to the forms should not have a financial or operational impact on the trial courts.

In light of the lack of expense to the courts, the committee concluded that keeping the chart on the form was well worthwhile. Although maintaining the chart will require more frequent amendments to the form than would be required if the chart were not on it, the committee believes the benefit to judgment debtors and employers—especially smaller employers—of having the dollar amounts for the maximum withholding included on the forms provided to them outweighs the cost to the Judicial Council of amending these two forms every few years.

³ The statute provides for different ways of calculating the correct withholding amount based on how much disposable income the garnishee (the judgment debtor) receives. If the judgment debtor has disposable income that equals or is less than minimum wage over a pay period, nothing should be withheld. If the judgment debtor has disposable income greater than the minimum wage, the employer is to withhold the *lesser* of (a) the difference between minimum wage and the total disposable income, or (b) 25% of the total disposable income. This means that if the judgment debtor has disposable income of less than 125% of the minimum wage over the pay period, then the employer is to withhold any amount of disposable income *over* the minimum wage. If the judgment debtor has disposable income that is equal to or more than 125% of minimum wage, then the employer is to withhold 25% of all disposable income. The chart sets out those ranges and the amounts to withhold within each range, for the several different types of pay periods described in the statute.

Keeping the figures on the forms may also actually benefit the courts in the long run. Because removal of the chart would make it more difficult for some employers to calculate the correct withholding amount, and more difficult for judgment creditors—often self-represented—to confirm whether the amount being withheld is correct, removal of the chart could result in more hearings being required on motions to correct the amount being withheld.

In addition, the committee considered the mandate in section 706.127(b) that the Judicial Council publish and provide copies to the levying officers of instructions to employers if those instructions are not included on the forms that must be provided to employers under section 706. In light of that statutory requirement, the committee concluded that, should the chart with instructions on how to calculate the maximum withholding amounts be provided on a web page rather than on the Earnings Withholding Orders served on employers, the council would need to develop a form containing these additional instructions (with the maximum withholding amounts) and make it available to the levying officers. Therefore, any cost savings accrued by the council through not having to amend these two Earnings Withholding Orders in the future would be offset by the expense of having to create and supply this alternative form now and each time the minimum wage changes.

2. Changes beyond the dollar amounts

The committee considered but rejected amending the forms to make additional changes beyond those needed to reflect the change in the minimum wage. Revisions were made to the instructions on these forms last year, and the group concluded that there was no need to revisit any changes other than to the figures in the recently revised chart.

3. Circulating the revised forms for comments

The committee considered whether to recommend to RUPRO that the amended forms be circulated for comment, but concluded that a request for comments on this form would place an unnecessary burden on the courts.

Rule 10.22 of the California Rules of Court sets forth the procedure for an advisory committee to recommend that the Judicial Council revise a form. Subdivision (c) provides that a proposal must be submitted to RUPRO with a recommendation that it be (1) circulated for public comment or (2) submitted to the council for approval without public comment. Paragraph (d)(2) provides that if the proposal presents a minor substantive change that is unlikely to create controversy, RUPRO may recommend that the council adopt it without circulating it for comment. This form was circulated for comment last year. The only changes proposed here are to make a minor substantive change to comply with recent amendments to the Code of Civil Procedure. There are no changes proposed beyond those required for the form to reflect the statutory change in minimum wage amounts. For that reason, the committee anticipates that the revision is unlikely to create controversy.

Approving the revision without circulation will save resources that would otherwise be spent by the council, RUPRO, the committee, the courts, and the Administrative Office of the Courts in

circulating, commenting, and considering comments on revisions that are required by statute and do not create any foreseeable controversy.

Implementation Requirements, Costs, and Operational Impacts

This form is prepared by parties or levying officers and issued by levying officers, so revisions should not cause any cost burden or operational impact on the courts.

Attachments

1. Revised forms WG-002 and WG-030 at pages 6–9.

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>):		LEVYING OFFICER (<i>Name and address</i>):	
TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (<i>Name</i>): _____		Draft 3/27/14 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**

WG-002

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 \$9.00 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.

MAXIMUM WITHHOLDING FROM DISPOSABLE EARNINGS BY PAY PERIOD

MINIMUM WAGE: \$9.00 per hour

(Beginning July 1, 2014)

Daily or Weekly	Every Two Weeks	Twice a Month	Monthly
\$360.00 or less in workweek: No withholding	\$720.00 or less: No withholding	\$780.00 or less: No withholding	\$1560.00 or less: No withholding
From \$360.01 to \$450.00: Amount above \$360.00	From \$720.01 to \$900.00: Amount above \$720.00	From \$780.01 to \$975.00: Amount above \$780.00	From \$1560.01 to \$1950.00: Amount above \$1560.00
\$450.01 or more: 25% of disposable earnings	\$900.01 or more: 25% of disposable earnings	\$975.01 or more: 25% of disposable earnings	\$1950.01 or more: 25% of disposable earnings

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, 2014. 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

- 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.
- 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!

**INSTRUCTIONS TO EMPLOYER ON
EARNINGS WITHHOLDING ORDERS**

WG-030

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.

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