

# Garnishments

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# Presenter's Background

- Payroll/Benefits/Bookkeeping background in large retail environments prior to 2000
- Hired in 2000 to work on largest BPO Contract of its kind up to that point
  - Joined a workgroup in a payroll department where there were approximately 25 full time employees (FTE) in the Garnishment Department and 3 additional FTE to process voluntary deductions
  - Experienced in garnishments and support processing from all states, student loan, as well as levies (state and federal) and bankruptcies
  - Types of voluntary deductions included, but were not limited to, charity deductions, union dues, US Saving Bonds and credit union deductions

# Other Deductions From Pay

- Chapter 9 American Payroll Association's The Payroll Source
- Classified in two categories; voluntary and involuntary
- Voluntary
  - Union Dues
  - Credit Union Deductions
  - US Savings Bonds
  - Charitable Contributions
- Involuntary
  - Tax Levies
  - Child Support Withholding Orders
  - **Creditor Garnishments**
  - Bankruptcy Orders
  - Student Loan Collections
  - Federal Agency Debt Collections

# Focus on Creditor Garnishment Basics

- Employer **required** to withhold
- Also called wage attachments or income executions
- Creditor must have proof of debt and go through court proceeding
- Creditor must allow garnishee/defendant to respond
- The Federal Consumer Credit Protection Act (CCPA) Title III governs two areas
  - Amount
  - Discharge
- State laws preempted by federal only from garnishing greater amounts
- State determines the process for garnishment proceedings

# Calculation of Disposable Pay

- CCPA states that the maximum allowable amount to be garnished for a creditor garnishment is the lesser of:
  - 25% of the employees disposable earnings
  - or
  - The amount by which the employee's disposable earnings for the week exceed 30 times the federal min hourly wage
- What is disposable pay?
  - Disposable pay is calculated by subtracting from gross earnings all deductions required by law

# Example Calculations

Secretary Sally's disposable earnings for a week are \$250, when her office receives an order to garnish her wages for \$500. The maximum amount that can be withheld is calculated as follows:

- $\$250 \times 25\% = \$62.50$  (25% calculation)
- $\$250 - 217.50 = \$32.50$  (amount by which employee's wages exceed 30 times the fed minimum wage)

Because the Federal exemption requires we use the lesser of the two, we use \$32.50 per week as the amount to be garnished.

# Example Calculations

Walter White's disposable earnings for a week are \$500, when the car wash receives an order to garnish his wages for \$2000. The maximum amount that can be withheld is calculated as follows:

- $\$500 \times 25\% = \$125$
- \$500 exceeds the weekly amount exempt from garnishments based on the Federal minimum wage, so no further calculation is required. Therefore, \$125 may be deducted on a weekly basis to satisfy the garnishment order.

# CCPA Protection from Discharge

- CCPA Title III prohibits an employer from discharging an employee/garnishee because his or her earnings are subject to garnishment for any one debt, regardless of the number of levies made or proceedings brought to collect it.
- Title III does not, however, protect an employee from discharge subject to garnishment for a second or subsequent debt.



# State Regulation

- Priority
- When to begin withholding
- Periodic versus Non-Periodic
- Time limits for remitting withheld amounts
- Administrative Fees
- Out of state garnishment jurisdiction
- Penalties

# It doesn't end with the calculation...

- Employers can have responsibilities other than calculating and withholding based on state and federal laws
  - Notify the employee
  - Complete the appropriate documentation
  - Determine what administrative fees are allowed
  - Hold amounts deducted and/or remit on schedule
  - Determine priority and allocation of disposable earnings
  - Last but not least...Decide what to do if a bankruptcy order is received

# Subsequent Actions

- Notify employee
  - Some states have a requirement that you notify the employee or other parties of action taken
  - Be prepared to answer employee questions
  - Do not offer advice
- Answers, interrogatories and disclosures
  - What are these docs?
  - Remember the state determines the process and required documentation
  - Where possible use original forms
  - Read, read, read, before completing unfamiliar documents

# Subsequent Actions (cont.)

- Fees
  - Cannot exceed CCPA or state limits
  - Do not confuse state laws for admin fees for garnishments with support fees
  - Clearly identify on paystub
- Requirement to hold funds and distribute based on schedule
  - Determined by state process
  - Lack of adherence can result in additional proceedings and even default

# Subsequent Actions (cont.)

- Priority
  - Support and Employee Bankruptcy always have priority
  - Although regulation grants IRS levy priority, policy permits garnishment, if garnishment is received first
  - Student Loans and non-tax federal attachments do not have priority
- I received a bankruptcy order...now what?
  - Bankruptcy orders have priority over creditor garnishments
  - Pay attention to dates
  - When in doubt, contact trustee
  - Look for notification that proceedings were dismissed
  - Always err on the side of caution

# Frequent Mistakes

- Not responding to documentation on termed employees or those not located in your records
- Failing to file a disclosure or answer, or to do so timely
- Not using the form provided
- Errors in determining priority when multiple orders are received
- Not remitting funds as required
- Applying the wrong state's laws
- Not checking through other company records, when not located in the payroll system
- Important to understand penalties for non-compliance
- Not calculating interest and terminating too soon

# Useful Resources

- American Payroll Association's The Payroll Source
- American Payroll Association's Complete Guide to Federal and State Garnishment
- APA ListServ and APA Hotline
- Department of Labor's website  
<http://www.dol.gov/>
- Bureau of National Affairs (BNA)  
<http://www.bna.com/>

# Question #1

- Can you name at least four common mistakes that are often made in the processing of garnishments?



# Question #2

- What two things does the CCPA (think Federal) govern in relation to creditor garnishments?

# Question #3

- How do you determine priority when multiple garnishments are received?

# Question #4

- What is the difference between periodic and non-periodic garnishments?

Questions?