

## LAW

# What Employers Need to Know About Employee Wage Assignments

by Michele C. Teel, Esq.

Now, more than ever, employers are more responsible for providing child and spousal support payments than the parents themselves. Wage assignments, which trigger the employer's duty to garnish the wages of an employee for child support, have several important implications to an employer.

## Employer's Duties upon Receipt of a Wage Assignment

The duty of withholding an employee's wages places the employer in an unfortunate position of the enforcing agent. Here are the basic obligations of an employer upon receipt of a wage assignment.

### 1. Interpret the Wage Assignment

Generally, the levying officer will serve the traditional wage and earnings assignment order upon the employer. A levying officer can be a parent, a former spouse, or an agency charged with support collection (the District Attorney's Office [D.A.], the Franchise Tax Board [FTB], or an out-of-state agency).

A standard wage assignment will contain: a monthly obligation for support, an arrearages payment and arrearages amount, an effective date for the payments.

### 2. Comply Within 10 days and Reply Within 15 Days

The law requires employers to provide a copy of the order and the forms to the employee with 10 days of receipt. The garnishment should commence at the next payroll. Within 15 days of receipt, the employer's return form must be completed and returned by First Class Mail. If there is a barrier to compliance with the order, this form must state the reasons.

### 3. Prioritize Orders

Garnishing can be difficult when there is more than one assignment order. Since support orders have priority over all others (even IRS assignments), confusion should arise only when there is more than one support assignment.

The bottom line is that an employer can only withhold 50 percent of wages unless there is a specific court order otherwise. The question is how to apportion and prioritize this 50 percent. The answer lies in the pro rata distribution and priority of orders:

Priority of assignment orders is as follows:

- (1) Ongoing child support,
- (2) Ongoing spousal support,
- (3) Arrears payments for support (child first, spousal second),
- (4) Other non-support assignments

It is imperative to contact all levying officers if there are not sufficient funds to meet all withholdings. Also, employees who cannot meet their obligations after a 50 percent garnishment should seek legal advice through an attorney or state funded family law facilitator.

### 4. Withhold and Send Funds

Employers must abide by court orders assigning wages or face a civil penalty of \$500 as well as responsibility for the unpaid support. Support is due according to the date on the order or, if no date is specified, the last day of the month.

The assignment covers wages from salary, bonus, pay to independent contractors, dividends, commissions, workers' compensation benefits (up to 25 percent), private disability (up to 25 percent), and unemployment compensation (up to 25 percent). Employee's support should be paid prior to contributions to retirement and deferred compensation plans.

### 5. Continue Withholding

Withholding must continue for as long as the order remains and the employee is on the payroll. This duty covers the time off for a work-related injury or other disability when the benefits are disbursed through the employer or agent of the employer.

Notice to the levying officer is mandatory when an employee is receiving: workers' compensation, disability benefits: state, federal or private, or unemployment benefits for a temporary or permanent layoff

For long term employees, the service of a modified order should be anticipated every two or three years. Upon modification, all prior requirements for notice are triggered, and the previous order is superceded. The general rule is only a court order or notice from the D.A. or F.T.B. will stop or modify the assignment. If emancipation or custody change situations arise, the employee must terminate the order. Orders do not expire unless they contain an expiration date.

The obligation to withhold pay extends until: the order is terminated and the order for termination is served, the order is satisfied and notice or order of satisfaction is served, or 180 days after employee is terminated

Upon termination of an employee, the employer must notify the levying officer that the employee is no longer employed and that the wage assignment will no longer operate.

### Deduction for Employer's Costs

Code of Civil Procedure section 706.034 allows employers to deduct from each paycheck one dollar (\$1) for each payment made under an earnings withholding order. The majority of employers

do not deduct this processing fee. With biweekly payroll in a larger corporation, this deduction can offer a significant reduction in the burden of withholding.

### Consequences if the Wage Assignment Is Not Satisfied

Valuable employees can be rendered useless or incarcerated due to delinquent support. Employees can lose their professional licenses (including sales, law and medicine), driver's license and passport, or be incarcerated for nonpayment of support. To avoid these pitfalls, an employer must handle wage assignments appropriately, keeping the business running smoothly and efficiently.