



American Payroll Association

Government Relations • Washington, DC

November 9, 2016

Ms. Mary Ziegler
Assistant Administrator for Policy
Wage and Hour Division
U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

Re: Interpretation of Federal Law on Withholding from Lump-Sum Payments for Child Support

Dear Ms. Ziegler:

During our conference call in June regarding disparate applications by states of the Consumer Credit Protection Act (CCPA) limits on withholding for child support from lump-sum payments to employees, the American Payroll Association (APA) agreed to send a follow-up letter describing the problem and including a list of lump-sum payment types. The payment type list is included as an attachment.

The U.S. DOL's Fact Sheet #30 on the applicability of the CCPA to child support states:

Specific restrictions apply to court orders for child support or alimony. The garnishment law allows up to 50 percent of a worker's disposable earnings to be garnished for these purposes if the worker is supporting another spouse or child, or up to 60 percent if the worker is not. An additional 5 percent may be garnished for support payments more than 12 weeks in arrears.

This interpretation has been applied consistently across all states for child support payments withheld from regular wage payments made each pay period, but the U.S. DOL's interpretation does not specifically refer to lump-sum payments. Therefore, many states believe that they are allowed to set their own requirements for wage withholding from these types of payments. The range runs from 0 to 100 percent withholding. States have acted in a manner that seems to run counter to the meaning of the term "earnings" as defined in CCPA § 302(a), 15 U.S.C. § 1672(a):

The term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, *or otherwise* (emphasis added), and includes periodic payments pursuant to a pension or retirement program.

APA recommends that the U.S. DOL issue an administrative interpretation or some other official document (fact sheet or guidance document) stating that the 50-65 percent rule applies to lump-sum payments that are subject to withholding for child support.

When states do not apply the CCPA’s 50-65 percent rule to lump-sum payments, employers are caught between following state child support orders and the possibility of noncompliance with the CCPA. For example, the U.S. DOL’s fact sheet states, “If a state wage garnishment law differs from the CCPA, the law resulting in the smaller garnishment must be observed.” Therefore, an employer in a state that requires 100 percent of the lump-sum for child support may wonder whether to apply the 50-65 percent rule anyway. This potentially puts the employer between federal and state compliance when both cannot be followed.

APA believes that the states that do not follow the CCPA’s 50-65 percent rule are misinterpreting the definition of “disposable earnings.” Title III § 302(b) of the CCPA states, “The term ‘disposable earnings’ means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.” As noted above, Title III § 302(a) defines the term “earnings” as “compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise. . . .”

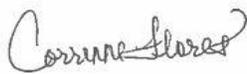
The definitions in the CCPA are sufficiently broad such that all lump-sum payments to employees regardless of the reason for the payment or the term used to define the payment are “compensation paid or payable for personal services.” When states define certain lump-sum payments as income other than personal earnings, yet include payments such as bonuses or payments in lieu of vacation, they are regulating the same compensation as contemplated in the CCPA.

APA and its members have enjoyed an extremely valuable working relationship with the U.S. DOL over many years. We understand that the agency’s priorities are set by the administration and that time is limited to address child support and lump-sum payments. The time given to us on the June conference call was greatly appreciated. As we move forward to resolve this issue, please let us know what APA and its members can do to assist the U.S. DOL in resolving this matter.

Sincerely,



Lisa Poole, CPP



Corri Flores

Cochairs, GRTF Child Support and Other Garnishments Subcommittee
American Payroll Association



William Dunn, CPP

Director, Government Relations
American Payroll Association

About the APA

Established in 1982, the APA is a nonprofit professional association serving the interests of more than 20,000 payroll professionals in the United States. The APA's primary mission is to educate members and the payroll industry about the best practices associated with paying America's workers while complying with all applicable federal, state, and local laws. The APA's Government Relations Task Force (GRTF) works with legislative and executive branches at the federal and state levels to assist employers with understanding their legal obligations with significant emphasis on minimizing the administrative burden on government, employers, and individual workers. The GRTF maintains a close relationship with state child support agencies and the federal Office of Child Support Enforcement to ensure that APA's members receive the latest information about child support laws and that the state and federal agencies receives meaningful feedback on its programs, regulations, guidance, and laws.

Cc:

Joe Henríquez McNearney, Senior Advisor & Director of Outreach, Wage and Hour Division, U.S. DOL
Helen M. Applewhaite, Branch Chief, FMLA – Section 14(c) and Other Labor Standards, U.S. DOL

Attachment

List of Lump-Sum Payment Types

This list offers examples of lump-sum payments given to employees. The list is not intended to cover every type of lump-sum payment subject to child support.

- Discretionary bonuses
- Nondiscretionary bonuses
- Productivity or performance bonuses
- Referral bonuses
- Sign-on bonuses
- Payments in lieu of paid time off
- Payments in lieu of vacation
- Commissions
- Termination pay
- Severance pay

- Buy backs
- Retroactive merit increases
- Profit sharing
- Safety awards
- Attendance awards
- Cash service awards

- Insurance settlements
- Life insurance proceeds

- Workers compensation
- Moving or relocation incentives