

ARIZONA

EMPLOYMENT LAW LETTER

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Arizona voters pass Predatory Debt Collection Protections Act

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On November 8, 2022, Arizona voters passed Arizona Proposition 209, titled the Healthcare Debt Interest Rate Limit and Debt Collection Exemptions Initiative. The initiative passed by a wide margin of 72.01% to 27.99%. Prop. 209 modifies several of Arizona's statutory exemptions, including the wage garnishment exemption, which is discussed in this article.

It also establishes a cap on the amount of interest that can be charged on medical and nonmedical debts and judgments. For those of you surprised by the breadth of Prop 209 (as I just described), juxtaposed to its title and how it was portrayed leading up to the election, you're not alone. Employers (as potential garnishees) should understand the new provisions of the law and how they apply to garnishments, as failure to properly garnish wages can result in severe liability against employers.

What is the effective date of Proposition 209?

The Arizona Constitution provides that Governor Doug Ducey has until 30 days after the date of the election to issue a proclamation declaring that the Prop. 209 ballot measure received a majority vote and is now law. Once he does this, the law becomes effective immediately.

At the time of writing, Governor Ducey hasn't issued such a proclamation. It's anticipated he will do this on December 8, 2022.

Does Proposition 209 apply to existing wage garnishments?

Prop. 209 modifies several existing Arizona statutes, which will be titled the Predatory Debt Collection Protections Act (PDCPA). In reviewing Arizona's statutes regarding when a law applies retroactively, it's unclear whether the PDCPA will apply to existing garnishments at present.

It's most likely that the PDCPA will apply to all garnishments going forward, even ones currently in existence. Otherwise, it would create a situation where there would be two sets of rules, depending on the timing of the garnishment.

That's not consistent with basic notions of equal protection and judicial economy. The answer will likely become clear once the PDCPA becomes effective and Arizona courts can update their garnishment forms.

What changes has the PDCPA made to wage garnishments?

Under the PDCPA, the amount that may be garnished from a judgment debtor's disposable earnings (i.e., the amount remaining after deducting amounts required by law to be withheld) has been reduced.

The garnishment may not exceed 10% of disposable earnings (down from 25%) or the amount by which disposable earnings for the pay period exceed 120 times (up from 60 times) the applicable minimum wage (assuming biweekly pay periods). Whichever is less is the amount that is required. Note that these exemptions don't apply to garnishments for support.

The PDCPA also modified the minimum wage used in calculating wages that are subject to garnishment. The "applicable" minimum wage is the minimum wage required by federal, state, or local law, whichever is highest.

At the time of this writing, the minimum wage used to calculate wage garnishments was the federal minimum wage (\$7.25). This is significantly lower than Arizona's minimum wage, which is set to increase to \$13.85 in 2023.

Best practices

Employers who have existing wage garnishments must update the form they use to calculate the garnished wages to ensure they are complying with the PDCPA. This form is called the Non-Exempt Earnings Statement. It must be completed for each pay period to determine the amount of the garnishment. The PDCPA's changes will result in a noticeable difference in the amount to be garnished.

If you have any questions on how to update the form or properly calculate the garnishment, contact experienced employment counsel. Failure to properly garnish wages could open the employer up to liability.

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