

Chapter 25 - Payroll

25.60 Garnishments and Wage Assignments

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Garnishments and Wage Assignments

25.60.10 Garnishments and Levies

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 Maine as the employer and direct the Maine 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.

The Office of the Comptroller establishes/identifies and implements the policy on Wage Garnishments in accordance with applicable IRS tax laws, and other applicable garnishment laws.

Wage Garnishments and Levies:

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 deducted in every biweekly pay period; and

Are deducted on a mandatory post-tax basis.

Must be discontinued by the Department upon an employee's retirement, termination or death.

The Controller's Office is (through MFASIS – HR) required to report new hires to the Department of Health & Human Services weekly. The Information Technology Division will submit a new hire report to DHHS 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. However, MFASIS/HR will halt garnishments with a specific total obligation once that obligation has been met. A release must be received by the State of Maine in order for the garnishment to be closed.

Retirement/Termination or Death

The Comptroller's Office will, upon retirement/termination or death, discontinue garnishing from future payouts effective same date regardless of future temporary employment.

25.60.10.a **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.

25.60.10.b **Employees with multiple jobs**

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

25.60.20 Child support

25.60.20.a Child support debt collection overview

Child support can be enforced through payroll deduction notices, administrative orders (notice and order to withhold and deliver child support), mandatory wage assignment orders, and out-of-state child support orders or notices.

25.60.20.b Payroll deduction notice

The Department of Health & Human Services (DHHS) may issue a payroll deduction notice to collect child support. The notice is effective immediately upon receipt by the agency.

The payroll deduction notice can capture up to 50 percent of the employee's disposable earnings. Any earnings withheld must be remitted to DHHS within 7 working days of the date the earnings are payable.

The deduction notice remains in effect until released, until the employee is no longer employed, or until the agency no longer possesses any earnings.

25.60.20.c Notice and order to withhold and deliver for child support

A notice and order to withhold and deliver (order) is an administrative order to withhold earnings for child support. Similar to a payroll deduction notice, an order is effective immediately upon receipt by the Controller's Office. The agency must begin withholding funds immediately.

The order can capture up to 50 percent of the employee's disposable earnings. Any earnings withheld must be remitted to DSHS within 7 working days of the date the earnings are payable.

The order remains in effect until released, until the employee is no longer employed, or until the agency no longer processes any earnings.

25.60.20.d **Mandatory child support wage assignment order**

A court of law may issue a wage assignment to collect child support. Wage assignment orders are effective immediately upon service on the agency.

Withholding under such an order may not exceed 50 percent of the employee's disposable earnings.

A wage assignment order continues until paid, released, or the agency is no longer holding any earnings. An agency must promptly notify the addressee specified in the assignment when the employee is no longer employed.

25.60.20.e **Out-of-state child support orders or notices**

The Controller's Office must withhold earnings when it receives a document from an out-of-state entity requiring the withholding wages for child support. It may be served directly upon the agency and begins the day received. Follow the procedures provided in the notice.

25.60.20.f **Spousal Support Orders**

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

25.60.30 Wage assignments

25.60.30.a **Wage assignments overview**

There are generally two types of wage assignments – voluntary wage assignments and mandatory wage assignments. A voluntary wage assignment is an employee's written consent to transfer future wages to a third party (assignee). Wage assignments are generally only for a part of the employee's wages. A mandatory wage assignment is a similar transfer of earnings required by law or court order. The amount deducted under the wage assignment can exceed the 25 percent limit of a writ of garnishment.

25.60.30.b **Voluntary wage assignment**

Agencies may accept or decline to honor a voluntary wage assignment. However, honoring a voluntary wage assignment may forestall a garnishment, which results in significantly more work for an agency. An agency accepting a wage assignment should notify the employee and the assignee that the agency's acceptance is conditioned on (1) the agency not being liable for mistakes or omissions in honoring the assignment and (2) that enforced wage collections (e.g., garnishments) will take precedence over the assignment.

Before honoring such an assignment, the agency should obtain a copy of the assignment signed by the employee. If the employee is married, written consent to the assignment by the employee's spouse is also necessary for non-child support debts.

25.60.30.c **Mandatory wage assignments**

A mandatory wage assignment most often requires the transfer of earnings based upon a court order or agency directive. The legislature provided for the mandatory assignment of wages for child support, criminal financial obligations and public assistance overpayments. A mandatory wage assignment should be processed in accordance with the terms of the assignment or court order. Continue to withhold earnings until the debt is paid in full unless the assignment states otherwise.

25.60.40 Other debt collection procedures

25.60.40.a Bankruptcy

When notified of a bankruptcy filing by an employee, the agency should request that the employee provide written confirmation of the bankruptcy filing. This could include a letter from the employee's attorney with the bankruptcy court case number, a copy of the first page of the bankruptcy petition, or a copy of a bankruptcy filing receipt with the court's case number.

Once the agency has confirmation of the bankruptcy, the agency must stop deducting earnings under non-child support garnishment, administrative order, and/or wage assignment. However, child support withholding should continue unless instructed otherwise by the court.

If the employee files a Chapter 13 bankruptcy, the Chapter 13 Trustee will forward a court order requiring the withholding of earnings. The agency must withhold and forward the earnings as indicated in the Order. Withholding under such an order can exceed 25 percent of disposable earnings. The Chapter 13 Trustee Office can answer any general questions regarding the bankruptcy order.

25.60.40.b Tax collection

The IRS and state taxing agencies use tax levies to capture the earnings of an employee. The IRS uses a "Notice of Tax Levy." The Departments of Revenue, Labor & Industries, and Employment Security use a Notice and Order to Withhold and Deliver (NOWD)

The Controller's Office will begin immediately withholding earnings in accordance with the tax levy or NOWD. A tax levy and NOWD are also continuing liens on earnings. Withholding should continue until paid in full, released, or earnings are no longer available to garnish.

25.60.40.c Educational loans

Federal law allows for the collection of federally guaranteed student loans through an administrative order. An agency must honor the withholding order as if issued by a court of this State.