

A GUIDE TO GARNISHMENTS

Debt collection is an ugly business. For this reason, creditors frequently turn to the strongest weapon in their arsenal: the garnishment.

Garnishment is a legal process by which an employer is directed to intercept a portion of an employee's wages and forward it to a third party. Responding to a garnishment order can be tricky. Failure to properly deal with such an order could expose an employer to significant legal liability. To minimize their legal risk, employers faced with garnishments are encouraged to follow these three steps:

Step 1 – Determine the validity of the garnishment order

Not all garnishments are legally binding. Obeying an invalid order can be as unlawful as refusing to obey a valid one. Before taking action, employers are strongly encouraged to have the orders reviewed by legal counsel to assess their validity. Employers must act quickly as garnishments typically apply to the next scheduled pay.

Step 2 – Determine the amount to be garnished

Employers must determine the correct amount to be withheld. The following is a general roadmap of the applicable conventions:

- Garnishable pay includes gross pay, less statutory source deductions;
- Salaries, hourly wages, overtime pay, bonuses, commissions, incentives

and other payments in exchange for services are garnishable; and

- Holiday pay, vacation pay, sick pay, and disability and pension benefits are garnishable in some jurisdictions.

Each province and territory have laws specifying the amounts of wages that cannot be garnished. For example, in Ontario, 50% of wages are exempt from child/spousal support garnishments, while 80% of wages are exempt from all other types of garnishment orders.

Step 3 – Payment of garnished amounts

Once an employee's wages have been garnished, the employer must ensure that the funds are properly remitted to the creditor. Employers must carefully follow the instructions contained in garnishment orders including to whom payments are to be made, where they should be delivered, as well as their frequency. Employers should also ensure continued compliance with a garnishment order until it is completely fulfilled, the debtor's employment status renders continued garnishment impossible, or a court advises the employer to stop making the payments.

The law pertaining to garnishment is complicated. This article only provides a small sample of the rules applicable to garnishments and the legal risks associated with mismanagement of garnishment orders by employers. Full and complete knowledge and understanding of the applicable laws is essential in limiting an employer's exposure.

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OUR TEAM

PARTNERS

David Whitten

Daniel Lublin

ASSOCIATES

Cédric Lamarche

Ellen Low

Aaron Rousseau

REQUEST A CONSULTATION

For a consultation
please call us at
416-640-2667.

Whitten & Lublin
141 Adelaide Street W,
Suite 600,
Toronto, Ontario,
M5H 3L5,
Tel (416) 640 2667,
Fax (416) 644 5198
www.canadaemploymentlawyer.com
www.toronto-employmentlawyer.com

