

# Michigan's New Wage Garnishment Procedures: What Employers Need To Know

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# AGENDA

- What are garnishments, and why should my business care?
- Key changes to Michigan's garnishment law
- Best practices
- Questions

BACKGROUND:  
WHAT ARE GARNISHMENTS,  
AND WHY SHOULD MY  
BUSINESS CARE?

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## WHAT IS A GARNISHMENT?

- A garnishment is a form of attachment by which a debtor's money or property that is in the hands of a third party (e.g., an employer) may be subjected to the payment of a creditor's claim.
- The purpose of a garnishment is to preserve the principal defendant's assets that are held by a garnishee so that those assets are available to satisfy a creditor's claim against the principal defendant.

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## WHY SHOULD MY BUSINESS CARE?

- In 2013, 7.2 percent of employees had their wages garnished.
- Many employers treat the administration of a garnishment as an informal and routine business matter. However, there are complex rules governing garnishment procedures that employers must know.
- Currently, creditor garnishments expire every 182 days. Most creditors reissue garnishments quickly after one expires that the employer must respond to and comply with.
- Failure to comply with strict garnishment rules and procedures can result in a default judgment being entered against your company. This means that the company is subject to a judgment against it for the full amount of the employee's debt!

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## HELP IS ON THE WAY!

- Effective September 30, 2015, the law in Michigan will change how garnishments are handled.
- The new law offers Michigan employers much needed relief from the burdensome garnishment laws currently in effect. The new changes include:
  - Garnishments continue indefinitely until the debt is paid off.
  - The judgment creditor is required to provide a statement of balance to the garnishee.
  - The judgment creditor must provide the defendant and the garnishee a release of garnishment after the balance of the judgement is paid in full.
  - Better relief from default judgments.

# KEY CHANGES TO MICHIGAN'S GARNISHMENT LAW

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## ONE GARNISHMENT, ONE NOTICE

- Under the current law, a garnishment must be renewed and reissued every 182 days. Garnishees receive a \$6 fee every time the garnishment is renewed.
  - This creates an administrative burden on employers and the potential for notices to get lost or misplaced.
  - Increases the likelihood of a default judgment being entered for failing to respond to the garnishment notice.
- Under the new law, a garnishment of periodic payments remains in effect until the balance of the judgment is satisfied.
  - Employers will receive a one-time \$35 fee at the time the garnishment is served on the garnishee.

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# PRIORITY OF GARNISHMENTS

- A garnishee is not liable for a garnishment to the extent the garnishee must satisfy *another* garnishment against the same individual if:
  - The other garnishment is a higher priority
    1. An order of income under the Support and Parenting Time Enforcement Act, MCL 552.602.
    2. A levy from the State of Michigan or state governmental unit to satisfy a tax liability.
  - The other garnishment has the same priority but was received at an earlier date.
- If a garnishment of periodic payments is suspended, and that order is later set aside, the garnishment retains its priority.

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## NOTICE TO THE GARNISHEE

- A garnishment of periodic payments or a notice of failure is not valid or enforceable unless the garnishment is served on the garnishee in accordance with the Michigan court rules.
- This eliminates a common practice of judgment creditors who mail garnishments to branches or local offices of employers.
  - This practice increased the likelihood that garnishments would be mishandled.
- Under the new law, garnishments must typically be delivered to the employer's principal place of business or to the registered agent.

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# JUDGMENT CREDITOR RESPONSIBILITIES

- While a garnishment of periodic payments is in effect, a judgment creditor *must* do both of the following:
  1. At least once every six months after the judgment creditor receives the first payment under the garnishment, provide to the garnishee and defendant a statement setting forth the balance remaining on the judgment.
    - However, failure to send a timely statement does not affect the garnishment or any obligation of the garnishee under the garnishment.
  2. Within 21 days after the balance of the judgement has been paid in full, including all interest and costs, provide the garnishee and defendant a statement of release.

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# REQUESTING A DEFAULT JUDGMENT

- The new law provides more opportunities for a garnishee to respond to a garnishment notice before a default judgment is entered.
- Now, a judgment creditor may not *request* that a default be entered against a garnishee unless:
  1. The garnishee fails to file a disclosure within 14 days after service of the garnishments *and* the judgment creditor has served on the garnishee a notice of failure setting forth the required act or acts the garnishee has failed to perform; and
  2. The garnishee has failed, within 28 days after the date of service of the notice of failure, to cure the identified failure by mailing to the judgment creditor and defendant a disclosure certifying that the garnishee will begin withholding any available funds.

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## OBTAINING A DEFAULT JUDGMENT

- When requesting that a court enter a default, a judgment creditor must attach proof of serving the notice of failure.
- The judgment creditor must also send a copy of the request for default by certified mail to the garnishee (1) at the garnishee's principal place of business, or (2) to the garnishee's registered agent.
- After receiving a copy of the request, the garnishee may avoid a default judgment by curing the identified failure.
  - The garnishee must mail to the court, judgment creditor, and defendant, a disclosure certifying that the garnishee will immediately begin withholding any available funds.

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## OBTAINING A DEFAULT JUDGMENT, cont.

- After providing a court with the required notices of default, a judgment creditor may request a default judgment for an amount that does not exceed the full amount of the unpaid judgment, interest, and costs.
- The judgment creditor must also send a copy of the request for default judgment by certified mail to the garnishee at the garnishee's principal place of business or to its registered agent.

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# SETTING ASIDE A DEFAULT JUDGMENT

- Under the current law, it is very difficult for an employer to have a default judgment set aside due to neglect or delay.
- Under the new law, employers are given a 21 day grace period to file a motion with the court requesting that the default judgment be set aside if:
  - If the garnishee certifies by affidavit that its failure to comply with the garnishment was inadvertent or caused by an administrative error, mistake, or other oversight; and
  - It will immediately begin withholding any available funds or immediately begin performing any other required act; then
- The court must reduce the default judgment to not more than the amount that would have been withheld if the garnishment had been in effect for 56 days.

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## SETTING ASIDE A DEFAULT JUDGMENT, cont.

- A court must also set aside a default judgment if:
  1. The garnishee was not liable to the defendant for any periodic payments after service of the garnishment.
  2. The garnishment, notice of failure, request for entry of a default, or request for default judgment was not properly served.
  3. The notice of failure was materially inaccurate or incomplete.

# BEST PRACTICES

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## ESTABLISH PROCEDURES

- The most common cause of a default judgment is failing to get the notice of garnishment to the individual responsible for administering the garnishment.
- Develop a process detailing the steps your company will take from receipt of a garnishment through its release.
- Know when to ask for help!
- Even though entry of a default judgment is now a multi-step process, do not wait until you receive notice of a default judgment.

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## A DEFAULT JUDGMENT HAS BEEN ENTERED – NOW WHAT?

- One of the troubling consequences of the garnishment process is that an employer can be liable for its employee's debt if they do not properly comply with garnishment rules and procedures.
- The new law allows employers to recoup the money from a default judgment from the employee.
  - The Michigan Payment of Wages and Fringe Benefits Act will allow for any money paid by the employer for a default judgment to be withheld from the employee's wages *without written consent*.

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## RECOUPING MONEY FROM THE EMPLOYEE

- Before deducting money from the employee, the employer must:
  1. Give the employee written notice of a deduction at least one pay period in advance;
  2. Not deduct more than 15 percent of the employee's gross wages per pay period; and
  3. Not reduce the employee's gross wages to a rate below the greater of the state or federal minimum wage.

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## CONCLUSION

- Many Michigan employers feel that these changes are long overdue and address many of the burdensome procedures and penalties that employers are currently subject to.
- These reforms ensure that:
  - Employers receive better compensation for administering garnishments.
  - There are reduced administrative burdens.
  - Provide employers with protections from unreasonable judgments against them for minor administrative errors.
  - Allow the employer to recover money it had to pay as a result of an employee's debts.

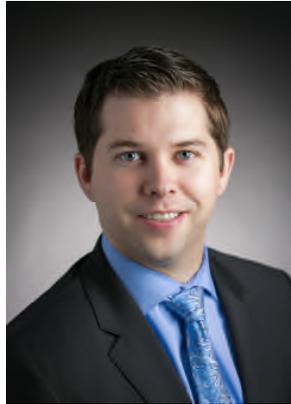
QUESTIONS?

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**THANK YOU**



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