

## 21 Questions Employers Ask About Earnings Garnishment

*A Public service of the State Bar of Wisconsin and  
the Bankruptcy, Insolvency and Creditors' Rights Section*

The process of earnings garnishment in Wisconsin changed substantially on April 1, 1994, the day 1993 Wisconsin Act 80 took effect. The Act created a new subchapter on earnings garnishment in Chapter 812 of the Wisconsin Statutes. The Bankruptcy, Insolvency and Creditors' Rights Section of the State Bar of Wisconsin has prepared this booklet to help employers understand the requirements of the new earnings garnishment law.

This booklet has been produced as a public service by the State Bar of Wisconsin as part of its effort to help Wisconsin citizens understand and exercise their legal rights and obligations. The Bar also seeks to help the state court system deal effectively with the matters brought before it.

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This booklet, which is based on Wisconsin law, is issued to inform and not to advise. No person should ever apply or interpret any law without the aid of a trained expert who knows the facts, because the facts may change the application of the law.

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### **1. What is earnings garnishment?**

Earnings garnishment is a way to collect money that a court has awarded but that remains unpaid. As a result of a garnishment lawsuit, a portion of the earnings of the person who owes the money are taken - or "garnished" - to pay the person to whom the debt is owed. "Earnings" are compensation for personal services, including wages, salary, commission, bonuses, and periodic payments from a pension or retirement program.

### **2. What is a garnishee?**

There are three parties to a garnishment lawsuit. The first party, the creditor, is the person who wants to receive the court-ordered payment. The second party, the debtor, is the person who has been ordered to pay the money, or the spouse of that person, if the earnings are marital property. The third party, the garnishee, is brought into the lawsuit because the creditor believes that the garnishee will, within the next 13 weeks, be obliged to pay earnings to the debtor. So, the garnishee is typically an employer like you.

### **3. How am I (the garnishee) notified of the garnishment?**

The creditor begins a garnishment lawsuit by filing a notice and paying a fee in circuit court. The court clerk then issues forms that the creditor must deliver to the debtor and you, the garnishee. The form delivered to the garnishee is called an earnings garnishment. (See form CV-422.) The front side of the form lists the names of the creditor, the debtor, and the garnishee. It explains that a court has awarded money to the creditor, and that this money has not been paid. It specifies the amount the creditor claims is owed, including interest and estimated taxable costs of collection. It also states that the garnishee should receive \$15 along with the form.

The garnishee is directed to follow the instructions on the back of the form. This direction carries the seal of the court that issued the garnishment. The instructions on the back of the form consist of nine numbered paragraphs that explain how the garnishee is supposed to process the garnishment. These nine paragraphs will be explained in greater detail below.

### **4. How will I receive the garnishment?**

Wisconsin law allows various methods for delivery, or "service," of the earnings garnishment form. The form can be served in any way permitted for the commencement of a lawsuit, except by newspaper publication. Or, it can simply be sent to the garnishee by first class mail, or by certified mail with return receipt

requested. Finally, although parties to a lawsuit normally may not serve their own papers, the creditor may personally deliver the earnings garnishment to the garnishee. However, with personal delivery, unless the garnishee signs a form called an admission of service, the creditor must also mail a copy of the earnings garnishment to the garnishee. And however the form is served, the garnishee must receive the \$15 fee with the form.

If you receive an earnings garnishment as a garnishee, you should note on the form the date and time you received it. If two creditors try to garnish the same debtor's earnings, the first form received takes priority. Only one garnishment of a debtor's earnings can be in effect in a given pay period, although there may be other levies - for example, deductions for support or unpaid state or federal taxes.

**5. Must I inform the debtor that his or her wages have been garnished?**

Usually not. The creditor must deliver papers to the debtor, notifying the debtor of the garnishment. The debtor must receive these papers within seven business days after you are served, and at least three business days before the first payday affected. You may inform the debtor of the garnishment, but you are not required to do so, unless the debtor's earnings are already being garnished when you receive an earnings garnishment from another creditor. In that case, you must inform the debtor of the second garnishment and its amount within seven business days.

**6. What is a business day?**

Most time periods under Wisconsin's new earnings garnishment law are calculated in "business days." The Wisconsin Consumer Act has used this term for more than twenty years. It means every day except Saturday, Sunday, New Year's Day, Martin Luther King, Jr.'s birthday, Washington's birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving, and Christmas, regardless of whether your business is open on those days.

**7. What if I receive an earnings garnishment, but the names of the parties are missing or the amount claimed by the creditor is blank or illegible?**

You are not required to process the garnishment if the form does not identify the parties or is illegible, incomplete, or otherwise unintelligible. The law does require you to mail that form back to the creditor, if known, within three days after you received it. You must explain how the form is defective and state that you are not

processing the garnishment, under authority of section 812.44(1)(c) of the Wisconsin Statutes.

**8. What if I receive a form without a court seal, or containing alterations?**

The law prohibits use of forms substantially different from those issued by the court clerk. Those forms also may not be altered in a manner that may be misleading. The court can award damages, costs, and attorney fees if a party uses a misleading form. You should bring any seemingly altered forms to the attention of the court clerk.

**9. What if the debtor no longer works for me, or never did?**

The first two paragraphs on the back of the earnings garnishment form cover these situations. If you don't expect to pay the debtor any earnings in the 13 weeks after you receive the earnings garnishment, simply send a statement explaining that fact to the creditor by the end of the seventh business day after you received the form. It is the creditor's responsibility, not yours, to determine who owes the debtor for earnings.

**10. How much of the debtor's earnings must I deduct and pay to the creditor, and when must I pay it?**

Paragraph 7 on the back of the earnings garnishment answers this question. In most cases, the garnishee must deduct 20% of the debtor's disposable earnings for payment to the creditor. "Disposable earnings" are the earnings remaining after social security and federal and state income taxes have been deducted.

Example: If the debtor's gross wages are \$520, and taxes and social security are \$130, disposable earnings are \$390; the amount deducted for payment to the creditor is \$78.

Amounts deducted from the debtor's wages must be paid to the creditor within five to ten business days after the payday when they are deducted.

**11. Are there any exceptions?**

Three situations might require you to deduct and pay less than 20% of the debtor's disposable earnings. First, the court might order you to deduct less. Courts sometimes order the creditor to take less than 20% of the debtor's earnings to avoid creating a hardship. If that happens, you will receive a court order to that effect.

The second situation arises if the family court has ordered you to withhold a portion of the debtor's wages for support of children or former spouses. Support always takes priority over garnishment, even if you receive an earnings garnishment form before the court order for support withholding. If the support withheld is 25% or more of the debtor's disposable earnings, no money can be garnished from the debtor's earnings. The garnishee must send the creditor a statement explaining that fact by the end of the seventh business day after receipt of the garnishment form. If the support order is for less than 25% of the debtor's disposable earnings, the creditor is entitled to be paid the difference between those two figures.

**Example:**

Debtor's gross earnings	\$520
Debtor's disposable earnings	390
25% of debtor's disposable earnings	97.50
Amount withheld for support	90
Amount garnished for creditor	7.50

The third situation occurs when the debtor gives you a form called an "Earnings Garnishment Debtor's Answer." (See form CV-424.) The answer tells you that the debtor is challenging the garnishment. The answer states that debtor is trying to stop the garnishment. In most cases, you will not say anything to the creditor after receiving an answer, unless the court orders otherwise. (See questions 15-17 below.)

**12. How soon must I put the garnishment into effect, and how long does it stay in effect?**

Before the new garnishment law took effect April 1, 1994, an earnings garnishment generally affected only the earnings payable on the payday of the pay period in which the garnishment was served on the garnishee. After April 1, 1994, an earnings garnishment affects all pay periods beginning within 13 weeks after the garnishee receives the form. (See paragraph 6 on the back of the garnishment form.) This change means that garnishees now have more time to put the garnishment into effect, because it doesn't apply to the pay period during which it is received.

When you receive the earnings garnishment, you can determine which pay periods will be affected by noting all pay periods that begin within 13 weeks after that date. Of course, if the full amount claimed by the creditor is paid before the 13 weeks end, the garnishment ends, too. As garnishee, you must keep a running total of

the amount paid to the creditor, and stop deducting when the amount claimed is fully paid. You will be liable to the debtor for any overpayments.

**13. What if two creditors attempt to garnish the same debtor?**

As noted above, only one garnishment can be in effect during a single pay period. If you receive a second garnishment before the first one has ended, paragraph 5 on the back of the garnishment instructs you to make the second garnishment effective the pay period after the earlier garnishment ends. Also, by the end of the seventh business day after you receive the second garnishment, you must notify the second creditor of the amount owed on the earlier garnishment. If the debtor leaves your employment before the second garnishment takes effect, you must notify the creditor of that fact within seven business days after you have determined that you will not be paying earnings to the debtor when the second garnishment was scheduled to be in effect.

**14. Are there other times when the garnishment will have a delayed effect?**

Yes. If the debtor stops the garnishment by giving you a debtor's answer, but the creditor successfully challenges that answer in court, you will receive a court order directing you to proceed with the garnishment. In that situation, to determine the 13-week period, substitute the date you receive the court order for the day you first received the earnings garnishment.

**15. How will I be notified if the debtor is trying to stop the garnishment?**

The papers delivered by the creditor to the debtor include a form that the debtor can use for this purpose. The form is an "earnings garnishment debtor's answer." (See form CV-424.) Even if the debtor at first has no defenses to a garnishment, some may arise as circumstances change. So, the law permits the debtor to mail or deliver a debtor's answer to you any time before or while an earnings garnishment is in effect. When you receive a debtor's answer or amended answer, you must mail a copy of the answer to the creditor by the end of the third business day after receiving it, noting on that copy the date you received the debtor's answer.

**16. Must I determine whether the debtor's answer is valid or sufficient?**

No. The law specifically provides that, unless you are served with a court order directing otherwise, in determining whether to pay any part of the debtor's earnings to the creditor, you must accept as true and binding any exemption claimed in a debtor's answer received before you have paid the creditor. After receiving a

debtor's answer, you should not pay the creditor any further money unless directed to do so by court order. The creditor bears the burden of challenging the debtor's answer in court.

**17. What if I have overpaid the creditor, or I have already paid some of the debtor's earnings to the creditor before I receive the debtor's answer?**

The law is clear that the debtor's answer binds you only if it is received before you make a payment. However, the law also requires that you not pay the creditor until at least five business days after payday, so that the debtor has a chance to assert an exemption or other defense. If you pay the creditor too soon, or if you pay the creditor more than the creditor has claimed, the debtor may ask the court for a judgment against you for his or her "actual damages." The term "actual damages" includes the improperly deducted earnings as well as charges for NSF checks, and any other costs incurred because of your error.

If you wait the required five business days after payday before paying the creditor, and receive the debtor's answer after you have mailed payment to the creditor, you are not liable for the money you have paid. But even if you improperly pay out some of the debtor's earnings, you may be able to limit your liability to return of the improperly deducted earnings. To do so, you must show that your error was unintentional and resulted from a bona fide error. You must also show that the error occurred even though you used procedures reasonably adapted to avoid that error.

**18. Do garnishments ever extend more than 13 weeks?**

Yes. Garnishment of the earnings of state and other public employees continues to remain in effect until the judgment is fully paid. Also, a creditor and a debtor may sign a written stipulation to extend the garnishment for additional pay periods. You are bound by such an extension if a copy of the stipulation is delivered to you, with an additional \$15 garnishee fee, before the end of the last pay period affected by the garnishment. A stipulated extension begins with the next pay period and covers all pay periods beginning within 13 weeks after the end of the original garnishment, unless the full claim is paid off sooner.

Stipulated extensions are not permitted if another creditor delivers a garnishment form to you before the end of the last pay period affected by the garnishment whose extension is attempted. If a stipulated extension is invalid for this reason, you must refund the \$15 garnishee fee given to you with the extension.

**19. What if I fail to perform as directed by an earnings garnishment?**

If you fail to pay the creditor money to which he or she is entitled within the time required, the creditor may ask the court for a judgment against you for the entire amount of the debt, plus interest and costs. If you prove that the amount that you should have paid was less than the full judgment, your liability is limited to that amount or \$100, whichever is greater.

**20. Am I required or allowed to file papers in court?**

As a party to the earnings garnishment lawsuit, you have the same right as other parties to ask the court to order any other party to comply with the law, or to ask the court for other equitable relief. Although you may be subpoenaed to testify or produce records if there is a dispute between the debtor and creditor, in general, you are not required to file any document in court.

**21. May I discharge or discipline an employee for being garnished?**

Unless permitted under a collective bargaining agreement, you are not permitted to impose a fee or take any adverse action against the debtor because of the garnishment. Doing so subjects you to liability for reinstatement, back wages and benefits, restoration of seniority, other relief allowed by law, and reasonable attorney fees. The Wisconsin Consumer Act also prohibits discharging an employee because of garnishment for a consumer debt.

Creditor:

**Earnings Garnishment**

Address:

Debtor:

Address:

Case No. \_\_\_\_\_

and

Garnishee:

THE STATE OF WISCONSIN, to the garnishee:

The creditor has been awarded a court judgment that has not been paid. As a result, the creditor claims that the amount owed by the debtor is as follows:

Unpaid balance on judgment	\$
Unpaid post judgment interest	\$
Estimated costs of this earnings garnishment	\$
<b>Total amount owed by the debtor</b>	<b>\$</b>

The creditor believes that you will owe the debtor for earnings within the next 13 weeks. If the creditor has tendered to you the \$15 fee with these papers, you are directed to complete the activities listed on the back of this form.

**(Court Seal)**

**See page 2 of form for further information.**

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**DETERMINE WHETHER YOU WILL OWE THE DEBTOR EARNINGS**

1. Determine if you are likely to owe the debtor for earnings in pay periods beginning within the next 13 weeks.
2. If you are not likely to owe the debtor for earnings in pay periods beginning within the next 13 weeks, send a statement stating that fact to the creditor by the end of the 7th business day after receiving the earnings garnishment forms. (Business days do not include Saturdays, Sundays, or legal holidays).

**IF THE DEBTOR SENDS YOU AN ANSWER**

3. Whenever you receive a debtor's answer form from the debtor, mail a copy of the answer form to the creditor by the end of the 3rd business day after receipt of that form. Include the date you received the answer form on the copy sent to the creditor.
4. If the debtor's answer form claims a complete exemption or defense, do not withhold or pay to the creditor any part of the debtor's earnings under this garnishment unless you receive an order of the court directing you to do so.

**MULTIPLE EARNINGS GARNISHMENTS**

5. If the debtor's earnings are already being garnished when you receive this earnings garnishment, place this earnings garnishment into effect the pay period after the last of any prior earnings garnishments terminates. Notify the debtor of the amount of the garnishment and notify the creditor of the amount owed on the pending garnishments by the end of the 7th business day after you receive these forms. If there are no prior pending earnings garnishments against the debtor's earnings, place this earnings garnishment into effect the pay period after you receive it.

**EARNINGS GARNISHMENTS LAST 13 WEEKS, EXCEPT FOR PUBLIC EMPLOYEES**

6. The garnishment of the earnings of employees of the state of Wisconsin and its political subdivisions remain in effect until the judgment is satisfied. The garnishment of earnings of other employees will affect the debtor's earnings for all pay periods beginning within 13 weeks after you receive it, unless the debtor's earnings are already being garnished. If this earnings garnishment is delayed under paragraph 5, above, it will affect the debtor's earnings for all pay periods beginning within 13 weeks after the first day of the pay period that you put this earnings garnishment into effect. If the amount claimed by the creditor is fully paid before the end of the 13 weeks, this earnings garnishment will terminate at that point.

**PAYING THE CREDITOR**

7. Between 5 and 10 business days after each payday of a pay period affected by this earnings garnishment, pay the creditor 20% of the debtor's disposable earnings for that pay period. Payment is complete upon mailing. "Disposable earnings" are those remaining after deducting Social Security, state and federal income taxes.

**EFFECT OF COURT-ORDERED ASSIGNMENTS FOR SUPPORT**

8. If the debtor has assigned his or her earnings for support by court order, those support payments take priority over this earnings garnishment. If 25% or more of the debtors' disposable earnings is assigned for support by the court order, do not pay any part of the debtor's earnings to the creditor. Instead, send the creditor a statement of that fact by the end of the 7th business day after you receive these forms. If less than 25% of the debtor's earnings is assigned for support by court order, the amount the creditor must be paid is reduced so that the total of earnings assigned and garnished does not exceed 25% of the debtor's disposable earnings.

**EXTENSIONS**

9. The debtor and creditor may agree in writing to extend this earnings garnishment for additional pay periods beginning within 13 weeks after this earnings garnishment would otherwise terminate. If you receive a written extension stipulation, and an additional garnishee fee for each extension, you must honor it unless a different garnishment against this debtor's earnings is served upon you before the extension takes effect. In that case, the extension is void and you must return the extension fee to the party who paid it to you.

Creditor:

Earnings Garnishment - Debtor's Answer

Debtor:

and

Garnishee:

Case No. \_\_\_\_\_

To the garnishee:

- 1. My earnings are **completely** exempt from earnings garnishment because:
  - a. The judgment has been paid.
  - b. The judgment has been discharged in bankruptcy.
  - c. I have filed bankruptcy and enforcement of the judgment has been stayed while the matter is pending.
  - d. The judgment is void.
  - e. I receive, am eligible for, or have within 6 months received one or more of the following:
 

<input type="checkbox"/> Relief funded under public assistance	<input type="checkbox"/> Relief funded under §59.53(21), Wisconsin Statutes
<input type="checkbox"/> Medical assistance	<input type="checkbox"/> Veterans benefits based on need under 38 USC 501-562 or §45.351(1), Wisconsin Statutes
<input type="checkbox"/> Food stamps	
<input type="checkbox"/> Supplemental security income	
  - f. At least 25% of my disposable earnings are assigned for support by court order.
  - g. My household income is less than the poverty line, or this garnishment would cause that to happen.
- 2. Too much of my earnings are being garnished because:
  - a. I am paying child support or maintenance in an amount that is less than 25% of my disposable earnings. The amount to be paid must be reduced so that the total of earnings assigned and garnished does not exceed 25% of my disposable earnings.
  - b. Other: \_\_\_\_\_
- 3. I have another defense to this earnings garnishment (explain briefly):

I understand that if I claim a complete exemption or defense in bad faith, I may be held liable to the creditor for actual damages, costs and reasonable attorneys fees.

Date Received by Garnishee

Signature of Debtor
Date
Address
Telephone Number