



# American Payroll Association

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National Conference of Commissioners on Uniform State Laws  
Committee on Scope and Program  
Project Proposal  
Uniform Wage Garnishment Act

On behalf of more than 20,000 payroll professionals, the American Payroll Association requests that the NCCUSL consider a uniform law governing wage garnishments. Currently, wage garnishments are governed by 54 very different state and territorial laws, which create significant and unnecessary complexity for employers because no two state laws are alike. The varying state provisions and resulting complexity create the likelihood of processing errors and the risk of financial liability. Processing errors can have considerable consequences because the employer is often held liable for the entire amount owed by the employee and may face additional civil penalties. APA believes that a uniform law governing wage garnishments would do much to alleviate this complexity and enable employers to more easily fulfill their obligations, which would benefit creditors, employees, and employers.

### **About the American Payroll Association**

The APA is a nonprofit professional association representing more than 20,000 payroll professionals and their companies in the United States and Canada. The APA's primary mission is to educate its members and the payroll industry regarding best practices associated with paying America's workers while complying with applicable federal, state, and local laws. In addition, the APA's Government Affairs Task Force (GATF) works with the legislative and executive branches of government to find ways to help employers satisfy their legal obligations, while minimizing the administrative burden on government, employers, and individual workers.

Through the GATF, the APA lobbies numerous state legislatures and the U.S. Congress on a variety of topics, including wage garnishments, wage payments, income tax withholding, and more. The APA would utilize its membership base, resources, experience, organization, contacts and skill to work for passage of a uniform garnishment law prepared by the NCCUSL.

Every two years the APA surveys its membership on various aspects of the profession. In its 2011 Survey of Salaries and the Payroll Profession, members reported the following pertinent information:

- More than 28% of respondents said that 1-3% of their workforces were subject to creditor garnishment in 2010.
- More than 20% of respondents reported making more than 1,250 garnishment payments in 2010.
- One-third of respondents (33.7%) reported having employees in only one state, while one-fifth (20.1%) had employees in 20 or more states.
- Nearly half (49.8%) of respondents handle all of their organizations' payroll processing in-house.

### **Wage Garnishment Law**

While no two states treat wage garnishments the same, it is important to define the term wage garnishment. The garnishment is a judicially enforced post-judgment debt collection process that utilizes the power of the legal system to attach property or wages of the debtor held by a third party (the "garnishee"). In order to obtain a garnishment, the creditor must first obtain a judgment against a debtor ("principal action"). After the debt is reduced to a judgment in the principal action, the creditor may institute a garnishment action to collect the

judgment. In the garnishment action, the plaintiff is the judgment creditor from the principal action and the garnishee defendant is a third party who may possess property or money of the debtor\defendant from the principal action. In the employment context, the alleged employer of the principal defendant is named as the garnishee defendant. Receipt of a wage garnishment is similar to an injunction attaching the principal defendant's (debtor's) money, property or earnings.

In 1968 Congress passed the Consumer Credit Protection Act (CCPA) (15 U.S.C. § 1601 *et seq.*) Congress concluded that unrestricted garnishments disrupted the economy by encouraging predatory lending, hindering the proper functioning of the Bankruptcy Code and causing individuals to lose employment. Congress charged the Wage and Hour Division (WHD) of the U.S. Department of Labor with responsibility to enforce the garnishment restrictions contained in the CCPA. The CCPA, however, does not preempt state laws to the extent that they are more protective of debtors/employees and does not address the garnishment process.

The role of the garnishee employer can be boiled down to its key parts, which are: (1) to answer the garnishment; (2) calculate withholding; (3) withhold income; and (4) remit withheld money to the court or the creditor. While the basic steps are the same, the variations that currently exist are nearly endless. For instance, when to answer, what to answer, where to send the answer and how often an answer is required differ from state-to-state. The variations appear to result more from disparate drafting, legislative history and litigation procedures than from significant policy decisions or unique state public interests. Therefore, the APA believes that there is an opportunity for a uniform wage garnishment law. Such a law would bring uniformity, which would reduce unnecessary confusion, cost and risk.

Payroll professionals are responsible for the administrative duties associated with garnishments of all kinds, including creditor garnishments, state and federal tax levies, child support orders, defaulted student loan garnishments, federal administrative wage garnishments, and wage withholding under a Chapter XIII bankruptcy proceeding.

Other than bankruptcy withholding and federal tax levies (and certain state tax levies), these garnishments are substantially similar in that a percentage of disposable income is exempt from garnishment and paid to the employee. However, a great deal of variation applies to important factors, including:

- the definition of disposable income;
- the amount of weekly income that is exempt from withholding;
- the duration an order remains in effect;
- the time limit within which the employer must acknowledge the garnishment;
- the ability to charge an administrative fee to recoup the cost of handling the garnishment; and
- if a fee is allowed, whether it is to be paid by the creditor or employee.

The more these rules are made uniform, the more likely it is that employers will be able to comply in full and on time. Our request for a uniform state law pertains solely to creditor garnishments established at the state level. Just as there is variation among different types of garnishment, there is variation among state provisions governing creditor garnishments.

### **Frustrations with current state laws**

We have included an accompanying chart from *APA's Guide to State Payroll Laws* (Table 7.1 – Creditor Garnishment Withholding Rules) that covers many of these provisions. Focusing on just one element – the amount exempt from withholding – one may easily discern the complexity involved in administering garnishments for multiple states. Thirteen states follow the withholding limits established by the federal Consumer Credit Protection Act (15 USC § 1673). The remaining 39 jurisdictions (including Puerto Rico and the District of Columbia) apply a staggering variation of limits.

Whereas the CCPA limits withholding to the lesser of (1) 25% of disposable income or (2) the amount greater than 30 times the federal minimum wage, state laws may vary either or both of those factors, require that a percentage of *gross* income also be calculated, provide for a fixed exempt amount, or apply separate withholding limits to specific counties within the state. States may also, but do not necessarily, apply the state minimum wage to the calculation, if that amount is greater than the federal minimum wage.

**Ohio** provides employers only five days to respond to a garnishment order once it is received. Although the order will likely be served in Ohio, the person responsible for answering the order may be located anywhere in the United States. Five days is often not enough time for the order to be processed properly. Collection agents are fully aware of this and may seek summary judgments against employers, holding them liable for the full debts of their employees.

In a number of states (**Arizona, Florida, Illinois, Michigan, Washington**, and more) employers must hold withheld funds in escrow and pay them over in full until subsequent documents are issued by the court or until a specified period of time has elapsed. This practice is inconsistent with any other type of garnishment.

**Iowa** sets an annual maximum on the amount that can be paid toward a garnishment. To further complicate the process, the state has established a different statutory exemption for consumer and nonconsumer credit that must be applied to each garnishment calculation.

**Arizona, Colorado, Georgia, Kentucky, Michigan, Ohio**, and **Utah** require that employers provide multiple statements to the plaintiff's attorney, reporting the amount withheld, the amount still owed, etc. These statements may be required with each payment, on a monthly basis, and with the final payment. Some of these states also require a copy be sent to the court and even to the defendant. **Kentucky** requires subsequent answers only when there is a difference in the employee's pay. The statements are burdensome to employers. If payments were remitted each pay period, creditors would have no need for multiple statements, as they would be able to calculate the amount paid and still owed on their own.

In states in which the effective duration of an order is relatively short (e.g., 13 weeks in **Iowa**; 90 days in **Michigan**; 60 days in **Washington**), employers are likely to receive multiple garnishments for the same debts. Payroll professionals handling orders from these states feel inundated with paperwork and find that there is an increased risk of processing errors especially when garnishments for other debts are also received. Additional costs are added to the debt, which increases the amount owed by the defendant. Payroll professionals find **Ohio** garnishments particularly complex with regard to duration because they are not fixed; state law restricts an order's duration to 182 days only if an order for a second case is received.

Most states provide that only one garnishment order may be honored at a time, even when the amount withheld for a garnishment is less than either the state or federal aggregation limits. **Kansas**, however, allows multiple garnishment orders to be honored simultaneously, with the amount deducted split evenly between the plaintiffs. Due to the economy, many attorneys are modifying the terms of garnishments and reducing the amount required to be deducted to levels lower than the applicable withholding limits. Under federal law, subsequent garnishments may be deducted at the same time as long as the total deducted does not exceed the withholding limit. It is not clear in all states if a partial amount can be deducted for a second garnishment, or if it must be held until the first garnishment is fully collected.

With regard to administrative fees charged by employers to reimburse their costs, there is inconsistency among state laws pertaining to the ability to charge a fee, the amount allowed, and who is responsible for paying it. Nine states have no provision, 10 states allow for a flat fee to be charged, five states allow for a percentage of the debt to be collected as a fee, five states allow a fee per payment, seven allow fees per pay period, one allows for a monthly fee, and one state allows for a fee to be collected for every week the garnishment is in effect. **Arizona, Michigan, Minnesota, Nevada, North Dakota, South Dakota, Utah**, and **Wisconsin** require that the fee be paid by the creditor. **Indiana** requires that the fee be split evenly between the creditor and employee. **Washington** says that if the garnishment is a continuing lien, the fee is to be paid by the employee; if it is not a continuing lien, it is to be paid by the creditor. Several states also require the fee be deducted from exempt income, which appears to conflict with wage and hour protections limiting the amount deducted for garnishment; as a result, employers may find that state laws allowing for administrative fees that are paid by the employee to be impracticable.

Inconsistent wording for common provisions causes frustration in interpreting state laws. For example, laws in nine states and territories (**Alaska, Arizona, Delaware, Maryland, New Mexico, Oregon, Puerto Rico, West Virginia, and Wisconsin**) provide for the amount of wages that are exempt from garnishment, while the remainder provide for the amount that is subject to garnishment. Stating the amount that is subject to garnishment is consistent with

the Consumer Credit Protection Act and enables payroll professionals to more easily determine how state law relates to federal law and which law will apply.

Certain courts in **Arkansas, Florida, and Georgia** require that attorneys file answers on behalf of employers. This creates unnecessary expenses for employers and delays employers' responses. Employers routinely answer court and administrative summons for other types of garnishment, including child support and federal tax levies, without the aid of attorneys.

The penalties under state law for failing to withhold properly or for failing to answer a garnishment summons in full or on time are excessively punitive. Even minor errors may cause the employer to be held liable for the entirety of the employee's debt. These penalty provisions are inconsistent with those imposed by other types of garnishment, such as child support withholding, federal tax levies, and student loan garnishments, which generally hold the employer liable only for the amount it fails to withhold according to the order.

### **Suggested elements of a uniform law**

- (1) *Uniform definition of disposable income.* Federal law defines disposable income as gross income minus deductions required by law. States vary this by also subtracting medical insurance premiums, life insurance premiums, union dues, retirement contributions, and other payments under the control of the employer. Having a uniform definition of this most basic calculation factor is critical to simplifying the garnishment process.
- (2) *Consistent withholding calculations.* APA suggests that the withholding limit be consistent with the Consumer Credit Protection Act and that any variations made by states be limited to the percentage that may be withheld and to no other elements of the calculation.
- (3) *Uniform effective duration.* APA suggests that all creditor garnishments remain in effect until satisfied in full. This practice is consistent with federal garnishments and child support withholding and is currently the practice in 27 states. Payroll professionals report that a lengthy effective duration reduces both paperwork burdens and processing errors.
- (4) *Allow 30 days for employer to respond to garnishment order.* Insufficient time to respond to garnishment orders is a leading factor in employers being held liable for the debts of their employees. Common business practices in which a centralized payroll department handles garnishments for employees in many states require that garnishment orders be transferred internally to the proper department once they are served on the employer. A 30-day period in which to respond is considered sufficient by APA and is currently provided in **Maryland** and six other states.
- (5) *Withheld funds to be remitted each payday.* Creditor garnishments are the sole type of garnishment that may require an employer to hold withheld funds in an escrow account to be paid out in full at a later time, which is burdensome for employers and inefficient. Remitting funds on each payday puts the funds into the hands of the creditor much more quickly and is consistent with the processes used for child support, tax levies, federal garnishments, etc. Currently 27 states provide that funds be remitted each payday.
- (6) *Obligation to notify debtor.* APA believes the obligation to notify the debtor employee of his or her rights in the garnishment process should rest with the creditor rather than the employer, and that the employer's responsibility should extend no further than withholding and remitting funds according to a court-issued order.
- (7) *Uniform answer.* Employers may be required to provide multiple reports to creditors or to the courts during the duration of a garnishment. To alleviate that burden, APA suggests that:
  - a. employers be required to report only once;
  - b. answers be sent to a single address in each state;
  - c. the initial response from employer to creditor be limited to include the employee's employment status, rate of pay, and existence of competing garnishments that may prevent that garnishment from being honored in full or in part;
  - d. the answer should not require a notary or attorney;
  - e. the law provide for a consistent time frame (30 days) in which employers are to respond; and
  - f. employers be allowed to submit payments and answers separately.
- (8) *Notice to employer.* Garnishment orders should be sent only to the party designated to receive legal documents for the garnishee, as reported to the proper authority within the states in which the garnishee conducts business. This may be an officer of the company or designated third party such as a registered

agent. The aim of this provision is to ensure garnishment documents are received by a person with knowledge as to where those documents must be forwarded, so they can be processed within the required time limits. This requirement would also reduce the amount of fraud perpetrated by unscrupulous collection agents seeking to circumvent the court system by sending official-looking papers directly to employers.

- (9) *Consistent rules for handling multiple orders.* APA suggests that the uniform law allow for multiple garnishments to be honored at the same time, with amounts withheld to be divided equally among the creditors, as is the practice in **Kansas**.
- (10) *Administrative fees.* The uniform law should allow employers to charge a \$10 fee per payment to recoup their cost of administering garnishments. Preferably this fee is to be paid by the creditor and deducted from the amount remitted.
- (11) *Penalties.* Any penalties provided under state law should be limited to the amount not withheld and remitted according to the order.

No one state law will serve as a model uniform law for all states. The individual provisions suggested here are drawn from existing state laws and are, from the perspective of payroll professionals who deal with wage garnishments on a daily basis, the most likely to result in greater compliance with fewer processing errors, and at lower cost to employees. The American Payroll Association looks forward to working with the NCCUSL on this important issue. For any questions, please contact Amy Bryant, Lisa Poole, or William Dunn, whose contact information is provided below.

Sincerely,

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