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Wage Garnishments Policy

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Executive Summary

Garnishments are mandatory deductions authorized by a court order, federal or state tax levy or other legal entity to be taken from an employee's after-tax wages according to the written instructions accompanying the garnishment order. All payments received by an employee for compensation are subject to garnishment. Only those garnishments that identify the Commonwealth as the employer and direct the Commonwealth to garnish the pay, and are authorized by a court order, federal law, or state law can be deducted through the payroll system. All changes must be authorized in the same manner as when originally adopted. No Garnishments will be taken in arrears.

Considerations

The Commonwealth processes Garnishments in accordance with the following hierarchy:

Chapter 13 Bankruptcy Orders (Personal Bankruptcy Orders) and IRS Tax Levies

Chapter 13 Bankruptcy order takes top priority unless an IRS (Internal Revenue Service) IRS federal tax Levy is received first by the Department. If a Chapter 13 Bankruptcy order is received by the Department after an IRS tax levy, the IRS requires employers to continue paying federal tax levy obligations unless the IRS issues an official release of levy. The Department must contact the Bankruptcy Trustee listed in the Bankruptcy order to notify the Trustee of the outstanding IRS Tax levies and any other wage garnishments. In most cases, all other wage garnishments, including child support obligations must be stayed, in accordance with the language of the order and written instructions from the Bankruptcy Trustee listed on the Bankruptcy order. In certain cases, employers will be instructed by the Bankruptcy Trustee to continue child support payments. Any creditors who currently receive wage garnishments should be notified if the Bankruptcy Trustee orders the wage garnishment stayed, and should be supplied with a copy of the written instructions and a copy of the Bankruptcy order. These instructions from the Bankruptcy Trustee will supersede any current wage garnishment orders other than IRS tax levies. All notifications are handled by the Department. Any wage garnishment order received by the Department, after the establishment of a Chapter 13 Bankruptcy order, may not be entered into HR/CMS without prior review and approval by the Bankruptcy Trustee. The Department must immediately notify the both the Bankruptcy Trustee and the entity submitting any subsequent wage garnishment order in writing that a Chapter 13 Bankruptcy order is in place, and that the wage garnishment can not be entered without approval of the Bankruptcy Trustee. The subsequent entity may require the Department to submit a copy of the Bankruptcy order.

IRS Tax Levies and Child Support Orders

IRS Tax Levies and Child Support Orders are garnishments of equal status based on the date of the garnishment order. Whichever order is received first ("first in time, first in right") is the order that is processed first. IRS Levy - Internal Revenue Service (IRS) levies on property for payment of taxes pursuant to Internal Revenue Code 26 USC Section 6331. DOR collected orders for child and spousal support pursuant to M.G.L. c. 119A § 12, include:

- Temporary orders of a child support pending custody actions (M.G.L. c. 119 § 28)
- Orders for care and maintenance of children under void marriage (M.G.L. c. 207)
- Divorce orders for care and maintenance of children and alimony (M.G.L. c. 208)
- Orders for child and spousal support for married persons living apart (separated) (M.G.L. c. 209)
- Orders for temporary child and spousal support for victims of domestic violence (M.G.L. c. 209A)
- Orders for child support for children born out of wedlock (M.G.L. c. 209C)
- Criminal court orders for child or spousal support upon abandonment (M.G.L. c. 273 § 18A)

All child support order payments ordered by a Massachusetts court will be sent to DOR for issuance to payees.

DOR Levies

Department of Revenue (DOR) levies on property for payment of taxes pursuant to M.G.L. c. 62C § 53.

Spousal Support Orders

Court orders for spousal support (alimony) when there is no child support involved pursuant to M.G.L. c. 208 § 36A, M.G.L. c. 246, and M.G.L. c. 209D.

Student Loan Repayments

Administrative wage garnishments issued by the federal government collected by "the state treasurer or other state official authorized to expend money on behalf of the Commonwealth" for nonpayment of student loans pursuant to M.G.L. c. 29 § 31. Garnishment orders for unpaid student loans are generally issued to be no more than 10% of the employee's disposal income although a greater percentage may be deducted with the written consent of the individual involved.

DTA Overpayments

DTA overpayments are the recovery of overpayments made by the Department of Transitional Assistance under M.G.L. c. 18 § 30.

DMA Reimbursements

DMA Reimbursements are reimbursements of medical assistance for health services to children provided by the Division of Medical Assistance pursuant to M.G.L. c. 118E § 23.

Court Ordered Employer Wage Garnishments

Court ordered employer wage garnishments are garnishment orders that direct the employer (Departments of the Commonwealth) to garnish an employee's pay. The garnishment order must come from a legal, court or administrative entity **AND** specifically identify the employer as the

Commonwealth. Court papers that do not name the Department as the employer and mandate a garnishment cannot be honored. Voluntary wage garnishments entered in court between an employee and a creditor are not court ordered wage garnishments but are considered voluntary and cannot be honored. Summons for "Trustee process" and out of state court ordered wage garnishment must be submitted immediately to the Attorney General's office for review to determine if there is a legal obligation for the Commonwealth to honor the wage garnishment.

Disposable Earnings Subject to Garnishments

Disposable earnings are that part of an employee's earnings remaining after deductions required by law are taken. It is used to determine the amount of an employee's pay that is subject to garnishment. The maximum allowable garnishment differs according to the type of garnishment order. In all cases, however, the disposable earnings must exclude deductions required by law: federal taxes, state and local taxes, and retirement contributions. When an employee's wages are not enough to satisfy the garnishment(s), a "partial" amount will be taken. No garnishment will be taken in arrears.

Chapter 13 Bankruptcy Orders (Personal Bankruptcy Orders)

There is no limit in disposable earnings subject to a Chapter 13 Bankruptcy order. Departments should immediately confirm any limits in writing with the Bankruptcy Trustee.

IRS Tax Levies

For IRS tax levies, the amount remaining from net pay after any exempted amounts (deductions required by law) is sent to the IRS to satisfy the levy. The individual can claim amounts to be exempt based on tax filing status.

Child Support Orders

For Child Support orders, the maximum garnishment amount is between 50% and 65% of disposable earnings:

- If the employee is supporting a spouse or dependent child other than those for whom a garnishment order is served, the maximum garnishment amount is 50%.
- If the employee is not supporting a spouse or dependent child, the maximum garnishment amount is 60%.

If the employee is deemed to be in arrears for an order prior to the previous twelve-week period, the amounts above increase to 55% and 65% respectively. For those employees with multiple garnishment orders for child support, it is the Department's responsibility to withhold the maximum amount possible from the employee's wages. DOR Child Support Enforcement will be responsible for allocating the withheld amounts to the custodial parents.

DOR Tax Levies

For DOR Tax levies, the maximum garnishment amount is 25% of the employee's disposable income. The definition of disposable income for this type of garnishment is gross pay minus taxes, retirement and any child support payments.

Spousal Support Orders

Spousal support garnishment orders not involving children follow the same guidelines for disposable earnings as Child Support orders listed above.

Student Loan Repayment

Garnishment orders for unpaid student loans are generally issued to be no more than 10% of the disposable income after taxes and retirement are deducted.

DTA Overpayments and DMA Reimbursements

For the repayment of DTA overpayments and DMA reimbursements, the maximum garnishment amount is either 25% of the employee's disposable earnings (gross pay minus taxes and retirement), or the amount by which the disposable earnings exceeds 30 times the minimum hourly wage, whichever amount is less.

Court Ordered Employer Wage Garnishments

Court ordered employer garnishment orders follow the same guidelines for disposable earnings as Child Support orders.

Employee with Multiple Jobs

When a garnishment order is issued to an employee who holds multiple jobs, the employee must indicate which wage payment the garnishment will be deducted from. The wage payment selected must be able to satisfy the biweekly garnishment deduction.

Wage Garnishments:

- Are administered by the Office of the Comptroller;
- Are mandated by court order, federal/state tax levy or other legal entity to be deducted by the employer;
- Are potentially deducted from all Commonwealth employees;
- Are submitted through an employee's payroll office and entered by the Office of the Comptroller in HR/CMS;
- Require a Garnishment Data Input Form and where applicable, a Garnishment Payee Request Form;
- Are deducted in every biweekly pay period; and
- Are deducted on a mandatory post-tax basis.
- All original copies of garnishment orders and related documentation must be retained at the Department for 7 years following the final garnishment payment.
- Must be discontinued by the Department upon an employee's retirement, termination or death.

The Human Resources Division (HRD) is required to report new hires to the Department of Revenue (DOR) every 14 days. The Executive Office of Technology Services and Security (and UMass) will submit a new hire report to DOR for state and contract employees on a pay period basis on behalf of HRD.

Discharge of Garnishment

Garnishments may not be modified (increased or reduced) or cancelled at the employees request, but may only be modified by an amendment from the entity that submitted the original garnishment order (unless ordered to be stayed by a Bankruptcy Court Trustee).

The employer may not discharge a garnishment without an order authorizing the discharge. However, HR/CMS will halt garnishments with a specific total obligation once that obligation has been met. A release must be received by the Commonwealth in order for the garnishment to be closed.

Retirement/Termination or Death

The Office of the Comptroller will, upon retirement/termination or death, discontinue garnishing from future payouts effective same date regardless of future temporary employment (i.e. 120 Day Appointments/ Intermittent Employees). The Garnishment Data Input Form and Employee Payroll Garnishment Full Payment Request Form can be found at macomptroller.org/forms.

Information Sources

Legal Authority

- 26 USC § 6331: IRS Tax Levy
- 15 CFR § 1673: Restrictions on Garnishment
- 20 CFR § 1095a: Student Loan Repayment
- 11 USC § 1301 et. al.: Chapter 13 Bankruptcy Law
- M.G.L. c. 7A §§ 3, 7, 8: State Accounting System
- M.G.L. c. 18 § 30: DTA Overpayments
- M.G.L. c. 29 § 31: Salaries
- M.G.L. c. 62C § 53: DOR Tax Levy
- M.G.L. c. 118E § 23: DMA Reimbursements
- M.G.L. c. 119A § 12: Child Support Order Wage Garnishments
- M.G.L. c. 119 § 28: Payment of Support
- M.G.L. c. 207: Marriage/Domestic Relations
- M.G.L. c. 208: Divorce
- M.G.L. c. 209: Married Persons
- M.G.L. c. 209A: Abuse Prevention
- M.G.L. c. 209C: Children Born Out of Wedlock
- M.G.L. c. 209D: Interstate Family Support Act
- M.G.L. c. 246: Trustee Process
- M.G.L. c. 273 § 18A – Support Obligations Under Prior Law

Contacts

- CTR Solution Desk