

MEMORANDUM

From: Bill Henning, Chair

To: All Participants in the Wage Garnishment Drafting Project

Date: February 5, 2016

I look forward to seeing everyone in D.C. on February 19 and 20 for our last scheduled in-person meeting. I ask that everyone review the new draft carefully beforehand so that we can make as much progress as possible during our two days together.

The Executive Committee has approved our request for an expansion of the committee's charge to include protections against employer retaliation and the extension of the act's protections to earnings deposited into bank accounts. The provision on retaliation has been in the draft for quite some time, but the provisions related to bank garnishments are new and extensive. Steve Willborn and I have had positive discussions with representatives of the banking community and expect further feedback, hopefully also positive, prior to our meeting. A memo providing a brief overview of the provisions was prepared for the bank representatives and is included as an appendix to this memo. Please bear in mind that even though we have permission to draft in this area, we have not made a final decision to include any bank-garnishment provisions in the act.

Another important change from our last draft is the addition of language expanding the definition of "employee" to include certain independent contractors. Under the new definition, the term means both "an individual treated by an employer as an employee for federal income tax purposes" and "an individual who performs personal services for an employer which are paid for through periodic payments but who is not treated as an employee for federal income tax purposes." The change did not necessitate a major reworking of other provisions in the act but it did require the abandonment of "wages" in favor of "earnings." As with bank garnishment, we have not made a final decision to cover independent contractors.

In addition to approving the expansion to our charge, the Executive Committee committed the ULC to providing the remaining funds needed for the plain-language project. This commitment, along with the generous contributions from the APA and the ULF, has permitted us to engage the services of The Plain Language Group. Dr. Deborah Bosley, the Group's principal, is working on a preliminary redraft of the notice and information forms (Section 110 of the new draft) and her redraft will be available for us to review at the meeting. Dr. Bosley will join us by phone for that discussion. The redraft will be distributed as soon as we receive it.

There will not be a formal agenda for the meeting. We will try to start with the bank-garnishment and independent-contractor provisions but if necessary we will postpone the discussion of bank garnishment until representatives from the banking community can be present. We will next discuss the new provision on creditor penalties, a topic we agreed to explore at our last meeting. After that, we will make a final decision on administrative fees and then focus on a few provisions that have been substantively revised since our last meeting. These are flagged in the draft by Reporter's Notes. We will work the call with Dr. Bosley into the schedule at a time that's convenient for her.

All the best to everyone, and I look forward to seeing you in D.C.

Bill

APPENDIX

As stated in the Reporter's Note at the beginning of Article 2, the draft provisions on bank garnishment are designed to closely mirror the process banks must follow when dealing with the garnishment of bank accounts containing federal benefits.

The requirement that a bank conduct an account review of a 60-day lookback period within two days after being served with a garnishment order is the same as federal law. In conducting the review, the first step is for the bank to determine whether there were two or more direct deposits from the same source during the lookback period. The bank doesn't have to determine whether the deposits were from an employer. If there are not two direct deposits from the same source, the act doesn't permit the account holder an exemption and the bank's responsibilities under the act are at an end.

If there are two direct deposits from the same source during the lookback period, the bank must send a notice to the account holder not later than three business days after the account review (again, the same time period as federal law). If federal benefits were deposited during the lookback period, the bank can use the federally mandated form, amended to include a very limited amount of additional information – a statement that the account holder can claim an exemption, the beginning date of the lookback period, and an explanation of the process for claiming the exemption. If there are no federal benefits in the account, the bank must send a form that mirrors the federal form except for the addition of the same limited amount of information described above. The act contains a standard form for providing the additional information that will make compliance easy.

Once the bank sends the notice, it waits to see if the account holder claims an exemption. If it does not receive a form claiming an exemption within 15 days after the date on the notice to the account holder, its duties under the act are at an end. The form the account holder is to use is provided in the notice sent by the bank. Even if the account holder claims an exemption, the bank's duties under the act are at an end if it does not receive one or more pay stubs from the account holder within 15 days after it received the account holder's claim form.

If the bank receives pay stubs, it reviews them to see if the earnings were direct-deposited to the account at issue and if the date of payment is within the lookback period. If the answer to those questions is yes, the bank looks to see whether the pay stubs indicate an amount that was garnished. The total amount of garnished funds shown on qualifying pay stubs is the amount of the exemption. The bank's good-faith determination of the exempt amount is conclusive and not subject to challenge by the creditor or the account holder.