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EMPLOYMENT LAW –
MANAGEMENT
2016

Voluntary Wage Assignments Law and Practice

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Questions to be Answered

1. Can this employee assign his/her future wages?
2. Must we honor this assignment?
3. What are the best practices for administering VWA?
4. Garnishments pretending to be VWA; why should we care about that?
 - What should be done about VWA that are really garnishments?

But Before the Answers

■ Most Common Documents

- Pay Day Lenders VWA
- IRS Payroll Deduction Agreement Form 2159
- Chapter 13 Bankruptcy Order
- IL Wage Assignment

Before the Answers

- Background to Keep In Mind:
 - Early VWA's interpreted via contract law
 - Common law - developing public policy on VWA
 - State and federal statutes approach as regulating credit practices
 - Employment-based regulations rare

Now, the Answer to Question One...

Can this employee assign wages?



Maybe – It Depends...

- Federal laws pertaining VWAs
Sets a National Floor . . .
- State common and statutory laws
pertaining of VWAs
Must Look at Each State

Federal Laws of VWAs

- Federal Trade Commission Rule
 - March 1, 1984
- Unfair credit practice unless:
 - Revocable at will of debtor
 - Payroll deduction plan commencing at time of transaction, or
 - Already earned wages
- States can have tougher regulations

Sampling State VWA Requirements

- A written document separate from the loan document
- If married, signed by spouse
- Notice of right to revoke
- Cap upon percent taken from wages

Now, the Answer to Question Two...

Must the employer honor VWA?



Five Varieties of States

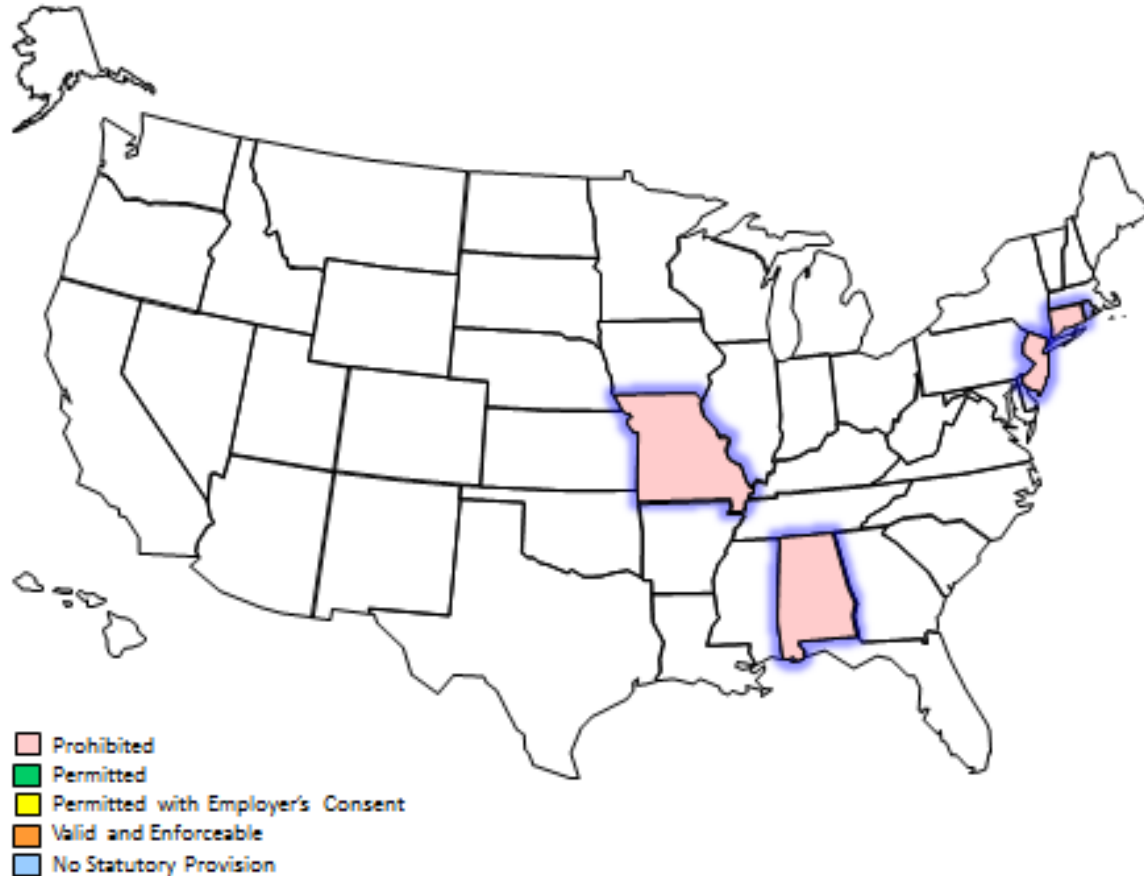
1. Prohibit
2. Valid & enforceable against employer
3. Valid with employer consent
4. Permitted
5. Silent

Prohibited

- New Jersey
- Alabama
- District of Columbia
- Connecticut
- **Missouri**



Cannot Honor Wage



States Prohibiting VWA

- New Jersey
 - Both prohibits taking a VWA and prohibits employers from honoring VWA
- Alabama, **Missouri**, D.C., Connecticut
 - Assignment of future wages is void

Valid & Enforceable

- State Law
 - **Illinois**
 - Maine
 - Maryland
 - Rhode Island
- Federal Law
 - Is it revocable at will?

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Illinois Wage Assignments

- Mandatory for employer to implement
 - Rules about form of assignment
 - Process rules for implementation

Fine Print Of Illinois Wage Assignments

An Assignment Of Wages Earned Or To Be Earned Is Valid When:

- (1) Made in a written instrument (a) signed by the wage-earner in person and (b) bearing the date of its execution, the social security number of the wage-earner, the name of the employer of the wage-earner at the time of its execution, the amount of the money loaned or the price of the articles sold or other consideration given, the rate of interest or time-price differential, if any, to be paid, and the date when such payments are due;
- (2) Given to secure an existing debt of the wage-earner or one contracted by the wage-earner simultaneously with its execution;
- (3) An exact copy thereof is furnished to the wage-earner at the time the assignment is executed;
- (4) The words "Wage Assignment" are printed or written in bold face letters of not less than 1/4 inch in height at the head of the wage assignment and also one inch above or below the line where the wage-earner signs that assignment;
- (5) Written as a separate instrument complete in itself and not a part of any conditional sales contract or any other instrument.

Demand On An Employer For The Wages By Virtue Of A Wage Assignment Has No Legal Effect On The Employer Unless:

- (1) The assignment was executed within the 3 years (§170/5) or 2 years as to future employer not names in the assignment ((§170/3).
- (2) There has been a default of more than 40 days in payment of the indebtedness secured by the assignment and the default has continued to the date of the demand;
- (3) The demand contains a correct statement as to the amount the wage-earner is in default and the original or a photo static copy of the assignment is exhibited to the employer; and
- (4) Not less than 20 days before serving the demand, a notice of intention to make the demand has been served upon the employee, and an advice copy sent to the employer, by registered or certified mail (§ 170/2).

Creditor to Proceed with Demand and Employer to Commence Withholding in 5 Business Days:

- If the employee has not given notice of defense as provided in this Act within 20 days after receiving the notice of intention to make a demand, the creditor may proceed with his demand.
- The employer shall commence payment to the creditor not sooner than 5 business days after service of such demand, unless a notice of defense is received within that 5 day period.
- If the employee cures the default stated in the demand, the creditor shall notify the employer and release the demand.

Notice of Defense:

- If timely received by an employer, no wages are subject to a demand served by the creditor described in that notice of defense; unless the employer receives a copy of a subsequent written agreement between the creditor and employee authorizing such payments. If such an agreement is not reached, the creditor may not institute further proceedings on the wage assignment. If a notice of defense has been given, service of summons in any subsequent proceeding on the debt for which the wage assignment was given as security may be made by registered or certified mail (§170/4.2).

Assignment Lasts Up To 84 days:

- A demand upon the employer applies only to wages due at the time of service of the demand and upon subsequent wages until the total amount due under the assignment is paid or until the expiration of the employer's payroll period ending immediately prior to 84 days after service of such demand, whichever first occurs (§ 170/2).

Authorized and No Liability:

- No employer shall be liable for payments made in compliance with this Section.
- Deductions allowed from employee's wages in response to a valid wage assignment (820 ILCS 115/9).

Must Also Provide Unlimited Provision for Employee to Revoke:

- IL law does not mention, but must still comply with Federal FTC Law – right to revoke at will.

Illinois Wage Assignment In Three Steps

1. Notice of Intent to Make Demand
 - To employee and advice copy to employer
 - Received via certified/registered mail
2. Demand on Employer
 - At least 20 days after Notice
 - Received via certified/registered mail
 - Employee did not submit Defense

Illinois Wage Assignment In Three Steps

3. Commence Deductions

- Start 5 business days after notice
- Lesser of 15% of gross or amount disposable earnings exceed 45x FMW
- Can take \$12 Fee
- Lasts 84 days

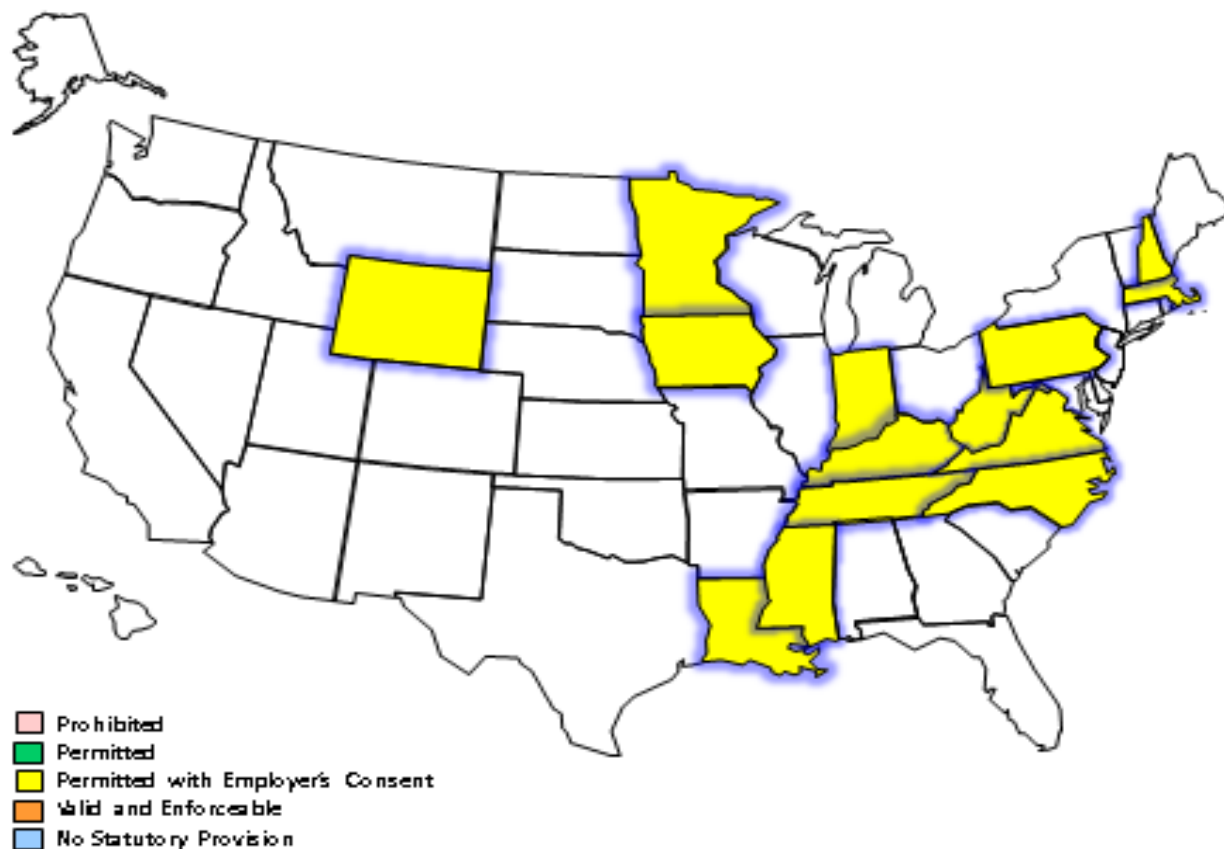
Illinois Wage Assignments: Questions

- Got Notice of Intent to Make Demand
 - Implement when one year passes before notice to withhold?
- Right to Revoke
 - Limited to 20 days after receipt of Notice of Intention to Make Demand?
- What Happens After 84 Days?
 - Must creditor start at beginning of process?

Many States Provide That Not Valid Unless Employer Consents

Minnesota	Tennessee	Wyoming
Indiana	Iowa	Kentucky
Louisiana	Massachusetts	Mississippi
New Hampshire	North Carolina	Pennsylvania
West Virginia	Virginia	

Wage Assignments Valid With Employer Consent



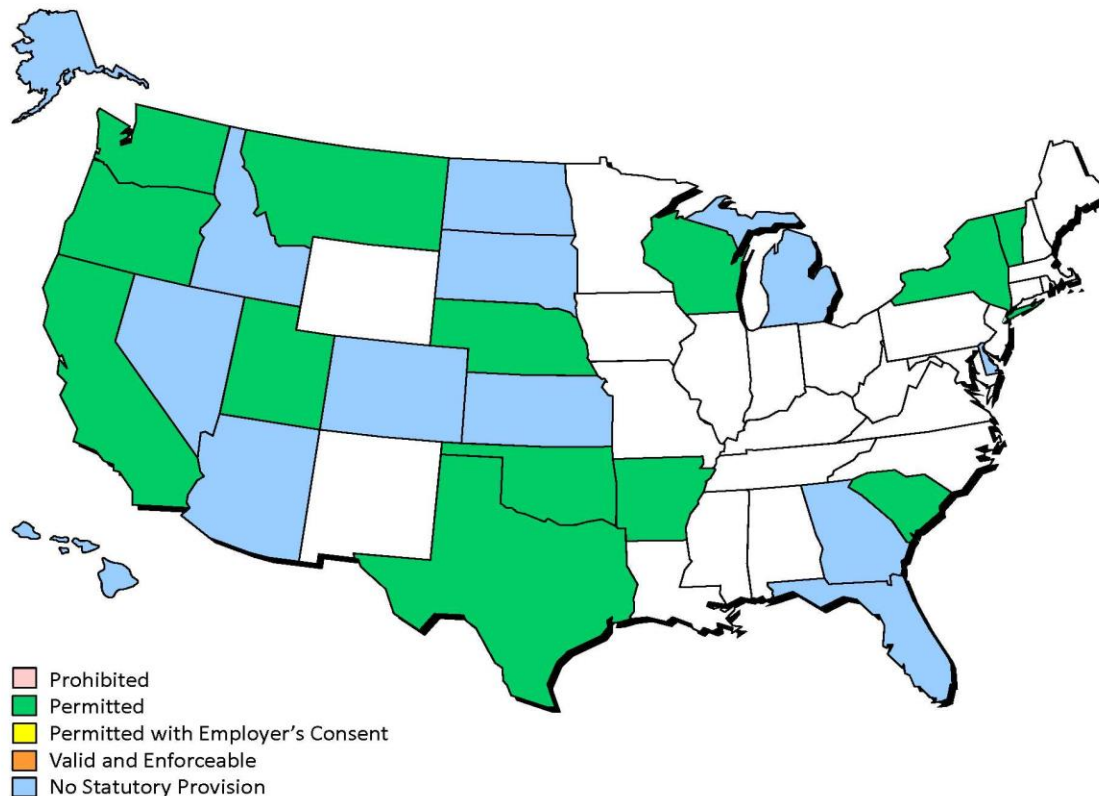
Most States in Muddled Middle

- Regulates how a person enters into assignment
- Lack of clarity whether such a VWA is enforceable against the employer
- Look to federal laws/guidance & common law

Muddled Middle States

- Alaska
- Arizona
- **Arkansas**
- California
- Colorado
- Delaware
- Florida
- Georgia
- Hawaii
- Idaho
- **Kansas**
- Michigan
- Montana
- **Nebraska**
- Nevada
- New York
- North Dakota
- **Oklahoma**
- Oregon
- South Carolina
- South Dakota
- Texas
- Utah
- Vermont
- Washington
- Wisconsin

Muddled Middle States



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Review of Questions One and Two

1. Can this employee assign wages?
2. Must the employer implement?

Evaluating & Processing VWA

Question One: Can Employee Assign?

- Individualized legal assessment is often best course of action.
- Your Lawyer will need to know:
 - Where employee resides?
 - Where employee works?
 - Where the assignment was prepared?

Evaluating & Processing VWA

Question Two: Must the Employer Honor VWA?

- States that prohibit VWAs
 - Employer must decline to implement
- States that require employer consent
 - Employer may decline to consent
- States that are silent – Muddled Middle
 - Employer may decline to implement

Evaluating & Processing VWA

■ Deduction Limits

- Not covered by CCPA
- States set limits

■ Priority

- Legally required deductions are taken first, followed by the VWA
- VWA has no cap under CCPA

Evaluating & Processing VWA

■ Priority *Continued*

- Some states speak about priority

State	Rule
Louisiana	Has priority over garnishment when accepted by employer
Ohio	Priority over other assignments in order received
New Hampshire	Valid against trustee process if employer accepts in writing
Massachusetts	Valid against trustee process if recorded with clerk before garnishment

Now, the Answer to Question Three...

Best Practices



VWA Best Practices

- Adopt company policy or include in employment application
 - Cannot assign earned/unearned wages without consent, unless contrary to law
- Draft internal procedures
 - Prepare process that mirrors the five basic types of state laws
- Document & record everything

VWA Best Practices

- For all decisions whether to accept/reject
 - Consider providing employee advance notice and form to either "confirm" or "revoke" the assignment
 - Promptly give creditors written notice of position
 - After decision remain flexible, if justified by facts/law

Now, the Answer to Question Four...

Garnishments Pretending to be VWA?



Order for VWA- What an Oxymoron

“Stipulated order for wage assignment pursuant to MCL 600.5301”

“Voluntary Assignment and Court Order”

“Consent order for installment payments via wage withholding”



Creditors Want the Best of Both Worlds

Outside CCPA Limits

&

An Order Compelling an Employer to
Withhold

Is the Document a VWA or Garnishment?

- Consumer Credit Protection Act
 - Defines garnishment as “any legal ... procedure through which earnings ... are required to be withheld”
- Wage & Hour Division
 - VWA is “a private transaction ... without any court compulsion”

Trouble With VWA & Garnishment Confusion

Garnishment

- Cap
- Time Limited
- Priority
- Aggregation

VMA

- No Cap
- No Time Limit
- Always Taken
- No Aggregation

Responding to VWA Confusion

- Responding to garnishment masquerading as VWA
 - Risky to unilaterally re-interpret the order – contempt
 - Risky to wait until creditor seeks enforcement – waive your defenses
- Best practice: Promptly comply or challenge



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