



American Payroll Association

Government Relations • Washington, DC

June 1, 2016

Governor John Hickenlooper
Colorado Office of the Governor
136 State Capitol Building
Denver, CO 80203

Re: Colorado's compliance with federal guidelines for calculating child support withholding

Dear Governor Hickenlooper:

The American Payroll Association (APA) respectfully directs your attention to Action Transmittal AT-16-04 (enclosed) issued by the commissioner of the federal Office of Child Support Enforcement, Vicki Turetsky. We have every reason to believe the Action Transmittal was issued in direct response to complaints about the Colorado Department of Human Services, Division of Child Support Services (CSS). We ask that you consider the practices of the CSS, outlined below, and the impact they are having on employers, employees, and parents and children not only in Colorado but across the country. We further ask that you direct the CSS to conform to the federal guidelines in the Action Transmittal.

When citing the reasons for issuing the Action Transmittal, Commissioner Turetsky wrote:

[T]he staff from the federal Office of Child Support Enforcement (OCSE), states, and employers discussed concerns about some states' interpretation of federal procedures to withhold when a noncustodial parent is paid weekly or biweekly. For employers that pay weekly or biweekly, some child support agencies are adding an amount due, in addition to the monthly amount ordered by a tribunal, to the Office of Management and Budget (OMB)-approved Income Withholding for

Support (IWO) form. **This causes confusion and leads to errors in withholding.**

The commissioner continued, saying, “Withholding an amount that is not based on the underlying child support order **is inconsistent with federal law and regulations** and causes the following consequences:

- The annual withholding amount is greater than the amount ordered by the tribunal.
- Allocation of payments among multiple child support orders may result in reduced payments to other states’ support orders when the employer is required to apply Consumer Credit Protection Act (CCPA) withholding limits.
- Payments for overdue support may exceed amounts specified in the underlying child support order.
- There is a lack of uniform withholding process among child support agencies.”

It has been estimated that up to one-third of all child support orders are issued to noncustodial parents not living in the same state as the child and custodial parent. The policies and practices of each individual child support enforcement agency affect employers and families in every state.

Employers in Colorado and across the country have enjoyed an unprecedented degree of standardization in child support withholding practices since passage of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which prompted states, including Colorado, to enact the Uniform Interstate Family Support Act. The Colorado CSS practices disrupt that standardization and run counter to the explicit directions of the federal government.

Standard method for determining child support withholding

A parent’s child support obligations are usually, though not always, established on a monthly basis. Employees may be paid weekly, biweekly, semimonthly, or monthly. When an income withholding order (IWO) is issued, employers convert the monthly obligation to correspond to the employee’s pay cycle. This is described on page 3 of the instructions for the OMB-approved IWO:

NOTE TO EMPLOYER/INCOME WITHHOLDER

An acceptable method of determining the amount to be paid on a weekly or biweekly basis is to multiply the monthly amount of support due by 12 and divide that result by the number of pay periods in a year.

It is understood and accepted that employees paid either weekly or biweekly will have slightly less than their monthly obligation withheld each month. However, the full obligation is met over the course of a year.

Deviation from standard practice

The following graphic is excerpted from an actual order issued by a Colorado county CSS. This is representative of orders issued regularly by counties throughout the state.

ORDER INFORMATION: This document is based on the support or withholding order from COLORADO (State/Tribe). You are required by law to deduct these amounts from the employee/obligor's income until further notice.

\$	340.40	Per	MONTHLY	current child support
\$	0.00	Per		past-due child support - Arrears greater than 12 weeks? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
\$	0.00	Per		current cash medical support
\$	0.00	Per		past-due cash medical support
\$	0.00	Per		current spousal support
\$	0.00	Per		past-due spousal support
\$	28.36	Per	MONTHLY	other (must specify) AMOUNT NEEDED SO FULL \$ IS WITHHELD

for a **Total Amount to Withhold** of \$ 368.76 per MONTHLY .

AMOUNTS TO WITHHOLD: You do not have to vary your pay cycle to be in compliance with the *Order Information*. If your pay cycle does not match the ordered payment cycle, withhold one of the following amounts:

\$ 85.10 per weekly pay period	\$ 170.20 per semimonthly pay period (twice a month)
\$ 170.20 per biweekly pay period (every two weeks)	\$ 340.40 per monthly pay period

\$ 0.00 **Lump Sum Payment:** Do not stop any existing IWO unless you receive a termination order.

In this example, the employee's monthly obligation is \$340.40, which works out to an annual obligation of \$4,084.80. According to the practice outlined in the IWO instructions (monthly obligation x 12 / pay periods), the amount ordered to be withheld each week should be \$78.55, but CSS orders that \$85.10 be withheld. The amount ordered to be withheld each biweekly pay period should be \$157.10, but CSS orders that \$170.20 be withheld. The IWO further instructs employers to withhold an additional \$28.36 each month. Although the employee's monthly obligation is \$340.40, the CSS is ordering employers to withhold \$368.76.

We stress to point out that these are not mathematical mistakes. Colorado CSS is intentionally ordering an amount be withheld that is not supported by the underlying legal obligation for the employee to pay child support.

“Regular on its face”

The confusion Commissioner Turetsky cited in AT-16-04 may have serious consequences for families in Colorado and elsewhere. The practices of the Colorado CSS call into question the validity of the orders they issue.

It is understood that an income withholding order is “regular on its face” if the order (a) is issued by an authority of competent jurisdiction, (b) is legal in form, and (c) includes nothing on its face that provides reasonable notice that it is issued without authority of law.

Reasonable people may look at an order issued by the Colorado CSS and decide that it is not regular on its face. Regarding the excerpt from the order, here are two obvious examples:

1. Logically, after the obligation is annualized and divided by the number of pay periods, the amount withheld on a semimonthly and biweekly schedule cannot be the same amount.
2. The CSS is ordering an amount be withheld that is greater than the employee’s obligation to pay.

The standardized IWO contains explicit directions to employers requiring that any order not “regular on its face” be returned and not implemented.

Return to Sender [Completed by Employer/Income Withholder]. Payment must be directed to an SDU in accordance with 42 USC §666(b)(5) and (b)(6) or Tribal Payee (see Payments to SDU below). If payment is not directed to an SDU/Tribal Payee or this IWO is not regular on its face, you *must* check this box and return the IWO to the sender.

“If payment is not directed to an SDU/Tribal Payee or this IWO is not regular on its face, you *must* check this box and return the IWO to the sender.”

According to OCSE, employers are responsible for withholding 75 percent of all child support collected. Nationally, in fiscal year 2015, employers collected \$24.5 billion. The APA and its members take pride in the fact that we play such an important role in the success of the child support program. We want that success to continue. State and federal governments have long recognized that the surest way to increase collections is to make it easy for employers to comply.

Based on the impact described here and the negative consequences, APA asks that you direct the Colorado Division of Child Support Services to fully comply with OCSE’s approved procedures regarding the completion of the standardized Income Withholding for Support form.

About the American Payroll Association (APA)

Established in 1982, APA is a nonprofit professional association serving the interests of more than 20,000 payroll professionals in the United States. One of the core missions of APA is providing representation for payroll professionals at the federal, state, and local levels. This is done primarily by educating government and community decision-makers about the payroll industry and the best practices associated with paying America's workers. APA's Government Relations Task Force works with legislative and executive branches of government to assist payroll professionals with understanding their employers' legal obligations and advocating for more effective laws, regulations, policies, and guidance. Significant emphasis is placed on minimizing the administrative burden on government, employers, and individual workers, as well as sharing information effectively.

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

Enc: AT-16-04

Correctly Withholding Child Support From Weekly and Biweekly Pay Cycles

ACTION TRANSMITTAL

AT-16-04

DATE: April 15, 2016

TO: State and Tribal Agencies Administering Child Support Plans under Title IV-D of the Social Security Act and Other Interested Individuals

SUBJECT: Correctly Withholding Child Support from Weekly and Biweekly Pay Cycles

SUMMARY: This Action Transmittal provides guidance regarding allowable withholding when the noncustodial parent is paid weekly or biweekly.

BACKGROUND: During the 2011 and 2014 Employer Symposiums, the staff from the federal Office of Child Support Enforcement (OCSE), states, and employers discussed concerns about some states' interpretation of federal procedures to withhold when a noncustodial parent is paid weekly or biweekly. For employers that pay weekly or biweekly, some child support agencies are adding an amount due, in addition to the monthly amount ordered by a tribunal, to the Office of Management and Budget (OMB)-approved Income Withholding for Support (IWO) form. This causes confusion and leads to errors in withholding.

Withholding an amount that is not based on the underlying child support order is inconsistent with federal law and regulations and causes the following consequences:

- The annual withholding amount is greater than the amount ordered by the tribunal.
- Allocation of payments among multiple child support orders may result in reduced payments to other states' support orders when the employer is required to apply Consumer Credit Protection Act (CCPA) withholding limits.
- Payments for overdue support may exceed amounts specified in the underlying child support order.
- There is a lack of uniform withholding process among child support agencies.

STATUTORY AND REGULATORY REFERENCES: States are required under 45 CFR 303.100(a)(1) to have income withholding procedures that “ensure that in the case of each noncustodial parent against whom a support order is or has been issued or modified in the State, and is being enforced under the State plan, so much of his or her income as defined in sections 466(b)(1) and (8) of the Act must be withheld, in accordance with this section, as is necessary to comply with the order.” In accordance with 45 CFR 303.100(a)(2) and (3), the IWO must include an amount to be applied toward liquidation of overdue support in addition to the amount of the current monthly obligation, and the total amount withheld may not exceed the maximum permitted under section 303(b) of the CCPA [15 U.S.C. 1673(b)]. These provisions do not authorize the state to issue an IWO requiring an employer to withhold an amount above the current monthly obligation and the monthly amount required to satisfy arrears. For employers with weekly or biweekly pay cycles, long-standing guidance permits states to annualize the support obligation.

In addition, section 466(b)(6)(B) of the Social Security Act requires states to establish methods to simplify the withholding process for employers. A single employer may receive income withholding orders from many sources including state and tribal child support agencies, courts, attorneys, custodial parents, and others.

OCSE [Action Transmittal 14-05](#), “2014 Revisions to the Income Withholding for Support (IWO) Form and Instructions,” published July 15, 2014, contains revisions approved by OMB that provide the following information for employers when calculating withholding amounts:

NOTE TO EMPLOYER/INCOME WITHHOLDER

An acceptable method of determining the amount to be paid on a weekly or biweekly basis is to multiply the monthly amount of support due by 12 and divide that result by the number of pay periods in a year.

This language clarifies that child support collected from employers that pay weekly or biweekly, per this calculation method, meets the federal requirements for states to collect child support. There is no federal law or regulation that supports a requirement to instruct employers to collect more than the amount in the underlying order.

EXAMPLE: To help states direct employers to properly withhold payments, we provide an example of the allowable withholding method.

The IWO contains a monthly current support obligation of \$528 with no arrears and no other amount ordered by the tribunal that issued the order; the total amount to withhold monthly is \$528 or \$6,336 annually (\$528 x 12).

Weekly amount to withhold ($\$6,336 \div 52$) = \$121.85

Biweekly amount to withhold ($\$6,336 \div 26$) = \$243.69

Semimonthly amount to withhold ($\$6,336 \div 24$) = \$264

Monthly amount to withhold ($\$6,336 \div 12$) = \$528

Using this calculation, as described in the IWO instructions, results in withholding the ordered amount of child support each year and is consistent with federal laws and regulations.

Child support agencies may not instruct employers to withhold more than the amount in the underlying child support order. Adding an extra amount to attempt to equalize withholdings for noncustodial parents on weekly and biweekly pay cycles is not authorized or accepted as a method to accomplish income withholding under federal law and regulations.

We are available to assist states with the income withholding process. Please contact the Division of Policy and Training at OCSE.DPT@acf.hhs.gov if you have questions.

Sincerely,

Vicki Turetsky
Commissioner
Office of Child Support Enforcement

cc: ACF/OCSE Regional Program Managers