



## A Duty To Dock Pay

For employers, court orders to garnish wages create yet another legal vulnerability.

By **Alison Stein Wellner**

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It was late on a Friday afternoon when the phone on Jeannie Barrineau's desk rang. The voice on the line was frantic: "The sheriff's in my office. He's going to arrest me!" Barrineau's heart started pounding. "I don't want to be the reason that this guy goes to jail," she thought.

At the time of this call about five years ago, Barrineau was working at a payroll outsourcing company in Florida. The employee's wages were being garnished for child support, and he explained that the money was deducted from each paycheck. "But the sheriff's saying I didn't pay!" he told her, panic-stricken. "Put the deputy on the phone," she said. She punched up the employee's records on the computer and tried to figure out what had gone wrong. "This is just the last thing you want to see happen," she thought.

It was one of your more dramatic moments in wage garnishment—an area typically just part of the HR routine. When an employee owes a debt and fails to pay, a court issues an order to the employer for money to be garnished straight out of the employee's paycheck and forwarded to whoever is owed the money.

In any mid-size or large company, at least a few employees' wages are being garnished, says Linda Crow, SPHR, principal with Corporate Performance Strategies, a human resources consulting firm in Atlanta that works with companies on garnishment issues. Garnishments are likely to stay a part of the HR routine for the foreseeable future, as the level of consumer indebtedness in this country shows no sign of decline.

But the drama of Barrineau's story highlights the strange situation that garnishment can create: It puts HR smack in the middle of an employee's messy personal finances. Wage garnishment also puts the company in an unusual legal position. Although the employee owes the debt, it's the company that receives the court order. If the employer does not comply, or does not withhold the correct amount of money, the company is liable—sometimes for the entire amount the employee owes, plus penalties.

For the company, wage garnishment creates an additional legal vulnerability: Employees whose wages are being garnished have special legal protection at both the federal and state level. Take out too much money or make an adverse employment decision, and you could be subject to lawsuits and fines. Of course, if you take out too little, you're also subject to legal action.

While the late Friday phone call was stressful for Barrineau, who is now a senior client service coordinator at a different firm, Oasis Outsourcing in Pensacola, she was probably lucky that the sheriff didn't come knocking at her door.

So, how do you keep the legal drama on television—and out of your office?

**Know Your Limits**

First, know the legal requirements. “Garnishment law is a curious mix of federal and state law,” explains Scott Humphrey, partner at the law firm Kilpatrick Stockton in Charlotte, N.C. For example, the Federal Consumer Credit Protection Act limits the amount subject to garnishment. The general federal rule is that a garnishment may not exceed either 25 percent of disposable earnings or whatever an employee earns that’s in excess of 30 times minimum wage, whichever is less. And what are disposable earnings? Everything the employee earns after required deductions, such as FICA and taxes, but before such voluntary deductions as union dues, contributions to retirement accounts, health insurance premiums and so forth, says Humphrey. Some states may set the limits lower than that.

On the federal level, child support and alimony are an exception to this rule. Federal law says that up to 50 percent of a worker’s disposable earnings can be garnished for support payments if the worker is supporting another spouse or child, or up to 60 percent if the worker is not. An additional 5 percent may be garnished for support payments more than 12 weeks in arrears, according to the U.S. Department of Labor.

Certain bankruptcy and tax court proceedings also are exempt from the 25 percent rule, so it’s best to check with a lawyer if you receive a garnishment order that exceeds 25 percent of an employee’s paycheck or the “30 times minimum wage” rule.

Again, states may set lower limits.

State law also may govern which entities are allowed to garnish from a paycheck, says Humphrey. Some states limit garnishments to child support, alimony and unpaid taxes. Others allow garnishment for delinquent student loans or other debts. In Alabama, for instance, an employee’s paycheck can be garnished to pay restitution for crime victims, says Burton Falk, legal research manager at LRN, a Los Angeles-based firm specializing in corporate ethics and compliance. His company compiled a report on every state’s garnishment law. “You can’t assume that because you know one state’s law, you know another state’s law in this area,” says Falk. “There are differences—both small and large—and it’s best not to try to generalize.” An attorney can guide you.

For employers, these limits pose a problem if a judge orders an employee to pay more than the legal maximum. That’s why it’s important to double-check the court’s assumption of how much the employee is being paid, says Humphrey. Courts generally base their orders on several pay stubs, and while mistakes are rare, they do happen. If the company informs the court of the mistake, says Humphrey, the court will change its order to take into account the lower figures.

The legal maximum for garnishment more often creates a problem when an employee’s wages are being garnished by multiple orders. If that’s your situation, the total amount might exceed the legal maximum. It’s up to you to make sure the employee is not being garnished too much—and also to let the court know immediately if any garnishment order can’t be legally complied with.

When an employee has several garnishment orders and not enough available wages to cover them, state law generally determines the priority in which garnishments should be paid, says Jennifer Price, an employment lawyer at Morgan Lewis & Bockius in Miami. Priority “is generally based on the order in which they are issued, with the exception of support orders and a few others,” she says. Federal law also may affect the priority.

Given how technical this area is, and how much depends on accurate interpretation of state and federal law, it helps to sit down annually with your employment lawyers to review any legal developments affecting wage garnishment in the state or states your company operates in—even if you outsource payroll, says Price.

If you handle payroll in-house, keep abreast of how states process garnishments once they receive them. In Florida, for instance, all child support payments go to a central processing center. When Barrineau talked to the sheriff who'd come to arrest the employee for failing to pay child support, she found that while garnishment had been properly coming out of the employee's paycheck, and the outsourcer had been sending it to the right place, the payment went awry in the state's processing center. A printed report faxed to the sheriff's office got the innocent employee out of a trip to jail, and Barrineau had to wade through red tape to sort it out with the state.

If you're handling payroll internally, it helps to have a person on staff who is well versed on these matters to do any troubleshooting.

### **The Big Talk**

Whether you outsource payroll or handle it in-house, it falls to HR to inform the employee of the garnishment order when it arrives from court.

“That conversation is not something that anyone thinks about and jumps up and down and says, ‘Oooh, oooh, oooh, I can’t wait to get to work today,’ ” says Crow. “It’s not a real pleasant side of HR. It brings the employees’ personal problems onto your desk.” After all, people who are having their wages garnished are often having difficulties in their personal lives and may not be at their cheeriest.

An unstable employee might even be pushed over the edge. The worst-case scenario was represented by the 2000 tragedy at Edgewater Technologies in Wakefield, Mass., when a distraught employee who had just had his wages garnished killed seven people in six minutes with an AK-47, including the company's vice president of HR.

While that's an extreme case, garnishment is clearly a conversation that should be handled with finesse. Crow says the first step is to be completely prepared, such as having a copy of the court order to show the employee. Then think through what you would want to know if this were happening to you. Two common questions from employees:

- How much is my paycheck going to be?
- How long is this going to continue?

In many states, you are allowed to charge a small fee, typically \$1 to \$2 per check, for handling the garnishment. If that's the case, now is the time to tell the employee.

“I tell them they've received the garnishment and show it to them and tell them what it's for,” says Crow. “It's important not to be judgmental, to be businesslike. For many people, it's embarrassing to begin with, and I don't think there's any point in embarrassing them further.”

You'll want to tap into your compassion, says Barrineau. “You have to reach inside yourself and think: If it were me in the same situation, how would I feel?”

While you may not particularly want to become an employee's sounding board, it often happens during these conversations. So be prepared to provide a sympathetic ear. "If they feel they need to tell me about it, I'll listen for a little while," says Crow. "Sometimes they need to vent."

Better still, if your company has an employee assistance program, be poised to give a referral. Just keep in mind that if you allow someone to vent a little, you're likely to get questions about legal matters, says Crow. "Stay out of giving them legal advice—that's a trap that's real easy to fall into."

You might encounter employees who try to get you to stop the garnishment. In these cases, remind the employee that the company is complying with a court order and has no power to stop or change it. "By the time it gets to the employer, the employee who is the debtor has already been provided notice of the debt and had opportunity to dispute the debt," says Price. "So, the meeting with the employer is not an opportunity to say, 'I really didn't know about this. Please don't take it out of my wages.' The employer has an obligation to take it out."

Indeed, it is highly unlikely that this is the first the employee has heard about the garnishment. "In my experience, more times than not, the employee is aware that this is coming. They may not be real happy, but they're generally not terribly surprised," says Crow.

"I've never seen an instance where the garnishment was a surprise," agrees Humphrey.

### **Is Termination an Option?**

Another question you might get is whether the employee's job is in jeopardy. Federal law could not be clearer: No employer may discharge any employee because his earnings have been garnished for any one indebtedness, or a single garnishment order. Employers that violate that law are subject to a lawsuit by the employee, as well as a \$1,000 fine and perhaps even jail time for the person who willfully violates the order.

Employers also may not make any adverse employment decisions based on a single garnishment: They cannot take disciplinary actions, they cannot refuse to hire someone who has had garnishments in the past, and so forth, says Price. There are no exceptions, even for employees such as accountants with fiscal responsibilities to the organization.

When an employee becomes subject to more than one garnishment order, an employer may take disciplinary action at that point. But it's a dicey proposition to take adverse action against an employee under these circumstances, says Price, because employees can dispute what constitutes "one indebtedness. Therefore, it is generally not wise to discharge an employee solely because his or her wages are subject to garnishment," she says.

If your company does want to discharge a person subject to garnishment for reasons other than the garnishment, be extra careful to follow proper disciplinary procedure, urges Price. And if your company wants to discharge a person subject to multiple garnishments, be sure you're consistent in your practices, advises Crow. "You'll open yourself to claims of discrimination if you terminate one for multiple garnishment and not another," she says.

Wage garnishment can be dramatic enough without throwing a discrimination lawsuit on top of it.

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