

An Employers Guide to Child Support Income Withholding



Friend of the Court Bureau
Michigan Supreme Court
<http://www.courts.michigan.gov/scao>

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Introduction

As both taxpayer and employer, you should know some basic facts about the federal and state child support laws and related programs that ensure that all parents support their children. These programs encourage family responsibility and thereby reduce all taxpayers' costs of providing welfare benefits for children.

A key feature of these programs requires employers who receive notice of an income withholding order that affects one of their employees to withhold part of that employee's income and transmit the money to the Michigan State Disbursement Unit (MiSDU). In turn, MiSDU releases that money to the parent who has custody of the employee's children. All parents who pay court-ordered support are subject to income withholding. The laws require income withholding to start immediately for almost all new or modified support orders.

Withholding of income to pay child support is not a punishment. Rather, like tax withholding, it provides an efficient method for paying a financial obligation in manageable installments. This pamphlet provides a brief summary of employers' legal responsibilities in this area.

In order to avoid using lengthy and repetitious descriptions, the Q&A sections that follow will use the terms "employer," "employee," and "income" in their broadest possible sense. For example, "employee" as used here includes traditional employees, independent contractors, and parties to almost any arrangement that results in one person (or business entity) owing money to another person (or business entity) in exchange for goods or services provided. Traditional employers are the most common "source of income" to which these income withholding laws apply.

Similarly, the Q&A sections will use the terms "income-withholding order" and "notice of income withholding," as near-synonyms. In practice, these are separate documents issued in a two-step sequence by a court and the county friend of the court office. First, a judge signs the "income withholding order" and gives it to the friend of the court office. The FOC office then sends a more detailed "notice of income withholding" to the employer of the person who has been ordered to pay child support. The notice of income withholding will not have a judge's signature, but employers are required to obey the notice's instructions, in the same way that they would obey a court order.

Finally, to make this brochure easier to read, the Q&A sections below use both impersonal ("employer/employee") and personal ("I/you") phrasing. In no instance does the phrasing choice have any substantive significance.

(1) Who must withhold income in response to an income-withholding order?

Answer: Any employer who receives a notice of income withholding and who owes or will owe income to the employee identified in the order. As explained earlier, “income” is a very broad term. It includes, but is not limited to:

- salaries, hourly wages, commissions, bonuses, and vacation or sick pay;
- payments due now or in the future from a profit-sharing plan, pension plan, insurance contract, or annuity; and
- some miscellaneous debts owed to the support payer by other individuals or business entities.

(2) Must I obey an income-withholding order issued by another state?

Answer: The Uniform Interstate Family Support Act allows a court in another state to send an income-withholding order directly to a support payer's Michigan employer. After receiving the order, the employer must:

- (a) treat an order that appears proper as if the order had been issued by a Michigan court;
- (b) immediately provide a copy of the order to the support payer employee; and
- (c) withhold and distribute the employee's income as directed in the order.

(3) When must an employer start withholding income?

Answer: A notice of income withholding becomes binding on an employer seven days after the employer receives the notice. Notices may be served by ordinary mail. They will specify the date of mailing, the date to begin withholding, and where to send the withheld money.

(4) How soon do I have to remit the income that I withhold?

Answer: For Michigan court cases, you must remit the withheld income to MiSDU (the Michigan State Disbursement Unit) within three days. Orders issued by out-of-state courts may specify a different deadline and a different intermediate recipient.

(5) How will I know if the court changes the amount that I must withhold?

Answer: For Michigan cases, the friend of the court office in the county whose circuit court ordered the support payments must advise you if the court changes the support amount. When the friend of the court sends you a modified notice, you must adjust the withholding amount accordingly within seven days after receiving the modified notice.

(6) How long must I continue withholding income?

Answer: The income-withholding order remains in effect until canceled by the court. The friend of the court then will send you a written notice to stop the withholding.

(7) What if the employee's income is also subject to a writ of garnishment or other withholding orders?

Answer: Under Michigan law, an order to withhold income for child support has priority over all other legal processes that affect the same income. This means it takes precedence over garnishments and other payroll deductions (except tax withholding and other child support orders). (Federal bankruptcy law may require an employer to temporarily stop withholding income to pay child support. In that situation, any employer who receives notice that an employee has obtained a bankruptcy stay should consult an attorney.)

(8) What happens if I don't withhold the income?

Answer: Unless the federal Consumer Credit Protection Act (CCPA) (15 USC 1673[b]) precludes it, you must start withholding income within seven days after receiving the notice. Otherwise, you will be held personally liable for any amount that you knowingly and intentionally fail to withhold. The court will require you to pay the amount you *should* have withheld even if you already have paid the “same” money to your employee. The court may also find you in contempt of court for failing to obey the withholding order.

(9) Is there any limit on the amount that an employer may withhold from an employee's income?

Answer: Section 303(b) of the CCPA limits withholding for *garnishments* to 25 percent of a person's disposable income. However, withholding for child support can go up to 50 percent of disposable income—and even higher in certain cases, such as when the payer has no other dependents or has fallen more than 12 weeks behind on the child support obligation. If the income-withholding order requires withholding more than 50 percent of the employee's income, the employer should seek guidance by contacting the friend of the court or consulting with an attorney.

(10) What identifying information must an employer provide when remitting withheld income to MiSDU?

Answer: An employer must include the employee's name and social security number, the court case's docket number, the amount remitted, and the date on which the money was withheld from the employee's income. This information will be found on the income withholding notice you will receive. The employer must also provide its own federal employer identification number. MiSDU's automated reporting system requests all of

that information, so using the automated system will assure that an employer provides all the required information.

(11) What happens if I receive more than one withholding order affecting the same employee?

Answer: If the total amount ordered to be withheld exceeds the limits imposed by Section 303(b) of the CCPA, the withholding and distribution of the income must be allocated as follows:

- (a) If the total designated as “current support” exceeds the withholding maximum set by CCPA § 303(b), you must allocate the withheld income up to that limit pro rata among the orders, allocating to each order a percentage equal to the amount of “current support” in that order divided by the total “current support” in all the orders.
- (b) If the total designated as “current support” does not exceed the CCPA maximum, you must first withhold and remit all current support. Next, use any remaining withheld income to pay “past-due support.” Allocate that money according to each order’s designated “past-due support” amount as a percentage of the total past-due support.

(12) Withholding orders usually require an employer to pay an employee’s dependent health care premiums directly to the insurer or plan administrator. What if the child support and the insurance premium together total more than the maximum that the CCPA allows me to withhold from the employee’s pay?

Answer: First, use the withheld money to pay the full amount of current and past-due support. Then withhold additional money for the insurance premium, but only until the total amount withheld reaches the CCPA limit. You do not have to use your own money to pay any portion of the premium unless specifically required to do so by your agreement with the employee.

(13) I have received income-withholding notices for several employees. Must I make separate remittances to MiSDU for each employee?

Answer: No, you may combine them into a single payment to MiSDU. Your remittance communication to MiSDU must specify the amount attributable to each employee and include the identifying information listed in Q&A No. 10.

(14) May I charge the employee for the costs associated with withholding?

Answer: No. Michigan law does not allow employers to charge a fee for processing Michigan income-withholding orders. For orders from other states, you may deduct a fee

if allowed to do so by the law of the state that is the employee's principal place of employment.

(15) What if employees say that they do not owe any child support and demand that I pay them all their income? What protects me if an employee sues me to collect income that I withheld as ordered?

Answer: Your payment to the MiSDU in accordance with an order of income withholding discharges your liability to the employee as to that portion of the employee's income. No one can stop your employee from filing a lawsuit, but lawsuits will be dismissed immediately upon learning that you have simply obeyed an income-withholding order.

(16) What do I do if an employee who is subject to an income-withholding order quits, is fired, or otherwise stops working for my company?

Answer: You must notify the friend of the court if the employment relationship ends for any reason, or is interrupted for a period of 14 or more consecutive days. In case of a termination, you must also provide the friend of the court with the employee's last known address and the name and address of the employee's new employer (if you have that information).

(17) What happens if, knowing of an existing order for income withholding, I refuse to hire the support payer because of the order being in place, or if I take disciplinary action against a current employee because of an income-withholding order?

Answer: An employer is guilty of a misdemeanor if, because of knowledge of an order of income withholding, that employer refuses to employ someone, or discharges, disciplines, or penalizes a current employee. The misdemeanor is punishable by a fine up to \$500 and full restitution to the employee, including both reinstatement and back pay.

(18) As an employer, do I have an obligation to provide the friend of the court with any other information about an employee who is subject to an income-withholding order?

Answer: Yes, upon the friend of the court's request, you must provide the employee's full name and address, social security number, date of birth, amount of wages or other income, and employment status, plus information about any dependent health care coverage that the employee can obtain as a benefit of employment. The State Court Administrative Office has standard forms (FOC 22 and FOC 22a) that employers can use to provide that and other information about the employee to the FOC and the court.

Employers can view and print those forms at:

<http://courts.michigan.gov/scao/courtforms/domesticrelations/investigation/foc22.pdf>

and

<http://courts.michigan.gov/scao/courtforms/domesticrelations/investigation/foc22a.pdf> .

(19) The Q&A's above have referred to "Michigan law" and "the law" several times. How can I find the statutes that govern child support enforcement?

Answer: Here are the names of the most important laws, together with the citations that an attorney would use to find them in a law book or on the Internet.

Friend of the Court Act:

Michigan Compiled Laws 552.501 - 552.535.

Support and Parenting Time Enforcement Act:

Michigan Compiled Laws 552.601 - 552.650.

Section 303(b) of the federal Consumer Credit Protection Act (CCPA):

15 USC 1673(b)

Uniform Interstate Family Support Act:

Michigan Compiled Laws 552.1101 - 552.1901.

Payment of Wages and Fringe Benefits Act:

Michigan Compiled Laws 408.471 - 408.490.

A Special Note to Employers

As an employer, you make a valuable contribution to the lives of children when you comply with an income-withholding order by withholding part of an employee's income and forwarding those support payments to MiSDU on a timely basis. Michigan employers are valued partners in one of the most effective child support enforcement programs in the nation. This partnership between the public and private sectors helps to ensure that Michigan's children have the financial ability to lead happy and healthy lives.