



## 25.60 Garnishments and Wage Assignments

### 25.60.10

January 1, 2004

### Garnishments and levies

The term garnishment or levy is often used to describe a number of different documents. A garnishment or levy is used to capture all or a portion of earnings or personal property owed by a state agency to an employee, vendor, or third party. Personal property can include, but is not limited to, wages, leave buyout, vendor payments, commissions, bonuses, or prize money. The documents used to capture such amounts include, but are not limited to, writs of garnishment, mandatory wage assignments, mandatory payroll deductions, court orders, tax levies, and other administrative orders. Before proceeding, determine the type of legal document served upon the agency. The legal document will determine the procedure to follow.

#### 25.60.10.a

#### Writs of garnishment - overview

The law provides for two types of writs. The first is titled a “writ of garnishment (continuing lien on earnings).” The second is titled a “writ of garnishment (non-continuing lien)” or a “writ of garnishment (debt other than earnings – after judgment).” A continuing lien writ captures a percentage of the employee’s wages for a 60 calendar day period. The non-continuing lien writ captures any non-exempt personal property owed to the employee/vendor (defendant) on the date the writ is served on the Office of the Attorney General. The non-continuing writ is most commonly used to capture contractual payments owed to a business.

#### 25.60.10.b

#### Writ of garnishment - continuing lien on earnings

A writ of garnishment (continuing lien on earnings) is served to capture an employee’s earnings. Earnings include wages, salary, and other compensation. If the writ does not have the caption “continuing lien on earnings,” it captures only the assets being held by the agency on the day the writ was received by the Office of the Attorney General.

Service of a writ on the Office of the Attorney General is required pursuant to RCW 6.27.040 and RCW 4.92.020. If an agency receives a writ directly, without prior service on the Attorney General, return the writ to the creditor (plaintiff) noting that it was improperly served.

Superior court writs of garnishment are issued by the clerk of the superior court, a court commissioner, or judge. A creditor's attorney may, however, issue *district court* writs of garnishment. Although an attorney may issue the initial district court writ of garnishment, any request or demand to turn over earnings or assets held by an agency must be by service on the agency of a court document titled "Judgment and Order to Pay." Either a court commissioner or a judge must sign this document.

Proper service of the writ (continuing lien on earnings) creates a lien on the employee's earnings for 60 calendar days. It captures all non-exempt earnings payable to the employee from the date of service on the Office of the Attorney General to the last payroll period ending on or before 60 calendar days after service of the writ.

Once the writ is served on the Attorney General, by law, an agency is prohibited from paying any non-exempt earnings to the employee. If the writ is served on the Office of the Attorney General on or near the date the employee is to be paid, an agency must take reasonable steps to stop a payment to the employee and withhold the non-exempt earnings.

The amount withheld each pay period will generally be 25 percent of the employee's disposable earnings or a lesser amount as stated in the writ. The remaining 75 percent is exempt from garnishment. The agency must pay the employee only the amount exempt from garnishment.

20.60.10.c

### **First Answer**

Accompanying the writ should be an "Answer to Writ of Garnishment" form. This form is often called the "First Answer." The agency must complete the First Answer form and return it to the applicable court with a copy to the creditor (plaintiff) or the creditor's attorney, as well as a copy to the employee (defendant). The creditor must provide the agency with self-addressed stamped envelopes for this purpose. The First Answer must be mailed to the court, the creditor, and the employee within 20 calendar days after receipt of the writ by the Office of the Attorney General. Failure to answer the writ timely can result in a judgment being taken against the agency for the entire amount of the writ as well as costs and attorney fees.

To complete the First Answer, the agency must answer the questions in Section I of the writ. Next, if the defendant is an employee of the agency, the agency must complete Section II related to gross earnings, deductions, disposable earnings, and exempt earnings. Use the garnishment worksheets to perform the applicable calculations. These also provide backup documentation for the actual garnishment amount.

The first worksheet deals with the “First Answer” and the second worksheet deals with the “Second Answer” to the writ. The agency may attach a work sheet showing its calculations. Refer to Subsection 25.60.50 for garnishment worksheets.

## 25.60.10.d

**Calculation of exempt earnings**

To calculate exempt earnings, subtract federal withholding taxes (including any additional withholding), social security (OASI), Medicare, L&I (medical aid), and retirement, and any other amounts required by law to be withheld from gross earnings. Any amounts the employee may deduct by law, such as health insurance, are not deducted from gross earnings. After deduction of the “amounts required by law to be withheld,” the result is disposable earnings.

Seventy-five (75) percent of disposable earnings or thirty times the federal minimum hourly wage, whichever is larger, is the exempt amount. This 75 percent (or thirty times) must be paid to the employee. The remaining 25 percent is subject to the writ of garnishment (continuing lien).

If the writ of garnishment (continuing lien) is for child support, the exempt amount is 50 percent, when the employee supports a spouse or dependent child. If the employee does not support a spouse or dependent child, the exempt amount is 40 percent.

To calculate the 60-calendar day effective period and the payroll periods subject to the writ, the agency counts the day the writ was served on the AGO as well as counting another 60 calendar days, beginning the day after service of the writ. The day that the writ was served on the Attorney General to the end of the 60 calendar days is the “effective period.”

The writ captures earnings due during the effective period. The agency must first determine the pay periods affected by the writ and then calculate the percentage of non-exempt funds available to the creditor.

Note that in determining affected pay periods, the agency cannot withhold money from a pay period that ends AFTER the end of the 60 calendar day effective period. The 60-calendar day effective period must encompass the WHOLE pay period affected (i.e., effective period ends March 14, the agency CANNOT hold money from the March 1-15 payroll period). Refer to the Administrative and Accounting Resources for illustrative examples.

Generally, a writ received between the 1<sup>st</sup> and 9<sup>th</sup> of the month as well as the 16<sup>th</sup> and 24<sup>th</sup> of the month will capture five pay periods. This rule only applies if the agency's pay period coincides with the state's general pay periods of the 1<sup>st</sup> to the 15<sup>th</sup> and the 16<sup>th</sup> to the end of the month.

25.60.10.e      **Deduction codes**

Non-exempt earnings deducted on behalf of the creditor must be held in a payroll revolving or equivalent account in General Ledger code 5189 "Garnishments Payable" until a Judgment on the Answer is served on the agency. This accounting approach only requires one deduction code to deduct the non-exempt earnings and credit them to the General Ledger code 5189.

25.60.10.f      **Processing fees**

The agency may deduct a fee of up to \$20 on the First Answer and \$10 for the Second Answer for a continuing writ on earnings. The fee may be deducted from the employee's non-exempt earnings only. If the creditor's garnishment amount takes all non-exempt earnings (the entire 25 percent), no fee may be deducted. The processing fee may not be taken from an employee's exempt earnings.

For example, if the employee's disposable earnings for a 60 calendar day period are \$5,000, a creditor may garnish up to 25 percent or \$1,250. If the creditor garnishes \$1,220, the agency should deduct the processing fee of \$20/\$10. If the amount garnished is \$1,230, the agency may deduct only a \$20 fee. If the amount garnished is \$1,250 or more, no fee may be deducted.

Deposit processing fees in the operating account that supports the administrative workload used to process garnishments. Code fee receipts to General Ledger code 3210 "Cash Revenues," Revenue Source code 0499 "Other Revenue."

25.60.10.g      **Second Answer**

Near the end of the 60 calendar day period, the creditor will send the agency a document titled Second Answer. The Second Answer tells the creditor what non-exempt earnings were captured during the 60 calendar days following the date of service of the writ on the Office of the Attorney General.

The agency must complete the Second Answer and mail it to the court, creditor, and employee within 20 calendar days of its receipt by the Office of the Attorney General in the envelopes provided by the creditor. Hold all non-exempt funds captured by the writ pending receipt of a document titled Judgment on Answer and Order to Pay (also called a Judgment on Answer).

25.60.10.h

**Judgment on Answer and Order to Pay**

A Judgment on Answer and Order to Pay is a court order that requires the agency to pay the withheld earnings over to a specified party. It further binds the employee to pay the creditor's costs. No earnings withheld from an employee should be paid to the court or a creditor absent receipt of a Judgment on Answer and Order to Pay.

A Judgment on Answer and Order to Pay must be signed by a court commissioner or a judge. Follow the directions in the Judgment when determining where to send the withheld earnings. Under a writ issued by a district court, the earnings may be sent directly to the creditor, the creditor's attorney, or the court. A superior court writ requires that the earnings be sent to the court clerk unless otherwise stated in the writ.

Carefully note the judgment amount that the agency must remit. The judgment amount must be equal or less than the amount stated in the Second Answer. If the amount in the judgment is more than the amount stated in the Second Answer, it must be returned to the creditor for re-issuance in the correct amount. If the amount in the judgment is less than the amount stated in the Second Answer, issue the warrant/check in that amount and refund the remaining earnings withheld to the employee. The agency must issue this warrant/check against the account where previously deposited in General Ledger code 5189.

If the writ is paid through other sources or the writ is dismissed, the court or the attorney will send a notice of the satisfaction, release, or dismissal of the garnishment to the agency. Rescind the accrued miscellaneous deduction "payable to the court" and return the earnings withheld to the employee. **In no event is an agency to issue the warrant/check for the earnings withheld to the employee until the agency receives a release of the writ signed by the appropriate court officer or attorney.**

25.60.10.i      **Stacking writs**

If the agency is withholding under one writ and the agency receives a second writ under a different court cause number, the second writ becomes effective upon expiration of the first writ. If the same creditor using the same court cause number as the first writ serves a second writ before the 60 calendar day period expires, refer the writ to the Attorney General. A creditor may not “stack” writs under the same court cause number. Refer to the Administrative and Accounting Resources for illustrative examples.

25.60.10.j      **Lien priority**

Lien priority is based on a number of factors. The time the document was served, the type of document, and the document’s subject matter. As a general rule, non-child support garnishments and administrative orders (educational levy, notice to withhold and deliver, IRS tax levy) compete on a first-in-time, first-in-right basis.

A child support garnishment or administrative order takes precedence over all other types of garnishments, wage assignments and administrative orders except an IRS levy served on the employer prior to receipt of the child support order. Garnishments of any nature take precedence over a non-child support voluntary wage assignment. If the agency has questions regarding the priority of competing legal documents, contact the Assistant Attorney General assigned to garnishments. Refer to the Administrative and Accounting Resources for illustrative examples.

25.60.10.k      **Writ of garnishment (non-continuing lien)**

A writ of garnishment with the caption “non-continuing lien” captures payments, monies, or other assets (collectively referred to as payments) in the possession of the agency on the date the writ was received by the Office of the Attorney General. If the agency possesses any payment due on that date to the defendant, the agency is prohibited from transferring the payment. The agency must answer the writ within 20 days of service, identifying the payment amount in the agency’s possession on the date of service.

If the payment is exempt from garnishment by state or federal law, the agency should answer the writ and cite the exemption statute. If no payments are owed to the defendant at the time the writ is received by the Office of the Attorney General, indicate in the writ that no monies were owed to the defendant on the date of service. If the agency fails to answer the writ, it can be held liable for the amount stated in the writ.

If payment is owed to the defendant, the agency must hold the payment until it receives a Judgment and Order to Pay. The agency should follow the directions in the Judgment when determining where to send the payments held.

Payments that become payable to the defendant after the date the original writ was served are not subject to the writ. A second writ must be served to capture additional payments.

Refer to the Administrative and Accounting Resources for illustrative examples.

25.60.10.l **Failure to answer or failure to remit funds**

If the agency fails to answer the writ or remit funds after a Judgment on Answer and Order to pay is received, the agency can be held liable for the full amount claimed by the creditor as well as interest, costs, and attorney fees. The creditor (plaintiff) must give the agency 10-calendar days notice that it will request the entry of a default judgment against the agency or serve the agency with a motion to show cause. If an agency receives such notice, contact the Assistant Attorney General assigned to garnishments immediately.

25.60.10.m **Release of writ**

If the creditor receives payment on its debt while the agency is holding withheld amounts from a garnishment, the creditor must obtain an order dismissing the garnishment signed by a court. The creditor may also provide the agency with a Release of Garnishment or Satisfaction of Judgment signed by the creditor's attorney. The release can be a partial release or full release. The agency should return amounts withheld that are released to the employee.

25.60.10.n **Failure of creditor to release writ or obtain judgment**

If the creditor fails to serve the agency with a Release of Garnishment or Judgment and Order to Pay, the agency must hold the amounts withheld for one year after the first answer was filed with the court. After one year, contact the Assistant Attorney General assigned to garnishments to seek release of the amounts withheld.

25.60.10.o **Direct questions to the Attorney General's Office**

Direct all questions regarding garnishment procedures in this policy to the Assistant Attorney General assigned to garnishments.

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**25.60.20**

January 1, 2004

**Child support**

25.60.20.a

**Child support debt collection overview**

Child support can be enforced through payroll deduction notices, administrative orders (notice and order to withhold and deliver child support), mandatory wage assignment orders, writs of garnishment for child support, and out-of-state child support orders or notices (collectively referred to as child support levies). Unless issued as a writ of garnishment, a deduction taken pursuant to a child support levy continues beyond the 60-day period of a writ of garnishment. A child support levy has priority over non-child support writs of garnishment, assignments, attachments, or other legal processes except an IRS levy served prior to receipt of the child support order.

25.60.20.b

**Payroll deduction notice**

The Department of Social & Health Services (DSHS) may issue a payroll deduction notice to collect child support. The notice is effective immediately upon receipt by the agency. Service of the deduction notice on the Office of the Attorney General is not required.

An agency must answer the notice within 20 calendar days after receipt using the answer form provided. The agency must begin withholding funds immediately. The payroll deduction notice can capture up to 50 percent of the employee's disposable earnings. Any earnings withheld must be remitted to DSHS within 7 working days of the date the earnings are payable.

The agency may deduct a processing fee from the employee's wages. The processing fee is \$10 for the first disbursement and \$1 thereafter. The deduction notice remains in effect until released, until the employee is no longer employed, or until the agency no longer possesses any earnings.

25.60.20.c

**Notice and order to withhold and deliver for child support**

A notice and order to withhold and deliver (order) is an administrative order to withhold earnings for child support. Similar to a payroll deduction notice, an order is effective immediately upon receipt by the agency. An agency must answer the notice within 20 calendar days after receipt using the answer form accompanying the order. The agency must begin withholding funds immediately.



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**Payroll**

The order can capture up to 50 percent of the employee's disposable earnings. Any earnings withheld must be remitted to DSHS within 7 working days of the date the earnings are payable. Upon withholding from the employee's paycheck, the agency may deduct a processing fee. The processing fee is \$10 for the first disbursement and \$1 thereafter.

The order remains in effect until released, until the employee is no longer employed, or until the agency no longer possesses any earnings.

25.60.20.d

**Mandatory child support wage assignment order**

A court of law may issue a wage assignment to collect child support. Wage assignment orders are effective immediately upon service on the agency. An answer to a child support wage assignment order must be mailed no later than 20 calendar days after the day the order was received by the agency.

Withholding under such an order may not exceed 50 percent of the employee's disposable earnings. An agency must remit any earnings withheld within *five working days* of the date such earnings are payable. A \$10 processing fee may be deducted by the agency for the first disbursement; and a \$1 fee may be deducted for each disbursement thereafter.

A wage assignment order continues until paid, released, or the agency is no longer holding any earnings. An agency must promptly notify the addressee specified in the assignment when the employee is no longer employed. Once employment is terminated, the agency must hold the wage assignment order for one year. The wage assignment order remains in effect for this one-year period. The one year period is calculated from the date of the employee's termination or the date the agency no longer possesses any earnings or other compensation, whichever is longer. The wage assignment order does not expire until one year has passed. If the former employee returns to service within the one-year period, the agency must immediately begin to withhold earnings as provided in the prior wage assignment order.

25.60.20.e

**Writ of garnishment for child support**

Private parties may garnish wages for child support using a writ of garnishment under RCW 6.27. If the garnishment is a continuing lien on wages, it is only effective for a period of 60 days from the date of service.

Withholding under a garnishment cannot exceed 50 percent of disposable wages if the employee is supporting a spouse or dependent child.

Otherwise, the creditor may garnish up to 60 percent of the employee's disposable earnings.

25.60.20.f

#### **Out-of-state child support orders or notices**

An agency must withhold earnings when it receives a document from an out-of-state entity requiring the withholding wages for child support. It may be served directly upon the agency and begins the day received. Follow the procedures provided in the notice. Contact DSHS, Division of Child Support, for assistance in processing out-of-state child support orders.

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**25.60.30**  
January 1, 2004

### **Wage assignments**

25.60.30.a

#### **Wage assignments overview**

There are generally two types of wage assignments – voluntary wage assignments and mandatory wage assignments. A voluntary wage assignment is an employee's written consent to transfer future wages to a third party (assignee). Wage assignments are generally only for a part of the employee's wages. A mandatory wage assignment is a similar transfer of earnings required by law or court order. The amount deducted under the wage assignment can exceed the 25 percent limit of a writ of garnishment.

25.60.30.b

#### **Voluntary wage assignment**

Agencies may accept or decline to honor a voluntary wage assignment. However, honoring a voluntary wage assignment may forestall a garnishment, which results in significantly more work for an agency. An agency accepting a wage assignment should notify the employee and the assignee that the agency's acceptance is conditioned on (1) the agency not being liable for mistakes or omissions in honoring the assignment and (2) that enforced wage collections (e.g., garnishments) will take precedence over the assignment.

Before honoring such an assignment, the agency should obtain a copy of the assignment signed by the employee. If the employee is married, written consent to the assignment by the employee's spouse is also necessary for non-child support debts.

25.60.30.c **Mandatory wage assignments**

A mandatory wage assignment most often requires the transfer of earnings based upon a court order or agency directive. The legislature provided for the mandatory assignment of wages for child support, criminal financial obligations and public assistance overpayments. A mandatory wage assignment should be processed in accordance with the terms of the assignment or court order. Continue to withhold earnings until the debt is paid in full unless the assignment states otherwise.

25.60.30.d **Priority of wage assignments**

A mandatory wage assignment, garnishment, or other legally established involuntary debt collection mechanism ordinarily takes precedence over a voluntary wage assignment. An agency should consult with its assigned Assistant Attorney General to resolve questions that may arise concerning these wage transfers.

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**25.60.40 Other debt collection procedures**

July 1, 2008

25.60.40.a **Bankruptcy**

When notified of a bankruptcy filing by an employee, the agency should request that the employee provide written confirmation of the bankruptcy filing. This could include a letter from the employee's attorney with the bankruptcy court case number, a copy of the first page of the bankruptcy petition, or a copy of a bankruptcy filing receipt with the court's case number.

Once the agency has confirmation of the bankruptcy, the agency must stop deducting earnings under non-child support garnishment, administrative order, and/or wage assignment. However, child support withholding should continue unless instructed otherwise by the court.

If the agency withheld earnings *after* the bankruptcy was filed, return the post-bankruptcy earnings to the employee. As to earnings withheld *before* the bankruptcy was filed, send a letter to the creditor seeking guidance on distribution of any withheld earnings. If the creditor objects to distribution of the funds to the employee, hold the funds for one year. If the agency does not receive a Judgment on the Answer within one year of the Second Answer, contact the Assistant Attorney General assigned to garnishments for advice.

If the employee files a Chapter 13 bankruptcy, the Chapter 13 Trustee will forward a court order requiring the withholding of earnings. The agency must withhold and forward the earnings as indicated in the Order. Withholding under such an order can exceed 25 percent of disposable earnings. The Chapter 13 Trustee Office can answer any general questions regarding the bankruptcy order. Direct legal questions to the Assistant Attorney General assigned to garnishments.

25.60.40.b

### **Tax collection**

The IRS and state taxing agencies use tax levies to capture the earnings of an employee. The IRS uses a “Notice of Tax Levy.” The Departments of Revenue, Labor & Industries, and Employment Security use a Notice and Order to Withhold and Deliver (NOWD). Tax levies may be served directly on an agency. Unless provided in the tax levy or NOWD, no processing fee may be collected.

Begin immediately withholding earnings in accordance with the tax levy or NOWD. An IRS tax levy and an NOWD are not subject to the 25 percent limit on withholding provided for writs of garnishment. A tax levy and NOWD are also continuing liens on earnings. Withholding should continue until paid in full, released, or earnings are no longer available to garnish. Check with the revenue agent of the applicable taxing authority if questions arise.

If competing tax levies/NOWD’s are served upon the agency and issues of lien priority arise, contact the Assistant Attorney General assigned to garnishments.

25.60.40.c

### **Educational loans**

Federal law allows for the collection of federally guaranteed student loans through an administrative order. An agency must honor the withholding order as if issued by a court of this State.

The administrative order may be served directly on an agency by mail. It captures earnings payable after the date it is received by the agency. The amount withheld, however, is subject to limits set by federal law. An agency may withhold only 15 percent of an employee’s disposable earnings. An employee may, however, consent to a greater withholding amount by providing written consent to the Department of Justice. The withholding order will instruct the agency on the amount to be withheld. No processing fee may be deducted.

Disposable earnings are calculated in the same manner as a writ of garnishment. Deductions from disposable earnings continue until the amount is paid in full (including all interest), released in writing, or the agency no longer holds any earnings payable to the individual. Amounts withheld must be forwarded to the student loan agency no less frequently than once a month. Amounts forwarded should identify the employee, the employee's social security number, and any student loan number.

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**25.60.50**

July 24, 2009

**Worksheets for answers to writs of garnishment**

Following are worksheets for the Calculations for First Answer to Writ of Garnishment, Continuing Lien, and Calculations for Second Answer to Writ of Garnishment, Continuing Lien.

Excel calculation worksheets for determining disposable earnings subject to garnishment, instructions for using the excel worksheets, and a sample First Answer worksheet is available on OFM's Administrative & Accounting Resources website at:

<http://www.ofm.wa.gov/resources/payroll.asp>.



