Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on June 28, 2013

Title
Civil Practice and Procedure: Change in Computation Method for Garnishing Wages in *Earnings Withholding Order for Elder and Dependant Adult Financial Abuse (Wage Garnishment)*

Rules, Forms, Standards, or Statutes Affected
Revise form WG-035

Recommended by
Civil and Small Claims Advisory Committee
Hon. Dennis M. Perluss, Chair

Agenda Item Type
Action Required

Effective Date
July 1, 2013

Date of Report
June 11, 2013

Contact
Anne M. Ronan, 415-865-8933
anne.ronan@jud.ca.gov

Executive Summary

The Civil and Small Claims Advisory Committee recommends revising *Earnings Withholding Order for Elder and Dependant Adult Financial Abuse (Wage Garnishment)* (form WG-030) to implement recent statutory changes to the method of computing the maximum amount of a judgment debtor's earnings that may be garnished under an earnings withholding order. Assembly Bill 1775 (Wieckowski; Stats. 2012, ch. 474) mandates that the Judicial Council revise the instructions to employers concerning these computations by July 1, 2013. The recommended amendments to the instructions on form WG-030 are identical to those that the council previously adopted on the *Earnings Withholding Order (Wage Garnishment)* (form WG-002).

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective July 1, 2013, revise the *Earnings Withholding Order for Elder and Dependant Adult Financial Abuse (Wage Garnishment)* (form WG-030) to implement recent statutory changes.

The revised form is attached at pages 4–5.

Previous Council Action

This form was adopted by the Judicial Council, effective January 2012, to implement a statutory amendment that provides that a wage garnishment order based on a judgment for elder or dependent adult financial abuse shall be given priority over other general wage garnishment orders, behind withholding orders for support or for taxes.

Rationale for Recommendation

Statute limits the amount of a judgment debtor's earnings that may be subject to an earnings withholding order. Previously, the California statute incorporated the federal statutory limits on wage garnishments, exempting from withholding all amounts that federal law exempts, unless certain exceptions apply. (Code Civ. Proc., § 706.050.) Assembly Bill 1775[1] amends that statute, effective July 1, 2013, 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.[2]

The *Earnings Withholding Order for Elder and Dependant Adult Financial Abuse (Wage Garnishment)* (form WG-030) provides instructions to employers regarding their duties upon receipt of the order, including the duty to withhold the correct amount of earnings and instructions on how to calculate that amount. The council adopted revisions to the instructions on the more generally applicable wage garnishment form, the *Earnings Withholding Order (Wage Garnishment)* (form WG-002), in April 2013 to reflect the changes in the calculation method. The same changes should be made to the more specific form used for wage garnishments in elder abuse cases. The changes previously adopted include the following:

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[1] Assembly Bill 1775 may be viewed at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120AB1775&search_keywords=.

[2] Assembly Bill 1775 also adds a definition of "disposable earnings" to the California statutes. (See Code Civ. Proc. § 706.011.) Because this definition—that disposable earnings are 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 form.

- Citations to the amended statute and references to California, rather than federal, minimum wage rates have been added.

- The dollar amounts in the table showing how much to withhold have been changed to reflect the higher amounts that will be exempt as of July 1, 2013, under the amended statute.

- The table has been reformatted, to clarify the information provided, with a new title, fewer row dividers (so more white space), and the conflation of the weekly and daily pay periods (because the computation is the same for both).

The recommended form also includes additional space in the box for the name and address of the attorney or self represented party, on the top of the first page, a change previously approved by the council in April 2013 as a technical amendment to this form.

Comments, Alternatives Considered, and Policy Implications

The recommended revisions to form WG-030 have not been circulated because they are identical to those made to form WG-002, which was revised after circulation for comment and approval by all commentators. (See Cal. Rules of Court, rule 10.22(d)(2).)

Because the change is mandated by statute, the committee did not consider the alternative of not changing the form.

Implementation Requirements, Costs, and Operational Impacts

This form is generally prepared by parties or levying officers, so the revisions should have no operational impact on the courts. If a court provides copies of the forms, the court may incur some expense to produce the new forms.

Relevant Strategic Plan Goals and Operational Plan Objectives

Revision of the employer's instructions, besides being mandated by statute, falls within strategic Goal IV, Quality of Justice and Service to the Public, particularly the related operational plan objective IV.1 to foster excellence in public service to ensure that all court users receive satisfactory services and outcomes.

Attachments

1. Form WG-030, at pages 4–5

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	LEVYING OFFICER *(Name and Address)*
TELEPHONE NO.: FAX NO. : E-MAIL ADDRESS: ATTORNEY FOR (*Name*):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: **DEFENDANT/RESPONDENT:**	CASE NUMBER:
EARNINGS WITHHOLDING ORDER FOR ELDER OR DEPENDENT ADULT FINANCIAL ABUSE (Wage Garnishment)	LEVYING OFFICER FILE NUMBER:

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

EMPLOYER: Enter the following date to assist your record keeping.
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 *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. a. The total amount due is: $
   b. The amount arising from an elder or dependent financial abuse claim is: $

   Count 10 calendar days from the date when you received this order. If your employee's pay period ends before the tenth 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 tenth 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 EMPLOYER'S INSTRUCTIONS on the reverse tell you how much of the employee's earnings to withhold each payday. Follow those instructions unless you receive a court order or order from the levying officer giving you other instructions.

Date: ☐

(TYPE OR PRINT NAME)

(SIGNATURE)

☐ LEVYING OFFICER ☐ REGISTERED PROCESS SERVER

(Employer's Instructions on reverse)

Form Adopted for Mandatory Use
Judicial Council of California
WG-030 [Rev. July 1, 2013]

EARNINGS WITHHOLDING ORDER FOR ELDER AND DEPENDENT ADULT FINANCIAL ABUSE (Wage Garnishment)

Code of Civil Procedure,
§§ 706.023 706.108, 706.052
www.courts.ca.gov

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.

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	$924.40 or more: 25% of disposable earnings	$1852.37 or more: 25% of disposable earnings