



American Payroll Association

Government Relations • Washington, DC

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Pamela Lowry
Illinois Department of Healthcare and Family Services
Division of Child Support Services
509 South 6th Street
Springfield, IL 62701

Via e-mail: Pamela.Lowry@illinois.gov

Dear Ms. Lowry,

The American Payroll Association (APA) has recently become aware of a change in the wage withholding limit that the Illinois Department of Healthcare and Family Services (HFS) is implementing for child support.

We have questions and concerns regarding the change and the impact it will have on employers throughout the country who handle income withholding orders (IWO) from the state of Illinois. We appreciate the opportunity to pose these questions to you and hope that you will be able to provide guidance for employers so that they may continue to fulfill their legal obligations.

About APA

Established in 1982, APA is a nonprofit professional association serving the interests of more than 20,000 payroll professionals in the United States. 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 and regulations. 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.

According to the federal Office of Child Support Enforcement (OCSE), employers are responsible for collecting 75% of all child support in the United States, through wage withholding. In 2016, this amounted to approximately \$24.5 billion. OCSE's *FY 2016*

Preliminary Report indicates that employers collected \$1.2 billion (84%) of the \$1.4 billion in total collections for Illinois.¹

Questions and Concerns

The HFS website was updated on or about August 21, 2017, to reflect the following information. (See <https://newhire.hfs.illinois.gov/NewHireWeb/IncomeWithholding.jsp>.)

Definition of Allowable Disposable Income

Allowable disposable income is the maximum amount available for child support withholding. In most cases, the amount ordered to be withheld will be less than the allowable disposable income amount, and the ordered amount can be withheld without any problem. Even if the withholding order specifies a higher payment, the allowable disposable income is the most that may be withheld.

Illinois Income Withholding For Support

Upon receiving clarification from the Federal Office of Child Support Enforcement, Illinois amended our Income Withholding For Support – HFS 3683. Due to systemic limitations, the HFS 3683 now instructs the employer, income withholder, or payor to withhold up to 50% of the obligor's disposable income, if the full amount of support ordered cannot be withheld.

Note: Allowable Disposable Income = disposable income x 50% limit

This information leads APA to the following questions.

Does HFS have the authority to change the “Allowable Disposable Income”?

The Illinois Income Withholding for Support Act says that withholding may not exceed the limits imposed by the federal Consumer Credit Protection Act (CCPA).² The CCPA allows a range from 50% to 65% of disposable income to be withheld, depending on whether the noncustodial parent supports another family and whether the debt is in sufficient arrears.

APA recognizes that HFS may issue IWOs directing employers to withhold any amount up to the authorized limits. If HFS chooses to issue all further IWOs with a maximum

¹ https://www.acf.hhs.gov/sites/default/files/programs/css/2016_preliminary_report.pdf.

² 750 ILCS 28/20(c)(6).

withholding of 50% of disposable income, APA expects that employers will comply without hesitation. However, the wording posted to the website could be interpreted in such a way that a reasonable person might question whether state law now limits withholding to no more than 50% of disposable income.

If HFS does have the authority to lower the withholding limit for child support orders, the next questions become paramount.

Does the change affect existing orders? If so, will HFS issue amended IWOs?

APA understands that HFS is lowering the withholding limit in response to direction from OCSE to bring its practice into compliance with federal law. Prior to the recent change, APA members noted receiving IWOs from Illinois consistently directing them to withhold 65% of disposable income, even when that amount appeared to exceed the allowable limits (i.e., the employee was supporting another family and/or was not in arrears).

Citing “system limitations,” HFS has amended its IWO (Form HFS 3683) to direct employers to withhold no more than 50% of disposable income. Further, the notice posted to the website reads, “Even if the withholding order specifies a higher payment, the allowable disposable income is the most that may be withheld.”

It is unclear whether the change in the withholding limit is intended to apply to the untold number of existing orders currently in effect. Illinois state law says that an IWO “shall continue to be binding upon the payor until service of an amended income withholding notice or any order of the court or notice entered or provided for under this Section.”³

APA respectfully requests that HFS issue an unequivocal statement explaining whether the change in the withholding limit applies only to orders being issued since the change or whether they are intended to apply to orders already issued and in effect.

If the change to 50% does apply to orders already issued and in effect, employers will be reluctant to change the withholding without sufficient legal authority. Because of potential liability, a posting to the HFS website will not pass muster.

The IWO authorized by the federal Office of Management and Budget has a series of check boxes at the top to inform payors of the type of order they are receiving. One of the check boxes is labeled “Amended IWO.” The IWO that Illinois issues, HFS 3683,

³ 750 ILCS 28/40(g).

contains these same boxes. As employers become aware of the change in the withholding limit, they will expect to receive some official notice authorizing a change in any payments they are sending to the Illinois State Disbursement Unit.

A retroactive change to existing orders without clear legal grounds will place employers in an untenable position. Employers that do not lower the withholding may be accused by HFS or the obligor of overwithholding. Employers that do lower the withholding but lack a legal document on which to base the decision will almost certainly be accused by obligees of underwithholding.

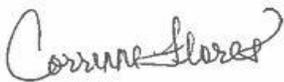
Does the change in the Allowable Disposable Income only affect HFS orders?

APA notes that the change in the withholding limit was posted to the HFS web page titled, "Employers and Income Withholding." We question whether the change in withholding would apply to only those orders issued by HFS or whether the change would also apply to orders issued outside of the state child support system, such as by an Illinois court or private attorney.

Conclusion

APA's primary mission is to educate payroll professionals regarding their obligations when paying workers. We are committed to our partnership with federal and state child support agencies to ensure full compliance. We also take pride in the success of the child support program, which is recognized for making sure children and their families have the opportunities they deserve. We ask that you consider answers to our questions to ensure our continued success with the child support program in Illinois and nationally.

Sincerely,



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



William Dunn, CPP
Director, Government Relations
American Payroll Association