

# THE EMPLOYER'S GUIDE TO PROCESSING CONTINUOUS ORDERS OF GARNISHMENT

## THE PROCESS

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### **Step 1. What will I receive?**

The employer, of “garnishee,” will be served, in the same manner as with a summons, with several forms:

- (1) Three copies of the *Order and Notice of Garnishment and Answer of Garnishee*;
- (2) Two copies of the *Notice to the Judgment Debtor*;
- (3) One copy of the *Request for Hearing*;
- (4) One copy of the *Interim Report and Answer of the Garnishee*;
- (5) One copy of the *Final Report and Answer of the Garnishee*; and
- (6) One copy of the *Employer's Guide to Processing Continuous Orders of Garnishment* (this document).

Additionally, the employer will be served by the Court Clerk with a copy of the *Affidavit* filed against the judgment debtor, the employee (please note that the *Affidavit* may be included on the *Order and Notice of Garnishment and Answer of Garnishee* form).

### **Step 2. How and when will I pay?**

The employer has **FIVE** (5) business days from the date on which it receives the *Order and Notice of Garnishment and Answer of Garnishee* form to respond to the court. Of the three copies of this form received by the employer, only one completed and signed copy goes to the court. The employer may keep a signed and completed copy and shall deliver the other signed and completed copy to the employee.

The copy of the *Order and Notice of Garnishment and Answer of Garnishee* form shall be delivered to the employee no later than the time that the employer otherwise would have paid the employee the personal earnings that are now being paid to the court. At the time of this delivery to the employee, the employer shall also give the two copies of the *Notice to the Judgment Debtor* form and the one copy of the *Request for Hearing* form to the employee.

The *Interim Report and Answer of the Garnishee* accompanies the payment that the employer makes to the court. The payment and the *Interim Report and Answer of the Garnishee* shall be made to the court within 30 days after the end of each employee pay period. This begins with the first full pay period after the employer receives the *Order and Notice of Garnishment and Answer of Garnishee*. The amount sent to the court is a statutory percentage specified within the order (a maximum of 25%) and is to be calculated each pay period.

The percentage remains the same regardless of whether the employee is paid weekly, bi-weekly, or monthly. This is different from the law prior to H.B. 294. Garnishment orders issued under the old provisions are legally binding and still in effect.

The employer is not required to file an *Interim Report and Answer of the Garnishee* for any pay period in which no amount was withheld for that order. If the employer files this form with the court, then one completed and signed copy shall be kept for the employer's records and another copy shall be delivered to the employee. If permitted by the court, the employer may file the interim report and/or transfer the amount withheld by electronic means.

The employer shall file the *Final Report and Answer of Garnishee* with the court when the garnishment ceases to remain in effect. In addition to the copy delivered to the court, two other completed and signed copies of the *Final Report and Answer of the Garnishee* shall be made. One shall be for the employer's records and another shall be delivered to the employee.

### **Step 3. How Long Must I Withhold?**

*Part A. Single Garnishment Orders.* If an *Order and Notice of Garnishment and Answer of Garnishee* has been served upon an employer, then it must be processed continuously until paid in full or until the court issues an order that changes or ends the garnishment. The employer must withhold funds until one of the following events occurs, ending the garnishment:

- (1) The total amount due is paid in full;
- (2) The creditor files a written notice of termination with the court;
- (3) The court appoints a trustee and halts the order of garnishment;
- (4) A bankruptcy court issues an order of stay to the employer;
- (5) Another creditor obtains a garnishment order, which has a higher priority (e.g., child support order or an IRS lien) and the maximum amount is already being withheld pursuant to the higher priority order. However, if a high priority order does not take the maximum amount that can be withheld per each pay period, then the remainder can be used to satisfy other existing and subsequent orders.
- (6) Another creditor obtains a garnishment order, and 182 days have passed since the employer began withholding funds pursuant to the first garnishment order.

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*Part B. Multiple Garnishment Orders.* Employers receiving more than one garnishment order on an employee are required to stack the garnishments in the sequence in which they are received. If an employer is currently garnishing wages of an employee and receives a garnishment order from a different creditor, the employer is required to place the new garnishment in its proper order of the stack. One of four things will occur:

- (1) If the first garnishment is paid in full before 182 days expire, the employer should begin processing the next garnishment from the stack.
- (2) If the first garnishment is not paid in full and 182 days have passed since the employer began withholding funds pursuant to the first garnishment order, the garnishment ceases to be in effect and the employer is required to take the next garnishment from the stack.
- (3) If no additional garnishments have been filed, the employer will continue withholding on the second garnishment as in *Part A*.
- (4) If one or more other garnishment orders have been received on the employee, and if the second garnishment is not paid in full and 182 have passed since the employer began withholding funds pursuant to the second garnishment order, the garnishment ceases to be in effect and the employer is required to take the next garnishment from the stack. This process continues for each succeeding garnishment order on the employee received by the employer in the sequence in which they are received.

If a garnishment order ceases to be in effect and the debt has not been fully paid off, then the creditor must start the process over again from the beginning. The creditor may not re-file a garnishment on a specific judgment while its garnishment is either being processed or is being held in the stacking procedure.

An employer may not discharge an employee solely because of a garnishment by only one creditor within any one year.

## **BACKGROUND**

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In House Bill 294 of the 123rd Ohio General Assembly, the Ohio Judicial Conference was requested to create a guide to help employers with the processing of continuous orders of garnishment.

In 1999, the Ohio General Assembly created the continuous order of garnishment of personal earnings. This revised order enabled a garnishment to continue until either the total amount due was paid in full, or the order was no longer in effect. A “stacking” mechanism was created that allows garnishment orders to be stacked in order of when they were filed, or by priority, as determined by statute. Also, the fee paid to the employer was increased to compensate for complying with the new continuous orders. These changes replaced proceedings that were inefficient and costly.

However, H.B. 294 contains further revisions, improving the continuous order of garnishment. This simple guide describes the process for employers and should help answer questions regarding the operation of the new law.

## **WAIVER OF LIABILITY**

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An employer who acts, or attempts to act, in accordance with Chapter 2716 of the Ohio Revised Code, the provisions for garnishment, is not liable for damages in any civil action for any action taken pursuant to that chapter in good faith or any omission made in good faith. However, failure to comply could be grounds for contempt proceedings.

## **EMPLOYER PROCESSING FEE**

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The employer may deduct a \$3.00 fee for processing from the amount withheld from the judgment debtor’s personal disposable earnings for each pay period that an amount of earnings was withheld for that order and for which an *Interim Report and Answer of the Garnishee* was filed. If no money is withheld and/or a report is not filed, then no fee may be deducted out by the employer. The employer is never required to deduct this fee for processing.

## **TERMS**

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*Garnishment.* A legal proceeding where a creditor seeks to satisfy a debt by claiming money owed to a debtor, usually in the possession of the debtor’s employer

*Garnishee.* The person whom has possession of money owed to a debtor, which has been claimed or attached by a creditor. The garnishee is the employer. An employer is defined as a person who is required to withhold taxes out of payments of personal earnings made to a judgment debtor.

*Garnishor.* The person who initiates or begins a garnishment proceeding in order to reach the debtor’s money held by another person, usually the debtor’s employer. The garnishor is the creditor.