

Wage Withholding and Priority Issues in Texas

Texas employers can suddenly find themselves thrust into the unenviable position of having to collect court-mandated withholdings from employees. It can be a daunting task for anyone, especially large employers facing a high volume payroll. However, familiarizing yourself with the basics of Texas withholding laws and how they correspond to federal laws can help prepare a company to manage an area with almost no room for even the best-intentioned error.

With the Texas Constitution holding current wages as exempt property, there is no wage garnishment in Texas, outside of very specific exceptions. While federal law makes exceptions for student loans and certain taxes, as noted in Article 16, Section 28 of the Texas Constitution, state law only recognizes exceptions for child support and spousal maintenance. This applies whether the order originates in Texas or is issued in another state, as long as the order appears valid.

This makes Texas somewhat unique. Many other states also may allow for the collection of state or local taxes and other debts owed to state agencies and many states now use garnishment to collect overpayment of benefits such as unemployment insurance.

Under sections 8 and 158 of the Texas Family Code, child or spousal support withholdings have a priority over any additional garnishment, attachment, execution or other assignment or order. The same is true under federal law, where withholdings for child and spousal support take precedence over all other federal wage garnishments.

Every Rule has an Exception

One notable exception is IRS tax debt. A wage levy from the Internal Revenue Service for tax debts cannot take precedence over child or spousal support garnishments unless the signed court order is received prior to receiving notification of support withholdings. Therefore, if any employer receives a valid child support order on March 1 and a federal tax lien on March 2, the support order takes priority over the tax lien. The IRS has demonstrated a willingness to accommodate child support withholding orders served after a tax levy. However, employees must personally request this provision from the IRS. Employees also should be encouraged to make the child support agency aware of any pre-existing tax levy.

As this shows, Texas employers, charged with the duty to abide by withholding orders for child support or spousal support, face a daunting task in regards to payroll. When compounded by a federal tax lien, state tax lien or retirement contributions, this task can quickly grow to be a major concern. Employers must ensure that all court orders are given proper priority when calculating withholdings, as any error in withholding can result in a stiff penalty for the employer.

The Texas Family Code can impose a \$200 fine against the employer for each violation. The employer also can be held liable for the total amount of unpaid child or spousal support if it was found to have erred in the withholding process.

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However, Texas law does give employers the ability to pass the cost of servicing a garnishment or wage attachment order in the form of administrative fees. They include:

Court-ordered child support. Under V.T.C.A. Family Code, Section 8.204 employers may collect an administrative fee of up to \$10 a month.

Court-ordered spousal maintenance. More commonly referred to as "alimony," employers may impose an administrative fee of up to \$5 a month.

Guaranteed student loan wage attachments. V.T.C.A. Civil Practices and Remedies Code, Section 63.006, allows employers to deduct a limited amount each month of the actual cost or \$10, whichever is less.

As long as the employee remains with the same employer, under TEX. FAM. CODE §§ 8.202, 158.202, that employer must comply with all orders regarding garnishments. If the employee leaves or is terminated, it is the responsibility of the employer to notify all relevant parties, including the court, of the change in employment status. If known, they must also provide the contact information for the new employer.

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The attorneys at Chamblee, Ryan, Kershaw & Anderson, P.C. have helped employers, both large and small, navigate the numerous legal issues that arise in the context of wage withholding orders. There are clearly harsh penalties and obligations placed on the employer in this context that require strict compliance in order to avoid costly consequences. Unfortunately, these legal obligations become even more convoluted and confusing when a particular employee is subject to a child support order, spousal support order, and tax liens.

When a mistake is made, the employer can quickly become the target of litigation when the employee's former spouse or taxing entity does not receive the proper amount from withholding. Ensuring compliance with these regulations becomes even more important when there are certain discretionary items being withheld, such as retirement accounts. The best course of action is to avoid the costly penalties and unnecessary litigation associated with improper withholdings by taking the proper steps on the front end. As stated best by Benjamin Franklin, "an ounce of prevention is worth a pound of cure."



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