

Ensuring proper handling of wage garnishments

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Our June Work on It column addressed the initial steps to take when you're served with a writ of garnishment and summons directing you to garnish an employee's wages. This month, we outline the steps to take after you file the garnishee's answer and your answer is served on both the judgment creditor and the judgment debtor. We haven't addressed nuanced situations; rather, we've focused on the basic steps employers must follow during the garnishment process.

How do we determine the amount of wages to garnish?

For each pay period, you must fill out a nonexempt earnings statement to determine how much money to withhold and then withhold that amount from the judgment debtor's paycheck. You may, but are not required to, claim a \$5 fee on each nonexempt earnings statement you complete. A copy of the statement must be included with the employee's paycheck, even if nothing is withheld. You should also provide a copy of the nonexempt earnings statement to the judgment creditor. Keep the original statement for your records, but don't file a copy with the court.

When do we release the garnished wages to the judgment creditor?

Although you are required to begin garnishing wages almost immediately after you are served with the writ of garnishment, you must not send any withheld earnings to the judgment creditor *until you receive a signed order of continuing lien*. If no objections are filed on the writ of garnishment or the garnishee's answer, and a signed order of continuing lien isn't entered within 45 days after you filed your garnishee's answer, you may be discharged from any liability on the garnishment. If

you are discharged, you must return any earnings you have withheld to the judgment debtor.

Once you receive a signed order of continuing lien, you will pay the judgment creditor the nonexempt earnings you have withheld up to that point. Going forward, for every pay period in which the order of continuing lien is in effect, you must:

1. Complete a nonexempt earnings statement;
2. Withhold the nonexempt earnings from the judgment debtor;
3. Provide a completed copy of the nonexempt earnings statement to the judgment debtor and the judgment creditor; and
4. Send the nonexempt earnings you withheld to the judgment creditor.

How will we know when to stop garnishing wages?

It's the judgment creditor's responsibility to keep track of the remaining obligation as it receives payments and to take reasonable action to ensure that the garnishee doesn't withhold more nonexempt earnings than necessary to satisfy the underlying judgment. Toward that end, the judgment creditor must complete a creditor's garnishment report and provide that information to the garnishee and the judgment debtor.

If the balance of the judgment is more than \$500, the report must be submitted quarterly, within 21 days after the end of each quarter. Once the balance drops below \$500, the report must be sent before the 10th of each month. How will we be released from the garnishment?

Once the judgment creditor has been paid in full, it must file with the court a petition and order discharging the garnishee and deliver a copy of the form to the garnishee. A judgment creditor also must release the garnishee once it is notified that the judgment debtor is no longer working for the

garnishee. What if the judgment debtor has more than one garnishment?

You will be required to determine the order of priority of payments. Arizona Revised Statutes § 12-1598.14 establishes the priority of payments that must be honored when more than one garnishment is received.

In closing

As you can see, the garnishment process is extremely involved and complex. Following the steps is imperative. If you're unsure what to do at any point in the process, contact employment counsel for assistance. A misstep could be costly.

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