

EMPLOYEE INSTRUCTIONS

—NOTICE—

IMPORTANT LEGAL NOTICE TO EMPLOYEE ABOUT EARNINGS WITHHOLDING ORDERS

(Wage Garnishment)

The **Earnings Withholding Order** requires your employer to pay part of your earnings to the sheriff or other levying officer. The levying officer will pay the money to a creditor who has a court judgment against you. The information below may help you protect the money you earn.

—NOTICIA—

NOTICIA LEGAL IMPORTANTE RESPECTO A LAS ORDENES DE RETENCION DE SUELDO

El **Orden de Retención de Sueldo** requiere que su empleador pague una parte de su sueldo a un oficial de retención. El oficial le pagará el dinero retenido a su acreedor que ha conseguido una decisión judicial en contra de Ud. Pida Ud. que un amigo o su abogado le lea este papel oficial. Esta información le podría ayudar a proteger su sueldo.

CAN YOU BE FIRED BECAUSE OF THIS?

NO. You cannot be fired unless your earnings have been withheld before for a different court judgment. If this is the first judgment for which your wages will be withheld and your employer fires you because of this, the California Labor Commissioner, listed in the phone book of larger cities, can help you get your job back.

HOW MUCH OF YOUR PAY WILL BE WITHHELD?

The reverse of the Earnings Withholding Order (abbreviated in this notice as **EWO**) that applies to you contains Employer Instructions. These explain how much of your earnings can be withheld. Generally, the amount is about 25% of your take home pay until the amount due has been withheld. The levying officer will notify the employee of an additional assessment charged for paying out money collected under this order and that amount will also be withheld.

If you have trouble figuring this out, ask your employer for help.

IS THERE ANYTHING YOU CAN DO?

YES. There are several possibilities.

1. See an attorney. If you do not know an attorney, check with the lawyer referral service or the legal aid office in your county (both are listed in the yellow pages under "Attorneys").
An attorney may be able to help you make an agreement with your creditor, or may be able to help you stop your earnings from being withheld. You may wish to consider bankruptcy or asking the bankruptcy court to help you pay your creditors. These possibilities may stop your wages from being withheld.
An attorney can help you decide what is best for you. Take your **EWO** to the attorney to help you get the best advice and the fastest help.
2. Try to work out an agreement yourself with your creditor. Call the creditor or the creditor's attorney, listed on the **EWO**. If you make an agreement, the withholding of your wages will stop or be changed to a smaller amount you agree on. (See item 4 on the reverse for another way to make an offer to your creditor.)
3. You can ask for an EXEMPTION. An exemption will protect more, or maybe even all of your earnings. You can get an exemption if you need your earnings to support yourself or your family, **but you cannot get an exemption if**
 - a. You use some of your earnings for luxuries and they aren't really necessary for support; **OR**
 - b. The money you owe is for food, clothing, medical care, or housing; **OR**
 - c. You owe the debt for past due child support or spousal support (alimony); **OR**
 - d. You owe the debt to a former employee for wages.

HOW DO YOU ASK FOR AN EXEMPTION?

(See the reverse of this form for instructions about claiming an exemption.)

(Continued on reverse)

HOW DO YOU ASK FOR AN EXEMPTION?

1. Call or write the levying officer for three (3) copies each of the forms called "Claim of Exemption" and "Financial Statement." These forms are free. The name and address of the levying officer are in the big box on the right at the top of the **EWO**.
2. Fill out both forms. On the forms are some sentences or words which have boxes in front of them. The box means the words which follow may not apply to your case. If the words do apply, put a check in the box.
Remember, it is **your** job to prove with the Financial Statement form that your earnings are needed for support. Write down the details about your needs.
3. For example, if your child has special medical expenses, tell which child, what illnesses, who the doctor is, how often the doctor must be visited, the cost per visit, and the costs of medicines. These details should be listed in item 6. If you need more space, put "See attachment 6" and attach a typed 8½ by 11 sheet of paper on which you have explained your expenses in detail.
4. You can use the Claim of Exemption form to make an offer to the

judgment creditor to have a specified amount withheld each pay period. Complete item 3 on the form to indicate the amount you agree to have withheld **each pay day during the withholding period**. (Be sure it's less than the amount to be withheld otherwise.) If your creditor accepts your offer, he will not oppose your claim of exemption. (See (1) below.)

5. Sign the Claim of Exemption and Financial Statement forms. Be sure the Claim of Exemption form shows the address where you receive mail.
6. Mail or deliver two (2) copies of each of the two forms to the levying officer. Keep one copy for yourself in case a court hearing is necessary.

Do not use the Claim of Exemption and Financial Statement forms to seek a modification of child support or alimony payments. These payments can be modified only by the family law court that ordered them.

FILE YOUR CLAIM OF EXEMPTION AS SOON AS POSSIBLE FOR THE MOST PROTECTION.

ONE OF TWO THINGS WILL HAPPEN NEXT

- (1) The judgment creditor will not *oppose* (object to) your claim of exemption. If this happens, after 10 days the levying officer will tell your employer to stop withholding or withhold less from your earnings. The part (or all) of your earnings needed for support will be paid to you or paid as you direct. And you will get back earnings the levying officer or your employer were holding when you asked for the exemption.

—OR—

- (2) The creditor will *oppose* (object to) your claim of exemption. If this happens, you will receive a Notice of Opposition and Notice of Hearing on Claim of Exemption, in which the creditor states why your exemption should not be allowed. A box in the middle of the Notice of Hearing tells you the time and place of the court hearing which will be in about ten days. Be sure to go to the hearing if you can.

If the judgment creditor has checked the box in item 3 on the Notice of Hearing on Claim of Exemption, the creditor will not be in court. If you are willing to have the court make its decision based on your Financial Statement and the creditor's Notice of Opposition, you need not go to the hearing.

The Notice of Opposition to Claim of Exemption will tell you why the creditor thinks your claim should not be allowed. If you go to the hearing, take any bills, paycheck stubs, cancelled checks, or other evidence (including witnesses) that will help

you prove your Claim of Exemption and Financial Statement are correct and your earnings are needed to support yourself or your family.

Perhaps you can even prove the Notice of Opposition is wrong. For example, perhaps the Notice of Opposition states that the judgment was for a common necessary of life. This term is generally taken by courts to mean only the essentials that everyone needs to live; sometimes a court will have to decide the matter. For example, while a coat may be a "common necessary," a fur coat may not be.

If the judge at the hearing agrees with you, your employer will be ordered to stop withholding your earnings or withhold less money. The judge can even order that the **EWO** end before the hearing (so you would get some earnings back).

If the judge does *not* agree with you, the withholding will continue unless you **appeal** to a higher court. The rules for appeals are complex so you should see an attorney if you want to appeal.

If you have one court hearing, you should not file another Claim of Exemption about the same **EWO** unless your finances have gotten worse in an important way.

If your **EWO** is to be changed or ended, the levying officer must sign the notice to your employer of the change. He may give you permission to deliver it to the employer, or it can be mailed.

WHAT HAPPENS TO YOUR EARNINGS IF YOU FILE A CLAIM OF EXEMPTION?

Your employer must continue to hold back part of your earnings for the **EWO** until he receives a notice signed by the levying officer to change the order or end it early.

The levying officer will keep your withheld earnings until your Claim of Exemption is denied or takes effect. At that time your earnings will be paid according to the law that applies to your case.

REGARDING CHILD SUPPORT

If you are obligated to make child support payments, the family support division of your district attorney's office may help you to have an Order Assigning Salary or Wages entered. This order has the top priority claim on your earnings. When it is in effect, little or no money may be

available to be withheld for an **EWO**. And, if the district attorney is involved in collecting this support from you, he may agree to accept less money if this special order is entered.

WHAT IF YOU STILL HAVE QUESTIONS?

If you cannot see an attorney, or don't want to see an attorney, you might be able to answer some of your questions by reading the law in a law library. Ask the law librarian to help you find sections 706.050 and 706.105 of the California Code of Civil Procedure. Other sections of the code, beginning with section 706.010 may also answer some of your questions.

Also, the office of the Wage and Hour Division of the U.S. Department of Labor may be able to answer some of your questions. Offices are listed in the telephone directory under the U.S. Department of Labor in the U.S. Government listing.