Garnishment Troubles – Beyond the Basics

Presented by

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Employers & Lawyers, Working Together

Catastrophe!

Mishandled Garnishments - Generally

- Garnishment
  - Creditor follows default and default judgment process
  - Bankruptcy – contempt process available
- All other orders are administrative and so require creditor to file a lawsuit and alleged garnishee has failed to withhold
  - IRS Levy
  - Student Loan
  - Child Support - IWO

Motions, Order & Judgments

Immediately Inform Your Lawyer

- Warning Documents – Garnishee About to be Liable
  - Conditional Judgment
  - Entry of Default
  - Order to Show Cause
  - Order to Compel
- Final Documents – Garnishee Is Liable
  - Final Judgment
  - Default Judgment

Best Practices for Garnishment Compliance

Remember – creditor wants to be paid and cares little if its from the employer's money!

ALWAYS BE ON GUARD

Garnishment Administration in Five Steps

Step One

Check Validity

Step One – Check Validity

<u>Topics:</u>

1. Does court or agency have jurisdiction?
2. Which law applies?
3. Special issues
4. Were you properly served?
5. Does the order name the right employer?
6. Is the document a valid order?

Step One – Jurisdiction

Court must have Personal Jurisdiction

Over employer – Not employee

- Creditor Garnishments
- State Levy
  - May be different from others
- IWO
- Student Loans
- IRS Levy

Step One – Jurisdiction

Jurisdiction Over Entity Named as Garnishee

- Doing Business
- Employees
- Pay Taxes
- Registered/Licensed
- Bank Accounts
- Property

Step One – Which Law Applies?

- Varies by type:
  - Garnishment = Order state
  - State Levy = Order state
  - IWO = Order & work state
  - Student Loans = Federal & work state
  - IRS Levy = Federal

Step One – Special Issues

- How does jurisdiction and choice of law apply if employee works in:
  - Pennsylvania
  - North Carolina
  - Texas
  - South Carolina

Step One – Proper Service

Proper Service is a Legal Requirement

- IWO
  - US Mail
  - Electronic
- Student Loans, IRS Levy, and State Levy
  - US Mail
- Creditor Garnishment
  - Hand Delivery to Person in Charge
  - Certified Mail
  - To Authorized Person

Step One – Garnishee = Employer?

- Orders that must name actual employer:
  - Garnishment
  - Student loan
  - IRS/State tax levy

- Order that need not name current employer:
  - IWO

Step One – Valid Order?

Just because a judge signed it or an agency issued it…

- Excessive withholding
- Wage assignments masquerading as garnishment
- IWO "regular on its face"

Step Two

Step Two – Review

<u>Topics:</u>

1. Is Debtor your Employee or Independent Contractor?

2. Priority

Step Two – Debtor = Employee?

- An initial determination must be whether you employ the debtor on the Order
  - Same issue for garnishment, IWO, etc.
- Look for match between two sources
  - SSN
  - Name
  - Address
- If employee or not <u>Always Timely Answer</u>!
- Garnishment may reach Independent Contractor payments too

Step Two – Debtor = IC?

- Does the Order Apply to Independent Contractors?
  - Garnishment = Laws vary, Mostly unclear
  - Student Loan – DCIA = No
  - IWO =Yes

Step Two – Priority of Garnishments

- Unclear Law
- Mostly Set by States
- Amounts withheld from disposable earnings pursuant to orders with priority:
  - Support for any person
  - Ch. 13 bankruptcy repayment agreement
  - Orders for past due federal or state taxes
  - Other garnishments in order served

Step Three

Respond

Step Three – Respond

Topics:

1. Requests for Verification of Employment
2. Answer/Disclosures
3. Discovery
4. Unauthorized Practice of Law

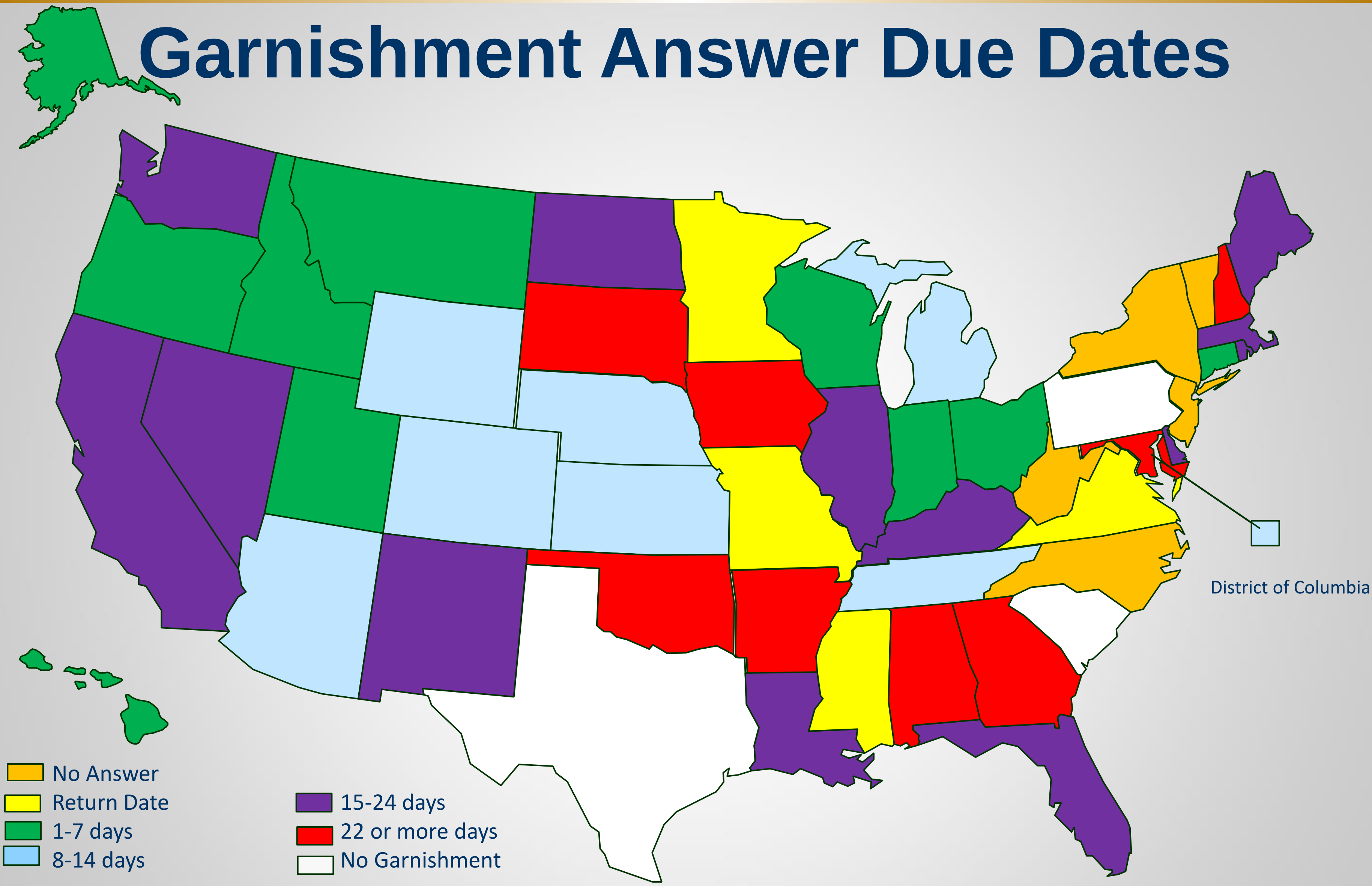
Step Three – Pre-Garnishment Requests For Verification/Information

- Income Withholding Orders (IWO)
  - Every state requires employer to respond without cost to Agency
  - Standard VOE Response
    - Not accepted: MO, NE, IL
    - Accepted: IA, KS, AR
- Garnishments – Vary by state
  - Subpoena process to ID employees (e.g. NY)
  - Various calls from creditors to verify employment
  - Two-step garnishments (e.g. IL and AZ)

Step Three – Answer/Disclosures

- Required by all state and federal processes
  - IWO
  - Student Loans
  - Creditor Garnishments
  - Tax Levies
- Deadlines based on when served (received by)
- Questions/Discussion for Creditor Garnishments
  - Where to send (Court, Creditor, Debtor)
  - Use original form (Varies – e.g. KS silent)
  - Original signatures (Varies – e.g. KS silent)
  - Notary (Varies – e.g. KS not required)

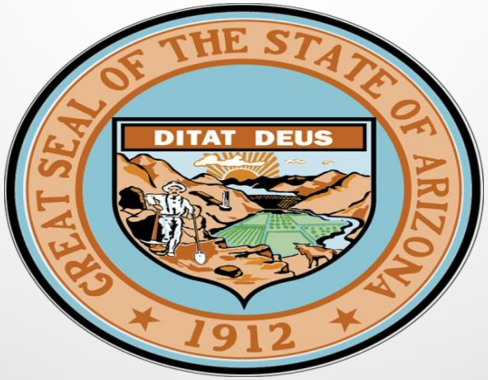
Garnishment Answer Due Dates



Step Three – Answer/Disclosures

Notary Public Rules

- 14 states require notarized disclosures
- Arizona is one such state
- Courts may reject when notary is not used



Step Three – Answer/Disclosures

Key Notary Public Issues

- State licensing required
- Must always be different person than signing the disclosure
- Signer and notary must always be physically present
- Criminal penalties apply

Step Three – Post Disclosure Discovery

- Income Withholding Orders
  - No process
- Student Loans & Tax Levies
  - No process
- Garnishments
  - Interrogatories
  - Requests for Production of Documents
  - Depositions

Step Three – UPL

Unauthorized Practice of Law

Preparing any document in any medium intended to affect of secure legal rights; representing another in a judicial proceeding…; preparing any document…for filing in any court.

EXCEPT… an employee may appear for her employer corporate in small claims court

- No exception in Rules of Practice to allow non-attorney to handle garnishee responses
- Statutory exception allows answer to writ to be filed by non-attorney

Step Three – UPL

Unauthorized Practice of Law

- Some state statutes also allow answers
  - Georgia
  - Florida
  - Missouri
- Preparing & Filing Answers – OK
- Handing Discovery or Motions – Not so Much

Step Four

Calculate and Withhold

Step Four – Calculate & Withhold

Topics:

1. Minimum Wage
2. Employer Fees

Step Four - Minimum Wage vs. Garnishments

Winner: Garnishment

Step Four - Minimum Wage vs. Garnishments

Payment Pursuant to Garnishment is Considered Equivalent . . . To Payment to the Employee When:

- Employer is Legally Obligated
  - Court of competent and appropriate jurisdiction
  - *See*, Fair Labor Standard Act, 29 C.F.R.531.39 (a)-(b)
- Deductions Does Not Exceed Allowable:
  - Threshold -- No deduction if earnings below 30 x FMW
  - Cap -- No deduction in excess of applicable 25% of Disposable Earnings

Step Four – Collecting Employer Fees

- No more than allowed by state law
  - Allowed for child support ($6 per month)
  - Allowed for garnishments (MO - $20 one time from remittance)
  - Not allowed for tax levies
- Federal guidance asserts that employer fee to be aggregated.

Step Five

Continue to the End

Step Five – Continue to End

Topics:

1. Acquisitions & Inter-Company Transfers
2. Termination & Rehires

Step Five - Company Acquisitions

- Stock Purchase = No Impact
- Asset Purchase = Large Impact
  1. Stop – Don't Transfer
     - Garnishments
     - Tax Levies
     - Student Loans
  2. Continue – Transfer
     - Child Support

Step Five - Inter-Company Transfers

Q1: Does transfer of employee to new division/subdivision impact garnishment?

Q2: Does employee relocation to new state impact garnishment?

Step Five – Terminations & Rehires

- Termination Reporting
  - IWO – Yes
  - Garnishment – Varies (but should)
  - Levy – Yes
- Rehire Repercussion
  - IWO – Varies, but mostly still valid until released
  - Garnishments – Varies from no – vague – yes.
  - Levy – Valid until released

Review and Discussion
Best Practices for Garnishment Compliance

<u>Process Advice</u>

- Document a process
  - Internal
  - Outsourced
- Annually communicate the process & train employees
  - Plan for continuity of internal expertise
- Audit to identify trouble spots
  - Misplaced, delayed, or misdirected documents
  - Untimely, incomplete, inaccurate, or missed disclosures
  - Lack of record-keeping required to prove compliance

Review and Discussion
Best Practices for Garnishment Compliance

Implementation Advice

- Read the Entire Document & Instructions
  - These change and must be followed
- It's an Order
  - Follow or timely challenge
- Be Skeptical
  - Use your resources to determine if a valid order

Garnishee Compliance Assistance

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