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HOW TO PROCESS A “CONTINUOUS” WAGE GARNISHMENT UNDER THE NEW RULES

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As of January 15, 2015 and pursuant to Missouri Revised Statute §525.040, a judgment creditor may serve a notice of “continuous” wage garnishment on a debtor’s employer, and if there are no other prior served garnishments on the employer, the garnishment will apply against the debtor/employee “until the judgment is paid in full or the employment relationship is terminated, whichever occurs first [.]” Under the new law and Missouri Rule 90-Garnishments and Sequestration, as amended, when an employer receives a garnishment order issued by a Missouri court from a judgment creditor and the order is designated as continuous, the employer calculates the appropriate payment and processes payments to the creditor until and unless the employer receives an order of termination from the court or the employee is terminated. Should there be more than one notice received by the employer, the later received notice will have priority based on the order received. The later received garnishments will not receive payment until the prior received notices are paid in full or are terminated by the court. However, all creditors shall receive completed interrogatories and a letter from the employer informing the creditor of all received garnishment orders and the order or priority. It is important to appropriately respond to all garnishment orders.

Service, interrogatories, and wages subject to withholding

When receiving a continuous wage garnishment order, note the employer is required to return the “interrogatories to garnishee” completed by the employer to the court within twenty (20) days from the date on which the garnishee is served. All individuals who might receive a garnishment order on behalf of the employer should be aware that although the order may have the employee’s name on the order, the order is to go to the employer, **not** the employee. The interrogatories include calculation inquiries regarding the amount of wages subject to garnishment and the amount that will be withheld for payment of the garnishment. An employee’s wages subject to garnishment is net deductions required by law. These deductions include income, earnings and FICA taxes, as well as required medical deductions (not flexible spending account deductions) and retirement deductions.

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How much to withhold

After calculating the amount of an employee's wages subject to garnishment, the employer must determine whether to withhold ten (10) percent or twenty-five (25) percent. If the employee has filed an "Judgment Debtor's Claim for Exemption" with the court and the exemption has been accepted by the creditor, then the employer deducts ten (10) percent from the employee's wages subject to garnishment, instead of twenty-five (25) percent. Note, an employee may file the required affidavit at a later date, and if the affidavit is accepted, the employer will subsequently then calculate lower amounts to be withheld at the lower rate of ten (10) percent on future wages.

The Maximum Allowable Withholding

Pursuant to Missouri Revised Statute §525.030 and the Federal Wage Garnishment Law, Consumer Credit Protection Act's Title 3, there are restrictions on the maximum amount of earnings that may be subject to garnishment. When calculating the withholding, other than garnishments for state and federal student loans and any income withholding for support for children and spouses, the federally mandated maximum amount must be the lesser of the following calculations:

- a) Twenty-five (25) percent of the aggregate earnings of any individual, after deduction from earnings of any amount required by law which includes medical and retirement deductions, but not medical flexible spending accounts;
- b) The amount the aggregate earnings of any individual, after deduction from earnings of any amount required by law which includes medical and retirement deductions, but not medical flexible spending accounts, **exceeds** thirty times the federal minimum hourly wage equivalent which is calculated as thirty (30) hours per week at the federal minimum wage (currently \$7.25/hour) which is as follows:
 - \$217.50 per week;
 - \$435.00 biweekly;
 - \$471.24 bimonthly; or
 - \$942.49 monthly; AND
- c) If the employee has filed an Judgment Debtor's Claim for Exemption with the court or agency and it has been accepted, Ten (10) percent of the aggregate earnings of any individual, after deduction from earnings of any amount required by law which includes medical and retirement deductions, but not medical flexible spending accounts.

The employer must first determine the aggregate amount of the individual's income that is subject to garnishment and whether the individual receives the head of family exemption from garnishment of wages. Second the employer must determine the amount the aggregate amount

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of the individual's income that is subject to garnishment exceeds the federal minimum hourly wage equivalent. Finally, the employer compares the two amounts and deducts the lesser amount from the employee's wages and makes a payment for this amount as instructed pursuant to the continuous wage garnishment order each pay period.

After processing payment

Once the payment is processed, the employer will typically make payments directly to the court. Some orders instruct payments be directly sent to legal counsel for the creditor. It is advisable to keep a record of the payments made. Garnishors are required to submit a statement of judgment balance remaining due every six months to the court, the employee and the Garnishee. Also, employees should contact the legal counsel for the creditor directly should there be any issues with the garnishment order or the filings filed in a particular case.

Best practices

Many employers find it prudent upon receipt of each garnishment to seek legal guidance to ensure proper processing of garnishments. Employers are liable for the full amount of any payment not properly made. Although most employers have recourse by making future deductions against employee wages, it is always best to process timely and correctly, in case the employee is potentially no longer employed by the employer.

Finally, note that this article is limited to the processing of "continuous" wage garnishments from judgment creditors. All garnishments for state and federal taxes are governed by different laws and rules, as are garnishments for state and federal student loans and any income withholding for support for children and spouses. If there are multiple garnishments and withholdings of different types, the laws interplay in a way too complex to detail here.