

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT

W16-01

Title	Action Requested
Civil Practice and Procedure: Revision of Wage Garnishment Form Instructions	Review and submit comments by January 22, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise forms WG-002 and WG-030	July 1, 2016
Proposed by	Contact
Civil and Small Claims Advisory Committee Hon. Raymond Cadei, Chair	Anne Ronan, 415-865-8933 anne.ronan@jud.ca.gov

Executive Summary and Origin

Senate Bill 501 (Wieckowski, 2015) (SB 501) amends the method of computing the amount of a judgment debtor's earnings that may be garnished under an earnings withholding order, effective July 1, 2016. Two mandatory Judicial Council forms, *Earnings Withholding Order (Wage Garnishment)* (form WG-002) and *Earnings Withholding Order for Elder or Dependent Adult Financial Abuse* (form WG-030), include instructions to employers describing the maximum amounts that may be garnished, which must be revised to reflect the new law.

The Proposal

Statute limits the amount of earnings of a judgment debtor that may be subject to an earnings withholding order. (See Code Civ. Proc., § 706.050.¹) Currently, law prohibits the amount of an individual judgment debtor's weekly disposable earnings subject to levy under an earnings withholding order from exceeding the lesser of (1) 25% of the individual's weekly disposable earnings or (2) the amount by which the individual's disposable earnings for the week exceed 40 times the state minimum hourly wage in effect at the time the earnings are payable, unless an exception applies.

SB 501 will, commencing July 1, 2016, change the second aspect of calculating the maximum amount to be withheld in two ways. The new law reduces the prohibited amount of an individual judgment debtor's weekly disposable earnings subject to levy under an earnings withholding order from exceeding the lesser of (1) 25% of the individual's weekly disposable earnings (this part stays the same as in current law) or (2) **50%** of the amount by which the individual's

¹ All statutory references hereafter are to the Code of Civil Procedure unless otherwise indicated.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

disposable earnings for the week exceed 40 times the state minimum hourly wage, *or applicable local minimum hourly wage*, if higher, in effect at the time the earnings are payable (the 2016 amendment shown in italics).

This proposal revises the second pages of each form (WG-002 and WG-030), which provide almost identical instructions to employers regarding their duties upon receipt of the order—including the duty to withhold the correct amount of earnings, and instructions on how to calculate that amount. Section 706.127 mandates that the council prepare these instructions and revise them as needed to reflect any changes in the applicable law. The current forms, in addition to explaining how to calculate disposable earnings, contain a chart that shows how much to withhold based on the amount of such earnings and the pay period, based on the state minimum wage. The revised forms will not contain that chart.

Because the amended law provides for employers to calculate the amount to withhold using the local minimum wage if that is higher than the state minimum wage, it is no longer possible to have a single chart of amounts to withhold that is applicable to all employers. In place of the chart, the proposed forms contain the text of the statute that explains how the maximum amount is to be calculated. There is also a reference to the judicial branch website. The advisory committee is proposing that the Judicial Council add information to the Self-Help pages of that website to help an employer calculate the maximum amount to withhold from an employee's pay. This would include a table showing the maximum withholding amount when the state minimum wage is the applicable amount to use, and instructions on how to calculate the maximum withholding amount when it is a local minimum hourly wage that is to be used in the calculation. The committee recommends the inclusion of an online calculator on the website, if feasible.

Alternatives Considered

The proposed form revisions are required to make the mandatory forms consistent with law as of July 1, 2016. Hence the only alternative that the committee considered was not whether to revise the form, but how. The group considered providing multiple charts on the form, using additional pages, so employers would not have to look elsewhere for information to more easily calculate the appropriate withholding amount. However that was deemed impractical in light of the increasing number of municipalities with minimum wage amounts higher than the state minimum wage, the fact that those amounts differ from each other, and the differing schedules for changing them (some are currently set to change each January, some each July, and at least one in October). Trying to ensure that all the charts were kept up-to-date as various municipal minimum wage amounts are changed would be very difficult and result in a continuous stream of changed forms as often as twice each year.

The committee concluded that providing the information on the website would be more practical. It also concluded that developing an electronic calculator, although it would involve more initial expense than a form revision, might be more efficient in the long run.

Implementation Requirements, Costs, and Operational Impacts

This form is generally prepared by parties or levying officers, so implementation of this proposal should not have any cost burden or operational impact on the courts.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Forms WG-002 and WG-030 are attached at pages 4–7.
2. Senate Bill 501 may be seen at http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB501

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>):		LEVYING OFFICER (<i>Name and address</i>):	
TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (<i>Name</i>): _____		DRAFT 12/02/15	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____		NOT APPROVED BY JUDICIAL COUNCIL	
PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____			
EARNINGS WITHHOLDING ORDER (Wage Garnishment)		LEVYING OFFICER FILE NO.: _____	COURT CASE NO.: _____
EMPLOYEE: KEEP YOUR COPY OF THIS LEGAL PAPER. EMPLEADO: GUARDE ESTE PAPEL OFICIAL.			

EMPLOYER: Enter the following date to assist your recordkeeping.
Date this order was received by employer (specify the date of personal delivery by levying officer or registered process server or the date mail receipt was signed):

TO THE EMPLOYER REGARDING YOUR EMPLOYEE:

Name and address of employer

Name and address of employee

Social Security No. on form WG-035 unknown

1. A judgment creditor has obtained this order to collect a court judgment against your employee. You are directed to withhold part of the earnings of the employee (*see instructions on reverse of this form*). Pay the withheld sums to the **levying officer** (*name and address above*).

If the employee works for you now, you must **give the employee a copy of this order and the *Employee Instructions (form WG-003)*** within 10 days after receiving this order.

Complete both copies of the form *Employer's Return (form WG-005)* and mail them to the levying officer within 15 days after receiving this order, whether or not the employee works for you.

2. The total amount due is: \$

Count 10 calendar days from the date when you received this order. If your employee's pay period ends before the 10th day, **do not** withhold earnings payable for that pay period. **Do** withhold from earnings that are payable for any pay period ending on or after that 10th day.

Continue withholding for all pay periods until you withhold the amount due. The levying officer will notify you of an assessment you should withhold in addition to the amount due. Do not withhold more than the total of these amounts. Never withhold any earnings payable before the beginning of the earnings withholding period.

3. The judgment was entered in the court on (*date*):

The judgment creditor (*if different from the plaintiff*) is (*name*):

4. The **INSTRUCTIONS TO EMPLOYER** on the reverse tell you how much of the employee's earnings to withhold each payday and answer other questions you may have.

Date:

_____ (TYPE OR PRINT NAME)

_____ (SIGNATURE)

LEVYING OFFICER REGISTERED PROCESS SERVER

(Employer's Instructions on reverse)

INSTRUCTIONS TO EMPLOYER ON EARNINGS WITHHOLDING ORDERS

WG-002

The instructions in paragraph 1 on the reverse of this form describe your early duties to provide information to your employee and the levying officer.

Your other duties are TO WITHHOLD THE CORRECT AMOUNT OF EARNINGS (if any) and PAY IT TO THE LEVYING OFFICER during the *withholding period*.

The withholding period is the period covered by the *Earnings Withholding Order* (this order). The withholding period begins ten (10) calendar days after you receive the order and continues until the total amount due, plus additional amounts for costs and interest (which will be listed in a levying officer's notice), is withheld.

It may end sooner if (1) you receive a written notice signed by the levying officer specifying an earlier termination date, or (2) an order of higher priority (explained on the reverse of the *EMPLOYER'S RETURN*) is received.

You are entitled to rely on and must obey all written notices signed by the levying officer.

The *Employer's Return* (form WG-005) describes several situations that could affect the withholding period for this order. If you receive more than one *Earnings Withholding Order* during a withholding period, review that form (*Employer's Return*) for instructions.

If the employee stops working for you, the *Earnings Withholding Order* ends after no amounts are withheld for a continuous 180-day period. If withholding ends because the earnings are subject to an order of higher priority, the *Earnings Withholding Order* ends after a continuous two-year period during which no amounts are withheld under the order. **Return the Earnings Withholding Order to the levying officer with a statement of the reason it is being returned.**

WHAT TO DO WITH THE MONEY

The amounts withheld during the withholding period must be paid to the levying officer by the 15th of the next month after each payday. If you wish to pay more frequently than monthly, each payment must be made within 10 days after the close of the pay period.

Be sure to mark each *check with the case number, the levying officer's file number, if different, and the employee's name so the money will be applied to the correct account.*

WHAT IF YOU STILL HAVE QUESTIONS?

The garnishment law is contained in the Code of Civil Procedure beginning with section 706.010. Sections 706.022, 706.025, 706.050, and 706.104 explain the employer's duties.

The Federal Wage Garnishment Law and federal rules provide the basic protections on which the California law is based. Inquiries about the federal law will be answered by mail, telephone, or personal interview at any office of the Wage and Hour Division of the U.S. Department of Labor. Offices are listed in the telephone directory under the U.S. Department of Labor in the U.S. Government listing.

COMPUTATION INSTRUCTIONS

California law provides how much earnings to withhold, if any, for different amounts of disposable earnings and different pay periods, and takes into consideration different minimum wage amounts. The law is described in the column to the right on this sheet. You may also look on the Judicial Branch Self-Help website, for assistance in determining the maximum withholding amounts for different amounts of disposable income, for different pay periods, with different minimum wage amounts. The information is at www.courts.ca.gov/self-help-xxxxxx.htm.

THESE COMPUTATION INSTRUCTIONS APPLY UNDER NORMAL CIRCUMSTANCES. THEY DO NOT APPLY TO ORDERS FOR THE SUPPORT OF A SPOUSE, FORMER SPOUSE, OR CHILD.

State law limits the amount of earnings that can be withheld. The limitations are based on the employee's disposable earnings, which are different from gross pay or take-home pay.

To determine the CORRECT AMOUNT OF EARNINGS TO BE WITHHELD (if any), compute the employee's *disposable earnings*.

(A) Earnings include any money (whether called wages, salary, commissions, bonuses, or anything else) that is paid by an employer to an employee for personal services. Vacation or sick pay is subject to withholding as it is received by the employee. Tips are generally not included as earnings since they are not paid by the employer.

(B) *Disposable earnings* are the earnings left after subtracting the part of the earnings a state or federal law requires an employer to withhold. Generally these required deductions are (1) federal income tax, (2) federal social security, (3) state income tax, (4) state disability insurance, and (5) payments to public employee retirement systems. Disposable earnings will change when the required deductions change.

(C) After the employee's *disposable earnings* are known, you can apply the formulas set out in the statute (see below) to determine what amount should be withheld, or you can seek assistance on the Self-Help website at www.courts.ca.gov/self-help-xxxxx.htm. Note that you also need to know the amount of the minimum wage in the geographic location where the employee works.

Code Civ. Proc. 706.050. Maximum Amount of Disposable Earnings.

(a) Except as otherwise provided in this chapter, the maximum amount of disposable earnings of an individual judgment debtor [the employee] for any workweek that is subject to levy under an earnings withholding order shall not exceed the lesser of the following:

(1) Twenty-five percent of the individual's disposable earnings for that week.

(2) Fifty percent of the amount by which the individual's disposable earnings for that week exceed 40 times the state minimum hourly wage in effect at the time the earnings are payable. If a judgment debtor works in a location where the local minimum hourly wage is greater than the state minimum hourly wage, the local minimum hourly wage in effect at the time the earnings are payable shall be used for the calculation made pursuant to this paragraph.

(b) For any pay period other than weekly, the following multipliers shall be used to determine the maximum amount of disposable earnings subject to levy under an earnings withholding order that is proportional in effect to the calculation described in paragraph (2) of subdivision (a), except as specified in paragraph (1):

(1) For a daily pay period, the amounts shall be identical to the amounts described in subdivision (a).

(2) For a biweekly pay period, multiply the state hourly minimum wage by 80 work hours.

(3) For a semimonthly pay period, multiply the state hourly minimum wage by 86 2/3 work hours.

(4) For a monthly pay period, multiply the state hourly minimum wage by 173 1/3 work hours.

Occasionally, the employee's earnings will also be subject to a *Wage and Earnings Assignment Order*, an order available from family law courts for child, spousal, or family support. The amount required to be withheld for that order should be deducted from the amount to be withheld for this order.

IMPORTANT WARNINGS

1. IT IS AGAINST THE LAW TO FIRE THE EMPLOYEE BECAUSE OF *EARNINGS WITHHOLDING ORDERS* FOR THE PAYMENT OF ONLY ONE INDEBTEDNESS. No matter how many orders you receive, so long as they all relate to a single indebtedness (no matter how many debts are represented in that judgment), the employee may not be fired.
2. IT IS ILLEGAL TO AVOID AN *EARNINGS WITHHOLDING ORDER* BY POSTPONING OR ADVANCING THE PAYMENT OF EARNINGS. The employee's pay period must not be changed to prevent the order from taking effect.
3. IT IS ILLEGAL NOT TO PAY AMOUNTS WITHHELD FOR THE *EARNINGS WITHHOLDING ORDER* TO THE LEVYING OFFICER. Your duty is to pay the money to the levying officer who will pay the money in accordance with the law that applies to this case.

IF YOU VIOLATE ANY OF THESE LAWS YOU MAY BE HELD LIABLE TO PAY CIVIL DAMAGES AND YOU MAY BE SUBJECT TO CRIMINAL PROSECUTION!

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO: _____ NAME: FIRM NAME: STREET ADDRESS: CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: ATTORNEY FOR (Name): _____	LEVYING OFFICER (Name and address): <p style="text-align: center;">DRAFT 12/03/15</p> <p style="text-align: center;">NOT APPROVED BY JUDICIAL COUNCIL</p>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:
EARNINGS WITHHOLDING ORDER FOR ELDER OR DEPENDENT ADULT FINANCIAL ABUSE (Wage Garnishment)	LEVYING OFFICER FILE NUMBER:

EMPLOYEE: KEEP YOUR COPY OF THIS LEGAL PAPER. EMPLEADO: GUARDE ESTE PAPEL OFICIAL.

EMPLOYER: Enter the following date to assist your record keeping.
 Date this order was received by employer (specify the date of personal delivery by levying officer or registered process server or the date mail receipt was signed):

TO THE EMPLOYER REGARDING YOUR EMPLOYEE:

Name and address of employer _____ _____ _____	Name and address of employee _____ _____ _____ Social Security No. <input type="checkbox"/> on form WG-035 <input type="checkbox"/> unknown
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- A judgment creditor has obtained this order to collect a court judgment against your employee. You are directed to withhold part of the earnings of the employee (see instructions on reverse of this form).
 Pay the withheld sums to the **levying officer** (name and address above). If the employee works for you now, you must **give the employee a copy of this order and the Employee Instructions (form WG-003)** within 10 days after receiving this order.
Complete both copies of the Employer's Return (form WG-005) and mail them to the levying officer within 15 days after receiving this order, whether or not the employee works for you.
- The total amount due is: \$
 - The amount arising from an elder or dependent financial abuse claim is: \$

Count 10 calendar days from the date when you received this order. If your employee's pay period ends before the tenth day, **do not** withhold earnings payable for that pay period. **Do** withhold from earnings that are payable for any pay period ending on or after that tenth day.

Continue withholding for all pay periods until you withhold the amount due. The levying officer will notify you of an assessment you should withhold in addition to the amount due. Do not withhold more than the total of these amounts. Never withhold any earnings payable before the beginning of the earnings withholding period.
- The judgment was entered in the court on (date):
 The judgment creditor (if different from the plaintiff) is (name):
- The EMPLOYER'S INSTRUCTIONS on the reverse tell you how much of the employee's earnings to withhold each payday. Follow those instructions unless you receive a court order or order from the levying officer giving you other instructions.

Date: _____

_____ (TYPE OR PRINT NAME) ▶ _____ (SIGNATURE)

LEVYING OFFICER REGISTERED PROCESS SERVER

(Employer's Instructions on reverse)

EARNINGS WITHHOLDING ORDER
FOR ELDER OR DEPENDENT ADULT FINANCIAL ABUSE
(Wage Garnishment)

INSTRUCTIONS TO EMPLOYER ON EARNINGS WITHHOLDING ORDERS

WG-030

The instructions in paragraph 1 on the reverse of this form describe your early duties to provide information to your employee and the levying officer.

Your other duties are TO WITHHOLD THE CORRECT AMOUNT OF EARNINGS (if any) and PAY IT TO THE LEVYING OFFICER during the *withholding period*.

The withholding period is the period covered by the *Earnings Withholding Order* (this order). The withholding period begins ten (10) calendar days after you receive the order and continues until the total amount due, plus additional amounts for costs and interest (which will be listed in a levying officer's notice), is withheld.

It may end sooner if (1) you receive a written notice signed by the levying officer specifying an earlier termination date, or (2) an order of higher priority (explained on the reverse of the *EMPLOYER'S RETURN*) is received.

You are entitled to rely on and must obey all written notices signed by the levying officer.

The *Employer's Return* (form WG-005) describes several situations that could affect the withholding period for this order. If you receive more than one *Earnings Withholding Order* during a withholding period, review that form (*Employer's Return*) for instructions.

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State law limits the amount of earnings that can be withheld. The limitations are based on the employee's disposable earnings, which are different from gross pay or take-home pay.

To determine the CORRECT AMOUNT OF EARNINGS TO BE WITHHELD (if any), compute the employee's *disposable earnings*.

(A) Earnings include any money (whether called wages, salary, commissions, bonuses, or anything else) that is paid by an employer to an employee for personal services. Vacation or sick pay is subject to withholding as it is received by the employee. Tips are generally not included as earnings since they are not paid by the employer.

(B) *Disposable earnings* are the earnings left after subtracting the part of the earnings a state or federal law requires an employer to withhold. Generally these required deductions are (1) federal income tax, (2) federal social security, (3) state income tax, (4) state disability insurance, and (5) payments to public employee retirement systems. Disposable earnings will change when the required deductions change.

(C) After the employee's *disposable earnings* are known, you can apply the formulas set out in the statute (see below) to determine what amount should be withheld, or you can seek assistance on the Self-Help website at www.courts.ca.gov/self-help-xxxx.htm. Note that you also need to know the amount of the minimum wage in the location where the employee works.

Code Civ. Proc. 706.050. Maximum Amount of Disposable Earnings.

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(1) Twenty-five percent of the individual's disposable earnings for that week.

(2) Fifty percent of the amount by which the individual's disposable earnings for that week exceed 40 times the state minimum hourly wage in effect at the time the earnings are payable. If a judgment debtor works in a location where the local minimum hourly wage is greater than the state minimum hourly wage, the local minimum hourly wage in effect at the time the earnings are payable shall be used for the calculation made pursuant to this paragraph.

(b) For any pay period other than weekly, the following multipliers shall be used to determine the maximum amount of disposable earnings subject to levy under an earnings withholding order that is proportional in effect to the calculation described in paragraph (2) of subdivision (a), except as specified in paragraph (1):

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(4) For a monthly pay period, multiply the state hourly minimum wage by 173 1/3 work hours.

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2. IT IS ILLEGAL TO AVOID AN *EARNINGS WITHHOLDING ORDER* BY POSTPONING OR ADVANCING THE PAYMENT OF EARNINGS. The employee's pay period must not be changed to prevent the order from taking effect.
3. IT IS ILLEGAL NOT TO PAY AMOUNTS WITHHELD FOR THE *EARNINGS WITHHOLDING ORDER* TO THE LEVYING OFFICER. Your duty is to pay the money to the levying officer who will pay the money in accordance with the law that applies to this case.

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