



# Garnishments: A Trap for Employers

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by *Randall J. Groendyk*

Employee garnishments are a no-win proposition for employers. For a miniscule \$6.00 payment, employers must process employee garnishments, calculate and withhold from employee's paychecks, and often at the same time balance competing obligations, such as support orders and tax levies. Even worse, if a garnishment is mishandled, an employer can be held liable for the entire debt of the employee, along with court costs and attorney fees.

In difficult economic times, all employers are likely to receive an employee garnishment at one time or another. Aggressive creditors will send out garnishments to possible employers, banks, and anyone else who may owe money to the debtor. Creditors who realize the debtor may be uncollectable will not hesitate to use an error by an employer in handling a garnishment to require the employer to pay the debtor's judgment.

Michigan law permits creditors to garnish employers only after the creditor obtains a judgment against the employee. There are two types of garnishments: periodic garnishments, which are sent to employers; and non-periodic garnishments, which are typically sent to banks. The paperwork for garnishments is innocent looking, but in fact a garnishment is actually a lawsuit against the employer. The creditor files a writ of garnishment with the court, and then serves the garnishment on the employer, often by mail or sometimes by using a court officer. The clock begins ticking immediately upon the employer's receipt of the garnishment: within seven days, the employer must provide a copy of the garnishment to the employee. Even more importantly, within 14 days, the employer must file a garnishment disclosure with the court, and send a copy of the disclosure to the creditor's attorney and to the employee.

## Not Filing on Time: Big Mistake

Probably the most serious mistake an employer can make is to not file the garnishment disclosure with the court within 14 days after receipt of the garnishment. Under Michigan law, if the employer does not file a disclosure with the court within the required period, the creditor may take a default judgment against the employer for the full amount of the debt owed by the employee. Even worse, the creditor does not have to give advance notice to the employer before entering the default judgment. As a result, employers who do not timely respond to a garnishment may be surprised to receive in the mail a default judgment which has been entered against them for not following the requirements of Michigan's garnishment laws. Employers must then file a motion with the court to set aside the default judgment, and ideally this motion should be filed within 21 days after the default judgment has been entered. It is within the discretion of the court to set aside the default judgment against the employer, and it can be an uphill battle for the employer to convince the court to do so.

Federal law limits the amount that creditors may garnish from employees. The amount subject to garnishment is the amount above 30 times the federal minimum wage, or 25 percent of disposable earnings, whichever is less. Employers must correctly calculate the amount to withhold, and must make the deductions until the garnishment expires. Periodic garnishments last for 90 days and creditors may file another garnishment after the first one expires. Judgments in Michigan are valid for ten years, so creditors may repeatedly file a garnishment against an employee until the judgment is finally paid.

## Interrogatories

Creditors are entitled to send interrogatories to the employer within 14 days after the employer

files the garnishment disclosure. Interrogatories are written questions the creditor may have about the garnishment disclosure. Unfortunately for employers, some creditors will respond to a garnishment disclosure by sending to the employer a long list of questions about the employee, including questions about the employee's telephone number, social security number, where the employee banks, and so on. In other words, creditors sometimes use employers as a tool to obtain information about the employee which will assist the creditor in collecting its judgment. This can be time-consuming for the employer, and also violate the privacy rights of the employee. Employers may object to providing this information in their response to the interrogatories, and the creditor is then required to file a motion with the court.

The filing of a bankruptcy by the employee stays (stops) any action to collect the judgment against the employee. If the employee files a Chapter 13 bankruptcy case, which results in repayment of the employee's debts over time, the employer may receive an order from the bankruptcy court requiring the employer to withhold money from the employee's paycheck and pay that money to the bankruptcy court. Also, employees have the right to file a motion with the court which issued the judgment and ask the court to enter an order permitting the employee to pay the judgment in installment payments. If that motion is granted, the court will send the employer an order which includes the terms of the payment plan and stops the garnishment.

Sometimes when an employer receives a garnishment, the employee will tell the employer to ignore the garnishment, or that the employee is making arrangements with the creditor to pay the judgment: employers should never stop withholding on a garnishment until receiving an order from the court releasing the garnishment.

### **Out-of-State Creditors**

Often, creditors from other states will register their judgment in Michigan, and then enforce the judgment in Michigan. Sometimes out-of-state creditors will send judgments to Michigan when the debtor moves to Michigan. As a general

rule, employers who do not do business in the state which sends the garnishment, and have no connection with that state, are not subject to the garnishment and are not required to respond to garnishments issued from courts in the other state. However, employers should contact counsel when they receive the garnishment from another state.

Employers may also receive other types of withholding orders, including support orders, federal tax liens, and state tax liens. Many issues can arise when employers receive these types of withholding orders, including the correct amount to withhold, which order has priority if there are competing garnishments or withholding orders, and similar questions. Employers should consult with counsel about these questions. Generally, child support orders have priority over creditor garnishments and often result in no money being available to pay the garnishment.

Federal law prohibits employers from discharging employees to avoid the costs and time involved in processing garnishments. Employers may not give legal advice to their employees, but certainly may encourage employees to work out payment plans with their creditors or to file a motion with the court for an installment payment order.

In summary, garnishments appear to be routine and innocent looking but, in reality, can lead to serious problems if they are not handled correctly. Employers should make sure they handle garnishments promptly and within the time limits imposed by Michigan law.