

OUR INSIGHTS

Employers Obtain Relief From Oppressive and Risky Michigan Wage Garnishments

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A wage garnishment is a court order that assists plaintiffs with the collection of judgments. Such an order requires an entity to withhold money (i.e., wages) owed to a judgment debtor and divert it to a judgment creditor in order to satisfy the judgment debt. An order for a wage garnishment is startlingly complex to administer and very risky for employers. For instance, if an employer does not timely answer a Michigan garnishment within 14 days, or fails to do any other act required by the court, it is subject to a judgment against it for the full amount of the employee's debt.

Today, Michigan Governor Rick Snyder signed into law two House bills that will dramatically reduce employers' administrative burdens and financial risk while also increasing the funds paid to employers that must comply with garnishments. The amendments take effect on September 30, 2015.

[House Bill 4119](#), which passed the Michigan House of Representatives by a vote of 109-to-1 and passed the Michigan Senate 37-to-0, will make the following changes to Michigan garnishments:

Wage garnishments will now continue until paid off rather than expire after six months. This relieves the churn that has previously occurred as garnishments expired and were reissued. Since wage garnishments only need to be set-up once, the new law also avoids the risks that come from having to receive and properly administer each garnishment over the time it takes to pay off the debt.

The fee that creditors have to pay employers will increase from \$6 to \$35. This reflects the fact that \$6 was not enough to compensate employers for their administrative costs, and the fact that garnishments will remain in place until paid off.

Wage garnishments will have to be properly served in accordance with the Michigan Court Rules—otherwise they will be void. This eliminates a common practice whereby garnishments are mailed to branches or local offices of employers—where their likelihood of being mishandled dramatically increases.

Before an employer can be liable for failing to comply with a garnishment order, the creditor will have to undertake a multi-step process that gives the employer multiple warnings and opportunities to achieve compliance. And, even if a default judgment is taken against the employer, within 21 days of the entry of

default, the employer may petition the court to reduce the default judgment to not more than the amount that would have been withheld if the garnishment had been in effect for 56 days. Previously, very little prevented creditors from quickly and without actual notice obtaining default judgments against employers that were difficult to set aside or reduce.

[House Bill 4120](#), which also passed the Michigan House of Representatives 109-to-1 and the Michigan Senate 37-to-0, will make the following changes:

The Michigan Payment of Wages and Fringe Benefits Act will allow for any money paid by the employer for a default judgment resulting from a failure to comply with a garnishment to be withheld from the employee's wages without written consent. As with the recovery of an overpayment of wages, the employer must (1) give the employee written notice of a deduction at least one pay period in advance; (2) not deduct more than 15 percent of the employee's gross wages per pay period; and (3) not reduce the employee's gross wages to a rate below the greater of the state or federal minimum wage.

Many Michigan employers feel that these changes are long overdue and are exactly the type of comprehensive reform that employers need. The reforms ensure that employers receive proper compensation for administering garnishments, provide employers protection from unreasonable judgments against them for minor administrative errors while expanding the duration of garnishments, and otherwise protect the ability of creditors to collect via garnishments.

[Martin C. Brook](#) is a shareholder in the Detroit Metro office of Ogletree Deakins. He was extensively consulted in preparation of the garnishment reform legislation, assisted with drafting the bills, was the employer-representative in contact with stakeholders, and testified before the Michigan Senate and House Commerce Committees alongside the sponsoring House Representatives.

Brook is also the author of *O-D Comply: Garnishments*, a subscription-based product focused on the most popular, varied, and difficult wage attachments: (1) creditor wage garnishments; (2) federal student loan wage garnishments; (3) federal tax levies; and (4) voluntary wage assignments.

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Martin Brook focuses his practice on representation of employers before state and federal courts and administrative agencies and advising employers on litigation avoidance and positive employee relations. Additionally, Martin's practice regularly involves representing and advising employers regarding payroll compliance issues which include, for example, wage garnishments, voluntary wage assignments, other wage attachments as well as electronic pay and tax protestors issues. Martin has...

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