



# American Payroll Association

Government Relations • Washington, DC

February 17, 2017

The Honorable Robert A. Wieckowski  
California Senate District 10  
State Capitol, Room 3086  
Sacramento, CA 95814

**Re: California Senate Bill 16, an act to add Section 706.053 to the Code of Civil Procedure, relating to wage garnishment**

Dear Senator Wieckowski:

The American Payroll Association (APA) appreciates the opportunity to write with regard to legislation you have sponsored. Senate Bill 16 would establish a withholding limit specific to garnishments for student loans that are not made, insured, or guaranteed by the U.S. Government.

We note that the section to be added to the California Code of Civil Procedure, § 706.053, would use a calculation established in § 706.050, which was recently amended in accordance with legislation you sponsored in 2015, Senate Bill 501. SB 16, as did SB 501 before it, requires that the higher of the state minimum wage or the applicable local minimum wage be used to calculate the amount that is exempt from wage garnishment. It also sets the withholding limit for defaulted student loans at the lesser of: (1) 15% of disposable earnings, or (2) 50% of the amount by which the individual's disposable earnings for that week exceed 40 times the state (or local, if higher) minimum hourly wage.

We note that the fact sheet posted to your website explaining SB 16 says, "This bill would better level the playing field of student loan collection by matching the private garnishment maximum to the Federal garnishment maximum – 15%." In fact, the exemptions provided by SB 16 far exceed those provided under federal law. However, APA is less concerned with the amount of the exemption than it is with the method by which it is calculated. APA would like to provide insight on the unintended consequences of using this calculation.

**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 help employers understand their legal obligations with significant emphasis on minimizing the administrative burden on government, employers, and individual workers.

### **The Concern**

APA supports fairness in the wage garnishment process that emphasizes a reasonable approach for employees without unduly increasing the administrative burden on employers. As payroll professionals, we appreciate provisions that help the employees we pay, but we also ask lawmakers to recognize that, in the case of a garnishment, employers are third parties to a legal dispute. Changes to the law requiring employers to rely on a local minimum wage for garnishments also require that employers spend time, effort, and resources that are quite unrelated to the application of a local minimum wage to pay the workers in their employ.

Further, APA believes that applying a local minimum wage is inherently unfair to California residents. By basing the exemptions on a local minimum wage, California residents working in locations with the highest minimum wages are afforded greater exemptions than those living in other areas. An employee in San Francisco is provided greater exemptions than an employee in Cupertino, who in turn is provided greater exemptions than an employee in San Diego. Within jurisdictions that apply a local minimum wage based on the number of employees (e.g., Los Angeles and Malibu, effective July 2017) the disparity in exemptions is even more remarkable.

California has 21 jurisdictions that have established a higher minimum wage than the state requires. Of these 21 jurisdictions, seven vary the minimum wage based on employee headcount, the provision of benefits, or nonprofit status. California is the only state to apply a local minimum wage to calculate the amount of disposable earnings that are exempt from wage garnishment. The following describes some of the issues employers face from this approach:

**Extensive Development Efforts** – Updating a payroll system requires specialized coding, technical development, testing, and a great deal of effort. Most payroll systems do not have a mechanism to calculate garnishment amounts based on the local minimum wage. Developing such a system, as must be done to comply with the provisions of SB 501, is expected to be expensive and time consuming for every employer managing creditor garnishments for employees in California. Applying this change for student loan garnishments would require an equal amount of time and effort.

In general, garnishment withholding limits are established at the state level, relying on either the federal or state minimum wage to calculate withholdings. The great majority of APA members pay employees in multiple states. From a development perspective, using the federal minimum wage to calculate disposable earnings is the most efficient because it applies across many states. When states apply their state minimum wage to the calculation, the development is more complex. The fact that many states may use their state minimum wage in the calculation makes the coding and development more reasonable, again, because the variable is used in numerous states. Applying the local minimum wage is proving extraordinarily complicated, in part, because California is the only state requiring it.

**Manual Calculations** – Adding to the complexity of implementing calculation changes, many employers utilize payroll software in their current environment. As these changes are enacted, employers must work with their software vendors to implement these types of calculations. Many software vendors are not prepared to add locality-specific calculations in their programming to help customers with these changing rules. If the payroll software cannot manage the calculation, the calculation must be done manually, by payroll professionals. Relying on manual calculations increases the risk of error, which can lead to penalties for the employer and penalties and interest for the employee.

**Effective Dates of Local Minimum Wage Changes** – Tracking varying effective dates for local minimum wage changes is difficult for purposes of wage garnishments. Not only must the rate be tracked but also the effective date for those rates. With varying effective dates for the local minimum wage increases (ranging among January, July, and October), employers will now be required to update their systems for garnishment calculations throughout the year. The lack of consistency in timeframes requires additional effort. This has become so complex that some of the major software vendors are not supporting the calculations, requiring their clients to create their own calculation tables. This again increases the risk of incorrect withholding.

**Changes to Employee's Work Locations** – Another issue that must be considered is the requirement to continually track where an employee works. An employee may transfer to a location where the exemption calculation must either be increased or decreased. For example, an employee may have wages garnished while working in San Francisco, but partway through the life of the garnishment, the employee could transfer to a location where another rate is lower or higher than when originally served. Or, an employee may work in two different locations during the same pay period, potentially requiring varying garnishment calculations. While tracking varying work locations for the purposes of paying wages can be accomplished within the payroll system, calculating the same garnishment with varying amounts, then combining those calculations to determine the entire amount is not currently possible.

One APA member shared that currently, in order to monitor scenarios where an employee works at various locations, the company had to create an entirely new process within the garnishment calculation, as well as new reports. These reports have to be prepared weekly and have to be updated into the payroll system manually for each employee in California who is subject to wage garnishment. As businesses continue to move toward progressively more automation, this change in the law is causing added manual work, which is not efficient, especially for large employers. Manual efforts drive up the administrative costs that employers incur in processing these student loans.

### **A Reasonable Alternative**

The intent behind SB 16, as was that of SB 501, appears to be increasing consumer protections for workers struggling with personal debt. These greater protections may be applied in a manner that will not negatively impact the employers that must manage the wage withholding.

Prior to the change that went into effect in 2016, California limited withholding for a creditor garnishment to the lesser of: (1) 25% of disposable earnings or (2) 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.

Increasing the amount exempt from garnishment can be accomplished simply, easily, and fairly by adjusting two factors in the limit: (1) lowering the percentage of disposable earnings and/or (2) raising the multiple of the state minimum wage. Employers would not experience difficulty if, for example, California were to limit withholding for a student loan garnishment to the lesser of (1) 10% of disposable earnings or (2) the amount by which the individual's disposable earnings for that week exceed 50 times the state minimum hourly wage in effect at the time the earnings are payable.

APA appreciates your efforts to provide robust consumer protections to employees whose wages are being garnished. We strongly urge that these protections be implemented in a manner that does not cause undue difficulty for the employers that must manage the wage garnishments.

Sincerely,



Corri Flores  
Chair, GRTF Child Support & Other Garnishments Subcommittee  
American Payroll Association



William Dunn, CPP  
Director, Government Relations  
American Payroll Association

Cc: Senator Ricardo Lara, Senator Patricia Bates, Senator Jim Beall, Senator Steven Bradford, Senator Jerry Hill, Senator Jim Nielsen, Senator Scott Wiener, Senator Hannah-Beth Jackson, Senator John M. W. Moorlach, Senator Joel Anderson, Senator Robert M. Hertzberg, Senator Bill Monning, Senator Henry I. Stern