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Wage Assignments and Garnishments – A Guide for Employers

As an employer, you are almost certain to encounter wage assignments and garnishments asking you to remit a portion of an employee’s pay to a third party. That third party may be a court or other government entity, someone who has won a lawsuit against the employee, or a company that makes consumer loans. It is important for you to know the difference between wage assignments and garnishments, and how you should respond to each.

What is the difference between a wage assignment and a garnishment?

A wage assignment is a voluntary contractual agreement between a person and a third-party that assigns to the third-party the person’s right to be paid a portion of the wages the employer owes to the person as an employee. Wage assignments can come from courts and other government entities and they can come from third-party creditors, such as companies that make consumer loans.

A garnishment is a court-ordered process that allows a creditor to collect money owed by a person (the debtor) from a bank, employer, or any entity that has possession of assets of the debtor. Usually, a garnishment arises because a person loses a lawsuit and the court issues a money judgment against them, making them a “judgment debtor.” The party who won the lawsuit—the judgment creditor—can then garnish the judgment debtor’s assets, including bank accounts. Other garnishments may come from state and federal tax agencies, without the involvement of a court. In either case, the garnishment documents are served on the employer and the law puts very strict duties on an employer to properly respond to and process the garnishment within a limited period of time.

Are wage assignments legal in Michigan?

Michigan law is unclear on the legality of some wage assignments. For some types, the wage assignment is illegal. For others, the assignment itself is legal but you are under no legal obligation in the absence of a court order to remit the requested funds. Others are perfectly legal.

The first and biggest question is where did the wage assignment come from? If it came from a Michigan Court, then it must be honored. If you are concerned the document you received is a scam, independently lookup the phone number of the Court and call to make sure the document is legitimate. Michigan Courts use an MC 289 Form,¹ which contains an Order from the Court to the

¹ <https://courts.michigan.gov/Administration/SCAO/Forms/courtforms/mc289.pdf>

employer to remit a certain amount of an employee's earnings to the Court on a regular basis. Family law courts may also use wage assignments using a JC-39 Form.² Courts may also require you to fill out a Garnishee Disclosure Form MC 14 to assist the court in determining how much wages should be remitted.³ Court-ordered wage assignments are often used by Courts to assure that a person pays the fines and costs ordered while on probation in a criminal case or to pay for costs in a family-law case, such as divorce. You may not take any disciplinary action against an employee or terminate their employment because you received a wage assignment from a Court.

Michigan also has a law that makes wage assignments illegal for certain consumer lenders that charge high interest. MCL 493.17 of the Regulatory Loans Act (MCL 493.1 et seq) provides:

(1) An assignment of, or order for payment of, salary, wages, commissions, or other compensation for services, earned or to be earned, given to secure a loan made by a licensee under this act, shall not be valid. . . .

That means that if a consumer loan is made by a "licensee," wage assignments to an employer are not legal. Seems clear, right? Not so fast. Problems arise when determining who is a "licensee." A "licensee" is anyone who is licensed or is required to be licensed under the Regulatory Loans Act. A person or company is required to be licensed under the Act if they make loans to individuals for personal, family, or household use and charge an interest rate that is greater than the amount of interest they could charge if not licensed. The amount the lender can charge if not licensed, however, will generally depend on whatever the limit is in the state where the lender is located. If it is a Michigan lender, it can charge 5% interest per year for unwritten contracts and 7% per year for written contracts. MCL 438.31. For non-Michigan companies, however, they must follow the interest rate limits in the state where located.

Because of the modern availability of out-of-state lenders, MCL 493.17 is largely ineffective in protecting Michigan consumers from predatory loans from such lenders. For example, some companies that provide short-term loans charge as much as 780% annual interest on the loan. This type of predatory lending is precisely the type of loan intended to be addressed by MCL 493.17. Unfortunately, the law has not been updated in decades and its limits are only good on a Michigan company that charges more than 5% interest per year for unwritten contracts and 7% per year for written contracts.

Thus, the answer to whether a particular wage assignment is legal is unclear and will depend on several factors. But an in-depth understanding of the legality of any given wage assignment is unnecessary for an employer. Instead, you just need to know what to do when you receive a wage assignment.

What should I do if I receive a wage assignment?

If you receive a wage assignment from a Michigan court, you must read it and follow the directions. The Court may require you to fill out a Garnishee Disclosure form, even though the

² <https://courts.michigan.gov/Administration/SCAO/Forms/courtforms/jc39.pdf>

³ <https://courts.michigan.gov/Administration/SCAO/Forms/courtforms/mc14.pdf>

money is being paid through a wage assignment. When the amount of the debt is paid in a family law case, the court will send you a JC 58 Order Cancelling Wage Assignment.⁴

If the wage assignment is not from a court or state or federal tax agency, and there is no court order, then you are under no legal requirement to remit the requested money to the creditor. In order for the creditor to compel you to remit the requested money, the creditor must first file a lawsuit in Michigan against the debtor, or file a lawsuit in a foreign state against the debtor (the employee), and then have that foreign judgment recognized by a Michigan Court. If that happens, you will receive a garnishment to satisfy a court judgment, not a wage assignment.

Some employers have a written wage assignment policy to address its response to wage assignment requests, such as:

The Employer does not accept any obligation to remit wages to a creditor in the case of a wage assignment. Also, the Employer does not accept any obligation to remit wages to a creditor where the debtor has used present and future earnings as collateral for a loan as provided for in the Regulatory Loan Act of 1963, P.A. 1939, No. 21, Section 17; MCL 493.17.

You may consider establishing a similar policy in your business and relying on that policy when processing wage assignments.

Because of the difficulty in determining the legality or enforceability of the various types of wage assignments, we recommend you always contact an attorney to make sure you respond appropriately.

How do Garnishments work?

As explained above, garnishments are orders from a court. A garnishment action is filed after a judgment is rendered in the principal lawsuit against the employee. The garnishment is actually a lawsuit filed against the employer, who becomes the “garnishee defendant.” As an employer, you are most likely to receive a *periodic garnishment* requiring you to deduct funds from your employee’s pay and remit those funds until the debt is paid. Garnishments require you to respond to the garnishment and withhold the amount from employee’s paychecks while sometimes trying to balance the garnishment with child support orders or tax levies.

Unlike non-judicial wage assignments, compliance with garnishments is mandatory and includes penalties for employers that do not comply. If you do not process the garnishment correctly, your company can be found in contempt and penalized in the same amount owed by the employee from the judgment, together with interest, costs, and attorney fees. See MCR 3.101(G)(2) and (S). For example, assuming a court renders a \$10,000.00 judgment against your employee, and none of that judgment has been paid, and you ignore the garnishment, you could be liable for the full \$10,000.00 plus interest of up to 13% APR, the costs of bringing the garnishment action, and

⁴ <https://courts.michigan.gov/Administration/SCAO/Forms/courtforms/jc58.pdf>

attorney fees accrued to process and litigate the garnishment. This is true even if the employee no longer works for you.

What should I do if I receive a Garnishment?

If you are served with a garnishment, the first question is whether the garnishment is valid. The Court must have jurisdiction over the employer. All Michigan courts have jurisdiction over Michigan companies. Analyzing jurisdiction can be complicated when it involves an out-of-state court. If you receive a garnishment from a court in another state, that court may have jurisdiction over your business if you have a significant presence in that state or are registered with that state's corporate filings department. If you have any doubt over whether a court has jurisdiction over your business, you should contact an attorney. Furthermore, the garnishment must be served on you within 182 days of the date it was issued. An improperly served garnishment is invalid. MCL 600.4012(10)(b)(ii).

The garnishment sent to you must include:

- Two copies of the garnishment writ on form MC-12.⁵ The writ must correctly identify the garnishee defendant (the employer) by its legal name and identify the defendant/debtor (your employee) by her or his full legal name, together with enough information to properly identify the employee.
- A \$35 disclosure fee for periodic garnishments.
- All pages of the SCAO form MC 14, Garnishee Disclosure.⁶

The employer has only seven days after receiving the garnishment to provide of copy to the employee. Within 14 days, the employer must fill out and file the Garnishee Disclosure form. This must be served even if the person is not or was not ever an employee. You should begin withholding the garnished amount at the beginning of the next pay period, unless the employee is paid monthly. For employees paid monthly, you should begin withholding immediately only if the garnishment is served on you during the first 14 days of the monthly pay period. Do not remit any funds until at least 28 days have passed to allow the employee time to challenge the garnishment. After 28 days, the employer should transmit funds as they become due, which is at the same time the employee is paid. The remittances should continue until the full amount of the debt is paid.

Where an employee has several competing withholdings from her or his pay, determining priority of the withholdings can be difficult. If that situation arises, you should contact an attorney to help you determine priority. Likewise, where an employee has several competing obligations, the federal Wage Garnishment Law under Title III of the Consumer Credit Protection Act places limits on how much can be garnished from an employee's pay. Again, if you are concerned, you should contact an attorney for guidance.

⁵ <https://courts.michigan.gov/Administration/SCAO/Forms/courtforms/mc12.pdf>

⁶ <https://courts.michigan.gov/Administration/SCAO/Forms/courtforms/mc14.pdf>

Your employee may ask you to ignore the garnishment, promising they are working out a deal with the judgment creditor. Don't do it. Do not ignore a garnishment or you are likely to find yourself ordered into a show cause hearing.

If you receive a garnishment, it is a good idea to talk to an attorney who can help assure you respond properly to the garnishment.

Must I respond to Interrogatories sent as part of a Garnishment?

The Michigan Court Rules allow plaintiffs to serve interrogatories on garnishee defendants or obtain depositions. However, the interrogatories or deposition notices must be served within 14 days after the employer serves the completed garnishee disclosure form. These interrogatories may ask questions about your employee, such as where they live, their date of birth, or their social security number. In this way, the creditor is able to use the employer to obtain personal information about the employee to assist it in collecting the judgment. However, these questions arguably require answers that violate the employee's privacy rights. Employers can object to the interrogatories and then the judgment creditor will need to file a motion with the court asking it to order the employer to answer.

If you receive interrogatories or a deposition notice, it is advisable for you to contact an attorney immediately. If you have any questions, please do not hesitate to call one of our attorneys as listed below.

Very truly yours,

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