

DOCUMENT RESUME

ED 099 566

CE 002 653

TITLE The Federal Wage Garnishment Law. Revised.
INSTITUTION Employment Standards Administration (DOL),
Washington, D.C. Wage and Hour Div.
REPORT NO WH-Pub-1324
PUB DATE May 74
NOTE 12p.
EDRS PRICE MF-\$0.75 HC-\$1.50 PLUS POSTAGE
DESCRIPTORS Employees; Employer Employee Relationship; *Federal
Legislation; Minimum Wage Legislation; *Wages
IDENTIFIERS *Garnishment

ABSTRACT

The Federal Wage Garnishment Law limits the amount of an employee's disposable earnings which may be garnished in any one week, and protects him from discharge because of garnishment for any one indebtedness. Coverage of the garnishment law, an explanation of garnishment, wages subject to garnishment, and restrictions on the garnishment amount are outlined and illustrated. The effect of the Federal law on State laws, procedural requirements in State laws, garnishment before judgment, exemption for State-regulated garnishments, protection against discharge, and the limits of discharge provisions are explained. Conditions under which an individual's earnings are subjected to garnishment and enforcement of the garnishment law also are outlined. The pamphlet includes the minimum wage increase effective May 1, 1974, under recent Fair Labor Standards Act amendments, which have increased the amount of earnings protected from garnishment. (NH)

ED 099566

THE FEDERAL WAGE GARNISHMENT LAW

MAY 1974

U.S. DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION

THIS DOCUMENT HAS BEEN REPRO-
DUCED EXACTLY AS RECEIVED FROM
THE PERSON OR ORGANIZATION ORIGIN-
ATING IT. POINTS OF VIEW OR OPINIONS
STATED OR IMPLIED ARE SOLELY REPRE-
SENTATIVE OF THE NATIONAL INSTITUTE OF
EDUCATION AND NOT OF THE POLICY

This publication includes the minimum wage increase effective May 1, 1974, under recent amendments to the Fair Labor Standards Act. These amendments have increased the amount of earnings protected from garnishment.



UNITED STATES DEPARTMENT OF LABOR
Employment Standards Administration
Wage and Hour Division

WH Publication No. 1324 (Rev)

0E002653

IMPORTANT NOTE

The Federal Wage Garnishment Law's restriction on the garnishment amount is based, in part, on the Federal minimum hourly wage prescribed by section 6 (a) (1) of the Fair Labor Standards Act. This minimum wage is:

\$2 an hour effective May 1, 1974
\$2.10 an hour effective January 1, 1975
\$2.30 an hour effective January 1, 1976

The statements and examples given in this pamphlet are based upon the \$2 an hour minimum wage. This pamphlet will be revised at the time of these increases. Pamphlets may be obtained from the nearest office of the Wage and Hour Division.

The restriction on garnishment which is based on the \$2 minimum wage applies to disposable earnings paid or payable after May 1, 1974. The restrictions are based on the minimum wage in effect at the time the earnings are payable. For example, when a withholding is made after May 1, 1974 under a garnishment order issued by a court before May 1, 1974, weekly disposable earnings in the amount of \$60 or less would not be subject to garnishment, even though the order was issued when this restriction protected only \$48.

U. S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
Wage and Hour Division
Washington, D. C. 20210

THE FEDERAL WAGE GARNISHMENT LAW

The Federal Wage Garnishment law, which became effective July 1, 1970, limits the amount of an employee's disposable earnings which may be garnished in any one week, and protects him from discharge because of garnishment for any one indebtedness. It does not change other matters related to garnishment, such as the rights of a creditor to collect the full amount owed him, most garnishment procedures established by State laws or rules, or the priority of garnishment orders when more than one is served on the employer.

COVERAGE

This law (Title III of the Consumer Credit Protection Act) applies wherever Federal and State courts have jurisdiction. Thus, it is applicable in the 50 States, Puerto Rico, the District of Columbia, the Canal Zone, and all United States territories and possessions.

Salaries of most Federal employees were not subject to garnishment prior to this law, and the law made no changes in this regard. The law's restrictions apply to city, county and State employees' earnings unless they are not subject to garnishment by an applicable State law.

This law became effective July 1, 1970 and applies to garnishment orders in effect on that date. The restrictions apply to amounts that may be withheld from an employee's wages subsequent to July 1, 1970, regardless of the fact that the garnishment proceeding was started before that date.

WHAT IS GARNISHMENT?

"Garnishment" means any legal or equitable procedure through which earnings of any individual are required to be withheld for the payment of any debt. Most garnishments are made by court order under which a creditor seeks to reach an employee's earnings before they are paid to him, so that they may be applied to the satisfaction of a claim against the employee. Since a wage assignment is a transfer of the right to receive wages, ordinarily effected by means of a contract, wage assignments are not within the scope of this law. If a legal proceeding to enforce a wage assignment results in a judgment with a garnishment order, the law would then be applicable.

WAGES SUBJECT TO GARNISHMENT

The law's restrictions on garnishment are based on the employee's disposable earnings, which are different than his gross pay or his take-home pay.

The term "earnings" means compensation paid or payable for personal services, whether called wages, salary, commission, bonus, or otherwise, and includes periodic-payments pursuant to a pension or retirement program.

Dollar values of meals and lodging furnished by an employer to his employees are generally regarded as "earnings". However, tips are generally not so regarded. Typically, tips do not pass through the hands of the employer and so he cannot withhold them if a garnishment order is received.

An employee's "disposable earnings" means that part of his earnings remaining after the deduction from those earnings of any amount required by law to be withheld. Examples of such deductions are:

1. Federal income tax withholding deductions (as determined by the number of exemptions claimed by the employee for income tax purposes)
2. Federal social security tax deductions
3. State and city tax withholding deductions
4. State unemployment insurance taxes
5. Deductions required under State employees' retirement systems.

Deductions which are not considered to be required by law are, among others, the following:

1. Deductions to purchase savings bonds
2. Deductions for contributions to religious, charitable, or educational organizations
3. Deductions for union dues and union initiation fees
4. Deductions for health and welfare premiums, including company retirement programs
5. Deductions for board, lodging, or other facilities furnished to an employee by his employer
6. Deductions for the purchase of stock in the employer's corporation
7. Deductions pursuant to an assignment of earnings
8. Deductions to repay loans or payroll advances made by the employer
9. Deductions for merchandise purchased from the employer
10. Deductions pursuant to garnishment orders.

RESTRICTIONS ON GARNISHMENT AMOUNT

The maximum part of the total disposable earnings of an individual which is subject to garnishment in any workweek may not exceed the lesser of:

(a) 25 percent of the disposable earnings for that week;

OR

(b) The amount by which his disposable earnings for that week exceeds 30 times the Federal minimum hourly wage prescribed by Section 6(a)(1) of the Fair Labor Standards Act in effect at the time earnings are payable (currently this is \$2 an hour or \$60 a week. On January 1, 1975, it will go to \$2.10 an hour, or \$63 a week).

Stated differently, until January 1, 1974, when an employee's disposable earnings are more than \$80 a week, up to 25 percent of his disposable earnings may be garnished. Where the disposable earnings are \$80 or less, only the amount over \$60 may be garnished. No garnishment can be made if the employee's disposable earnings are \$60 or less.

These restrictions represent the maximum amount subject to garnishment, regardless of the number of garnishment orders received by the employer. Thus, if \$25 of an employee's pay is the maximum amount subject to garnishment and that amount is being withheld to satisfy a current garnishment order, no further withholding can be made from that particular pay if a second garnishment order is received.

In the case of employees paid monthly or semi-monthly, the \$60 figure (30 times the \$2 minimum wage) is translated to \$260 a month or \$130 for a semi-monthly pay period. The \$80 breaking point is translated to \$346.67 for monthly pay periods, and \$173.33 for semi-monthly pay periods. For this purpose, a month is considered to consist of 4 1/3 weeks. Thus, if an employee is paid semi-monthly, no garnishment may be made where the semi-monthly disposable earnings are \$130 or less. It makes no difference if these earnings were \$90 in one week and the rest in other weeks of the period - the semi-monthly period is treated as a unit.

It is not permissible, however, to break the \$60 figure down to a daily basis. If an employee whose wage rate is \$20 a day works only 2 days in a week, for example, his week's earnings of \$40 cannot be garnished in any amount.

Where an employer turns over his total weekly payroll to a local bank, which then puts each employee's net earnings in a checking account established for him under this payroll system, the garnishment restrictions apply to these earnings, even though they are in a bank account and not in the employer's hands. It is the Division's position, also, that an individual's earnings in any bank account retain their status as earnings and are subject to the Act's restrictions, so long as they are capable of identification as earnings.

The law specifies that restrictions on the maximum amount that may be garnished do not apply to court orders for the support of any person, bankruptcy court orders under Chapter XIII of the Bankruptcy Act, and debts due for State or Federal taxes. Also included are court orders requiring an employer to withhold an employee's wages for child support and for alimony.

A levy against wages for a Federal tax debt by the Internal Revenue Service, pursuant to its tax collection authority, is not restricted by this law. Collection of taxes is covered by other Federal laws and procedures that provide certain protection for the taxpayer.

EXAMPLES OF AMOUNT SUBJECT TO GARNISHMENT

The following examples illustrate the statutory tests for determining the amounts subject to garnishment.

- (a) An employee's earnings may not be garnished in any amount where his disposable earnings in a particular week are \$60 or less. (For those paid on a monthly basis, this amount is \$260, and for those paid semi-monthly, it is \$130.)
- (b) An employee's gross earnings in a particular week are \$78; after deductions required by law, his disposable earnings are \$70. Since only the amount over \$60 may be garnished where the disposable earnings are \$80 or less, only \$10 may be garnished in this week. \$60 would be paid to the employee.
- (c) An employee's gross earnings in a particular workweek are \$115; after deductions required by law, his disposable earnings are \$100. In this week 25 percent of the disposable earnings may be garnished, or \$25. The employee would be paid \$75.
- (d) A garnishment order is received on Wednesday requiring wages earned up to that day to be withheld. The employee is paid \$20 a day. Since he has earned less than \$60, no garnishment is permitted. However, if another garnishment order is received when the workweek is completed, or in states where continuing garnishments are issued, the employer will withhold on the basis of the earnings for the entire week.

- (e) An employee paid bi-weekly has disposable earnings of \$200 for the first week and \$40 for the second week of the pay period, or a total of \$240. The rules for a bi-weekly pay period are:

No garnishment if disposable earnings for the pay period are \$120 or less.

When disposable earnings are \$160 or less for the pay period, only the amount in excess of \$120 may be garnished.

When disposable earnings are above \$160 for the pay period 25% may be garnished.

- (f) An employee who has \$100 disposable earnings (gross weekly wages less taxes) becomes subject to a court order directing his employer to withhold from his wages \$40 a week for child support and alimony. Such a support order is not regarded as an "amount required by law to be withheld", so the disposable earnings remain \$100. Since the 25% restriction does not apply to court orders for the support of any person, \$40 may legally be withheld instead of \$25. However, no additional withholding may be made that week if another garnishment order, resulting from an ordinary indebtedness, is subsequently received.
- (g) The rule stated in (f) above also applies in cases of tax liens for Federal or State taxes whether or not there has been a court proceeding. It also applies where the court order is issued under a wage-earner plan authorized by Chapter XIII of the Bankruptcy Act.
- (h) An employee on a \$125 weekly draw against commissions has disposable earnings each week of \$100. Commissions, paid monthly, total \$700 for July after deductions required by law. Each draw and the balance due at the monthly settlement are separately subject to the law's restrictions. Thus, 25% (or \$25) of each draw may be garnished. At the end of the month, the \$400 previously drawn is subtracted from the \$700 settlement figure, and 25% of the balance (or \$75) may be garnished.

EFFECT ON STATE LAWS

The Federal Wage Garnishment Law does not annul, alter, or affect or exempt any person from complying with State laws which prohibit garnishments or provide for more limited garnishments than are allowed under the Federal law. Any provision of a State law that subjects less of an individual's earnings to garnishment than does the Federal law

will be the one that is applied under a garnishment order. On the other hand, the Federal provision is applied if it results in a smaller garnishment.

For example, where a State law restriction on garnishment to a class of individuals such as householders results in a lesser amount subject to garnishment than under the Federal law, that law rather than the Federal restriction will be applicable. This rule applies even though the State law in other respects imposes restrictions on garnishment less favorable than the Federal law. In those respects, the State provisions will be preempted by the Federal restriction, and the maximum amount subject to garnishment will be determined under the Federal law.

PROCEDURAL REQUIREMENTS IN STATE LAWS

There are no procedures that must be followed under the Federal law, such as filing an affidavit or an application for exemption, in order for the limitations on garnishment to apply. A requirement in a State law that the employer or employee must affirmatively claim an exemption as a condition to receiving it, or any other procedural requirement of similar effect, may not be applied to defeat the Federal limitations.

Where a State restriction on garnishment is more favorable to the employee than under Federal law, however, the State provision will be applicable even though its availability is conditional on such a procedural requirement. In cases where the employer or employee fails to follow the procedure and thus loses a more favorable State law provision, the provisions of the Federal law will become applicable.

In some States the entire amount due the employee when a garnishment order is received is impounded until certain procedural requirements are met. The Wage and Hour Division takes the position that such State provisions are preempted by the Federal law and that the law's restrictions apply to these withholdings.

GARNISHMENT BEFORE JUDGMENT

In the case of *Sniadach v. Family Finance Corp. of Bay View*, 395 U.S. 337 (1969), the Supreme Court of the United States held that wage garnishment is not permitted until a judgment is obtained, in order that the debtor or wage earner will have the opportunity to be heard and tender any defense he might have. It was held that wage garnishment prior to trial on a suit for judgment constituted taking property without the procedural due process of law which is required by the 14th Amendment to the Constitution. The Wage and Hour Division believes the implementation of this decision is not within the purview of this law, but is a matter for the courts that issue wage garnishment orders.

EXEMPTION FOR STATE-REGULATED GARNISHMENTS

The Secretary of Labor may exempt from the garnishment provisions of this Act, garnishments under the laws of any State if he determines that the laws of that State provide restrictions on garnishments which are substantially similar to those provided in this Act. Regulations,

Part 870, specify the procedures and standards under which State laws will be found to be "substantially similar." When a State's garnishment law is determined to be "substantially similar" to the Federal law, all of the provisions of the State law relating to the restrictions on the amount that may be garnished will be applied, and the Federal formula will not come into play. Enforcement of garnishment restrictions will rest with the State. To date, the laws of Kentucky and Virginia have been found "substantially similar" to the Federal law.

In the absence of a determination that the State's garnishment law is "substantially similar" to the Federal law, any section or provision of the State law that results in a smaller garnishment amount is to be applied. Conversely, the Federal provision is applicable where the Federal restriction results in a smaller amount.

PROTECTION AGAINST DISCHARGE

The Federal law prohibits an employer from discharging any employee because his earnings have been subject to garnishment for any one indebtedness. The term "one indebtedness" refers to a single debt, regardless of the number of levies made or the number of proceedings brought for its collection. A distinction is thus made between a single debt and the garnishment proceedings brought to collect it.

If several creditors combine their debts in a single garnishment action, the joint amount is considered as "one indebtedness". In the same vein, if a creditor joins several debts in a court action and obtains a judgment and writ of garnishment, the judgment would be considered a single indebtedness for purposes of this law.

The protection against discharge is renewed with each employment, since the new employer has not been a garnishee with respect to that employee. Also, any garnishment fully executed before July 1, 1970, the effective date of the law, is not counted as an indebtedness.

LIMITS OF DISCHARGE PROVISIONS

The restriction on discharge applies to all garnishments as that term is defined in the law. Accordingly, discharge for a first-time garnishment such as an attachment of wages under a tax lien would be in violation of the law. The same would be true of a court order requiring an employer to withhold an employee's wages for child support or alimony. In the case of tax liens, several levies to collect a single tax delinquency (or to collect several year's tax arrears that are combined into a single indebtedness) would be treated as one indebtedness. However, each specific court order for the payment of child support or alimony obligations that are in arrears is considered as a separate indebtedness.

Since the discharge provision is a protection against "firing," a

suspension for an indefinite period or of such length that the employee's return to duty is unlikely may well be considered as tantamount to firing and thus within the term discharge as used in the law. In these situations, each case must be considered on its own facts.

Some employers have a rule that the employee will be given warnings for the first two garnishments and will be discharged for the third garnishment in a year. Where at least two of the actions relate to separate debts, discharge would not be prohibited by the law since the warning and discharge would be based on garnishment for more than one indebtedness.

In some cases employers set up plans which prescribe disciplinary actions for violations of company standards of conduct, with discharge if for example the employee violates three of the standards in a year. One of the actions considered as a violation is "garnishment of wages". If only one of these violations relates to garnishment, discharge would be prohibited by the law since the discharge would result from garnishment for only one indebtedness. In other words, regardless of the employer's disciplinary plan, no discharge may be based either wholly or in part on a first time garnishment.

The law does not prohibit discharge if there are garnishment proceedings pursuant to a second debt. However, as in the case of the limitations on the amount that may be garnished, the law does not affect or exempt any person from complying with a State law that prohibits discharge because an employee's earnings have been subjected to garnishment for more than one indebtedness.

"SUBJECTED TO GARNISHMENT"

An individual's earnings are "subjected to garnishment" for purposes of this law when the garnishee (employer) is bound to withhold earnings and would be liable to the judgment creditor if he disregards the court order. Thus, if an employee or being advised that garnishment is contemplated obtains a release from the garnishor (creditor) before the garnishment order is issued, his earnings have not been subjected to garnishment.

The law does not expressly provide any time limitation between a first and second garnishment. Where a considerable time has elapsed between garnishments, such as a year, it may be that the employee is actually being discharged for the current indebtedness. The first indebtedness may no longer be a material consideration in the discharge. Determinations in such cases will be made on the basis of all the facts in the situation.

ENFORCEMENT

The Federal Wage Garnishment Law is enforced by the Wage and Hour Division of the Department of Labor. In those States where an exemption for State-regulated garnishment has been granted, the State enforces the limitations on the amount that may be garnished in a pay period, but not the restrictions on discharge from employment.

Section 303(c) provides that no court of the United States or any State may make, execute, or enforce any order or process in violation of the restrictions on the amount of an employee's disposable earnings subject to garnishment.

Anyone who willfully violates the discharge provisions of this law may be prosecuted criminally and fined up to \$1,000, or imprisoned for not more than one year, or both.

When an employee has been illegally discharged because of garnishment, and the matter is not settled by the parties with or without the aid of the Wage and Hour Division, either the employee or the Department of Labor may institute an equitable action in the courts. Such an action would seek restoration to the employment held before the wrongful discharge, and restitution of the wages lost (less any earnings of the employee between the illegal termination and the date of settlement.)

ADDITIONAL INFORMATION

Inquiries about the Federal Wage Garnishment 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 of the U. S. Government listing. These offices also supply publications free of charge.

This publication is for general information and is not to be considered in the same light as official statements of position formally adopted and published in the Federal Register.