



Complex Problems. Simple Solutions.

Garnishments

Samples

*These samples are sections of this resource and should not be used separate from the full instructions and disclosures that accompany this subscription.

Introduction

There are several different types of wage attachments. These ***Garnishments: Federal and State Law Summaries (“Summaries”)*** discuss four types of wage attachments: (a) *creditor wage garnishments* (that identify a private employer as the garnishee); (b) *federal student loan wage garnishments* (that are administratively issued by the U.S. Department of Education (“DOE”) and a patchwork of agents, without the necessity of a court order); (c) *federal tax levies* (that are an administratively issued by the U.S. Internal Revenue Service (“IRS”), without the necessity of a court order); and (d) *voluntary wage assignments* (that are purport to require a private employer to divert wages outside of the legal system). The topics covered are those most frequently encountered and complex to administer. Other wage attachments include support orders (child, spouse and medical support orders) and various state administrative garnishments (including proceedings to collect delinquent taxes and overpayment of state-provided benefits) are not covered by these Summaries. Support orders are substantially uniform across the country due to a comprehensive federal law and compliance support system, as well as the nationwide adoption of the Uniform Interstate Family Support Act. Some states also provide additional rules for public employers, which are not addressed in these Summaries.

In several sections of these Summaries, the notation “No statutory provision” is used to indicate that no legal authority was located for that topic, based on a review of relevant state statutes, court rules, case law, regulations, and interpretive guidance, as of the Effective Date listed above. Subscribers are reminded that the *federal* Summary addresses certain federal law requirements that, to some extent, are not covered by the respective *state* Summaries. In addition, federal law controls over conflicting state laws, except in one area: federal law specifically allows states to adopt withholding maximums that are more favorable to debtors (employees). Subscribers should review the applicable state Summaries in conjunction with the federal Summary and, when appropriate, are recommended to consult with Ogletree Deakins about their own particular creditor garnishment situations.

Choice of Law

When evaluating a choice of law issue for wage garnishments, keep in mind that the garnishment is an order directed to the garnishee requiring it pay to the judgment creditor any debts it owes to the judgment debtor. For an employer-garnishee, the debt being intercepted or “attached” is the employee’s wages. While jurisdiction over the employee was relevant in the principal action when the judgment was obtained, jurisdiction over the employee is no longer required for the ***issuance*** or ***enforcement*** of the garnishment. Lastly, the prevailing legal authority is that this debt is located anywhere (and everywhere) the employer is legally present. This is the view expressed by the U.S. Supreme Court as far back as 1905 and more recently reinforced in 1977.¹ However, academic commentators, as well as some lower courts, favor limiting the reach of garnishments to only wages that are paid or earned in the state. We will monitor legislative and case law developments on these matters. Therefore, the jurisdiction to be established in a garnishment action is over the employer and the earnings owed to the employee. **If the employer is subject to the jurisdiction of the state where the garnishment was issued, the recommended approach**

¹ *Harris v. Balk*, 198 U.S. 215 (1905); *Shaffer v. Heitner*, 433 U.S. 186 (1977).

Determining the correct amount to deduct is more difficult and more risky when large lump sum payments (*e.g.*, bonus or severance payments) are involved, as there is no clear federal authority (and state laws vary) on whether these payments are “earnings.” The CCPA defines earnings as: “compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus or otherwise, and includes periodic payments pursuant to a pension or

Answering the Wage Garnishment and the Unauthorized Practice of Law

Whether answering a garnishment is considered to be “the practice of law” is a recently identified issue that remains unanswered in almost every state. Most states and courts prohibit corporations from representing themselves in court, and, therefore, if filing a garnishee answer is considered to be “practicing law,” then corporations will be required to retain an attorney for this purpose. As many employers are aware, there has been significant discussion on this issue in light of the recent activity that has taken place in Florida and Georgia over the past few years.² The current

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In analyzing a *creditor wage garnishment*, follow these steps:

1. Carefully review the garnishment document(s) (remember, it is a ***court order***);
2. Look for relevant topics in this Important Notes to Subscribers document;
3. Consult the Summary for the state ***that issued the garnishment***;
4. Refer to the federal Summary; and
5. Check the Summary for the state ***in which the employee performed the services***.

For example, if you received a garnishment from Michigan for a person working in South Carolina, you should refer to the Michigan Summary, then the federal Summary, and finally the South Carolina Summary.

² *In Re: UPL Advisory Opinion No. 2010-1, Case No. S11U0028; Cortez Community Bank v. Cobb et al*, 56 So.3d 80 (Florida, 2d D.Ct. of Appeals, March 2, 2011).

Voluntary Wage Assignments

A voluntary wage assignment, is a process completely different than and separate from the garnishment process. Specifically, a voluntary wage assignment is a contract between a lender and a borrower taken as security for the loan that purports to give the lender the right to require the borrower's employer to divert wages to the lender for repayment of the loan. This is a common arrangement found in many payday loan agreements. These voluntary arrangements are not

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In summary when analyzing a *voluntary wage assignment*, follow these steps:

1. Carefully review the assignment document;
2. Look for relevant topics on this Notes to Subscribers document;

Hawaii – Creditor Wage Garnishment

Category	Subcategory	Law Summary
Background		Permitted and both private and public sector employers may be named as garnishees. HRS §§ 652-1, 653-1, 653-2.
Jurisdiction & Service of Process	Jurisdiction	No statutory provision.
	Manner of Service	For an employer that has an office in the district in which the process is issued, service is to be made by process server handing it to an employee of the employer. HRS § 652-2.5(1). For all other employers, service may be made by process server handing it to an employee of the employer or sending it by certified or registered mail, return receipt requested, to the employer's business address. HRS § 652-2.5(2).
	Contents of Service	Must receive two copies of either the Motion for Issuance of Garnishee Summons After Judgment (“Motion”) and if granted,

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Category	Subcategory	Law Summary
		<p>the Garnishee Summons (“Summons” or “garnishment”) or the Declaration of Judgment Creditor (“Declaration”), as well as a copy of the Garnishee Information (“Information”), the Notice to the Employer/Garnishee (“Notice”), and Garnishee Disclosure (“Answer”) Forms. HRS § 652-1(a); Haw. Dist. Ct. R. Civ. P. Rule 70(d); Forms 3DC29, 3DC32, 3DC25, 3DC27, 3DC27A, and 3DC26.</p> <p><u>Transfer Garnishment is valid:</u> Unique to Hawaii law is that a creditor may transfer an unsatisfied garnishment from a past employer to a new employer. HRS § 652-5. This is accomplished by the creditor providing a certified copy of the judgment and an affidavit of the judgment creditor of the amount remaining due and unpaid. <i>Id.</i></p>
	Notice to Employee	There is no statutory provision or court rule, but Form 3DC27A indicates that the employer is to be provided two sets of the documents and must provide one of those sets to the employee.
Answer	General	For a garnishment in Circuit Court, an Answer is required or the employer will have to appear before the court as set forth in the garnishment. Forms 3DC26 and 3DC32; HRS §§ 652-2, 652-9.
	Who	The employer or its attorney may complete the Answer. Forms 3DC26 and 3DC32; HRS §§ 652-2, 652-9.
	When	In Circuit Court, if the employer chooses to file an Answer, it may do so at any time. HRS § 652-1; Form 3DC27. However, if the creditor timely files a Declaration in a District Court, then the employer must either file an Answer within 7 days or remit the withheld amounts to the creditor as they become payable to the employee. HRS § 652-1(b).
	Where	If the employer chooses to file an Answer, then employer should file it with the court and serve it on the creditor before or on the day of its filing. HRS § 652-1(b) and (c); Forms 3DC26 and 3DC32.
	What	In an Answer, the following information is to be provided:

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Category	Subcategory	Law Summary
		<p>(1) Whether the debtor is indeed employed by the employer; and</p> <p>(2) Whether the employer has any money due to the employee that can be garnished.</p> <p>HRS § 652-1(a) and (b); Forms 3DC26, 3DC27, and 3DC32.</p> <p>The employer must ensure that it does not include the employee’s entire social security number on any publicly accessible court-filed document. HCRR Rules 2.19 and 9.</p>
Employer Rights & Risks	Recordkeeping	No statutory provision.
	Fees	If judgment is entered against the creditor, then the employer may recover its attorneys’ fees. HRS § 652-8; Form 3DC02.
	Prohibited Employment Practices	The employer may not discharge, suspend, or discriminate against an employee solely because of a garnishment. HRS § 378-32(a)(1); Form 2DC27C. The employee may file a complaint with the Department of Labor and Industrial Relations within 30 days of the violation, and after a hearing, he or she may be awarded reinstatement and/or back pay. HRS §§ 378-33(a), 378-34(b), 378-35.
	Adverse Proceedings	<p>If the employer chooses not to file an Answer, then it is required to appear before the court, or it may be assumed that the debtor is the employer’s employee, and the employer will be required to comply with the withholding requirements. Forms 3DC27 and 3DC32.</p> <p>Alternatively, if the employer refuses to appear for the court-ordered hearing, or refuses to disclose the requested information at the hearing, then the matter will proceed to trial. HRS § 652-8. If the creditor prevails at trial, then judgment will be entered against the employer, and the creditor may recover its costs; however, if the employer prevails, then it will recover its own costs. HRS § 652-8. The employer should appear at the hearing.</p> <p>While there is no controlling statutory or court rule, certain District Court forms require the employer to appear in response</p>

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		<p>to a Motion for Show Cause and explain why judgment should not be issued against the employer for the total judgment amount, plus costs and interest, and that failure to appear would constitute contempt of court. Form 3DC31. In this case, the employer should be sure to appear to explain its reasons.</p> <p>An employer is not liable to anyone for deductions taken in good faith compliance of a garnishment. HRS § 652-1(f).</p>
Resources	Links to State/Court Forms	<p>http://www.courts.state.hi.us/self-help/courts/forms/hawaii/circuit_court_forms.html</p> <p>http://www.courts.state.hi.us/self-help/courts/forms/hawaii/district_court_forms.html</p>
	Frequently Used Forms	<p>Circuit Court Forms:</p> <p>Form 3C-E-153 – Garnishee Summons and Order</p> <p>Form 3C-P-180 – Notice of Entry of Judgment/Order</p> <p>District Court Forms:</p> <p>Form 1DC43 – Notice of Entry of Judgment or Order</p> <p>Form 3DC25 – Declaration of Judgment Creditor for Garnishment of Wages; Exhibit(s); Notice to Employer of</p>

Hawaii – Voluntary Wage Assignment

Garnishment	Category	Law Summary
Voluntary Wage Assignments	Permissible & Enforceable	No statutory provision.
	Procedures	N/A