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ARTICLE

Administrative Wage Garnishment

When an employee's student loan becomes the employer's problem.

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Student loan debt in the United States increased by about 109 percent in the last decade, growing from around $800 billion at the beginning of 2010 to nearly $1.7 trillion at the beginning of 2020. The overwhelming majority of student loans, about $1.5 trillion, are loans made or guaranteed by the federal government. Among adults with outstanding student loan debt, the Federal Reserve estimates that around 17 percent—or nearly one in every five adults with student loan debt—are behind on their payments. Borrowers face obvious risks when they default on their student loans, but their employers may face related risks. For small businesses especially, these risks may have substantial financial impacts.

Specifically, employers may expose themselves to substantial liability by failing to comply with a withholding order from an entity seeking to garnish an employee's wages to repay federal student loans. To mitigate this risk, employers need to train employees who are responsible for responding to garnishment orders to understand that federal law does not require a court order for certain types of garnishment, and the employer is not excused from compliance even if the employee borrower contests the debt. State laws do not apply to this type of garnishment. Thus, even if the employee works in a location where state law prohibits wage garnishment, federal administrative wage garnishment laws are still enforceable.

Student loans made under the Federal Family Education Loan Program (FFELP) are one example of federal debts that can be collected through administrative wage garnishment. 20 U.S.C. § 1071 et seq. Private lenders made student loans directly to eligible students at eligible colleges and universities under the FFELP before 2010. *Id.* Certain guaranty agencies or state agencies guaranteed those loans, and the U.S. Department of Education "subsidized and reinsured" them. Although Congress has not authorized new student loans under the FFELP since 2010, about $257 billion of FFELP loans were still outstanding at the beginning of 2020.

When a borrower defaults on a student loan made under the FFELP, a guaranty agency may garnish up to 15 percent of the borrower's "disposable pay" and apply it to the borrower's outstanding balance. 20 U.S.C. § 1095a(a). Federal regulations define "disposable pay" as the remaining portion of a borrower's compensation after "the deduction of health insurance premiums," Social Security taxes, and other withholding taxes. 34 C.F.R. § 682.410(b)(9)(ii)(C).

Before a guaranty agency can garnish a borrower's wages, the guaranty agency must mail the borrower a written notice at least 30 days before the garnishment. 20 U.S.C. § 1095a(a)(2). The written notice must describe (1) the nature and amount of the debt, (2) the intention of the agency to collect the debt through deductions from disposable pay, (3) an explanation of the borrower's rights, (4) the deadlines by which a borrower must exercise those rights, and (5) the consequences of a failure to exercise those rights in a timely manner. 34 C.F.R. § 682.410(b)(9)(i)(B)(1)–(5). The guaranty agency must also provide the borrower with an opportunity to (1) inspect and copy records relating to the debt, (2) enter into a written agreement with the guaranty agency under terms agreeable to the head of the guaranty agency or his or her designee to establish a schedule for the repayment of the debt, and (3) have a hearing on the determination of the guaranty agency concerning the existence or the amount of the debt and concerning the terms of the repayment schedule. 20 U.S.C. § 1095a(3)–(5).

If the borrower does not make a timely response to the guaranty agency, the guaranty agency

> must send a withholding order to the employer within 20 days after the borrower fails to make a timely request for a hearing, or, if a timely request for a hearing is made by the borrower, within 20 days after a final decision is made by the agency to proceed with garnishment.

34 C.F.R. § 682.410(b)(9)(i)(R).

A guaranty agency's withholding order must contain "only such information as may be necessary for the employer to comply with the withholding order." 20 U.S.C. § 1095a(c). Federal regulations provide that, at a minimum, the withholding order must include "the borrower's name, address, and Social Security Number, as well as instructions for withholding and information as to where the employer must send payments." 34 C.F.R. § 682.410(b)(9)(i)(S).

An administrative wage garnishment order can be printed on plain paper and delivered to an employer by regular mail. This lack of formality may cause an employer to question whether the

order is legitimate or, worse, to disregard it altogether. While it is prudent for an employer to contact the garnishing agency to request verification that it sent the order, an employer has no right to obtain additional details about its employee's student loan debt beyond the limited information that federal law requires in the order. An employer should not delay garnishment based on questions about the underlying debt, even if the employee borrower claims the debt is in dispute or has been paid in full. The agency that issued the order will send notice directly to the employer if the borrower takes action that results in modification or cancellation of the garnishment order.

If an employer fails to comply with a withholding order, "[t]he guaranty agency must sue any employer for any amount that the employer, after receipt of the withholding order . . . fails to withhold from wages owed and payable to an employee under the employer's normal pay and disbursement cycle." 34 C.F.R. § 682.410(b)(9)(i)(P). In addition, the employer is liable for "attorneys' fees, costs, and, in the court's discretion, punitive damages." 20 U.S.C. § 1095a(a)(6).

As many courts have stated, once a guaranty agency sues an employer for failing to comply with a garnishment order, there are no defenses available to the employer. *See, e.g.*, *Educ. Credit Mgmt. Corp. v. Wilson*, 2005 WL 1263027, at *3 (E.D. Tenn. May 27, 2005) ("[T]he text of the wage garnishment provision offers a borrower's employer no defenses to a wage garnishment order[.]"); *Educ. Credit Mgmt. Corp. v. TKD Auto., Inc.*, 2020 WL 5503681, at *6 (M.D.N.C. Sept. 11, 2020) ("Section 1095a(a)(6) simply offers the employer no defense for not complying with a lawful garnishment order[.]"). "The only defense available is for the debtor to challenge the existence or the amount of the debt." *Educ. Credit Mgmt. Corp. v. Cherish Prod., Inc.*, 312 F. Supp. 2d 1183, 1186 (D. Minn. 2004). However, only the employee—not the employer—may challenge the existence or the amount of the loan. *See Wilson*, 2005 WL 1263027, at *3 ("To be clear, the wage garnishment provision enables the borrower, not the borrower's employer, to contest the loan." (citing 20 U.S.C. §§ 1095a(a)(5) and 1095a(b))).

Student loan defaults will continue even if today's troubled economy rebounds, so employers, especially small businesses, should be prepared to respond promptly to federal wage garnishment orders. Employers that resist compliance with such orders only hurt themselves by inviting a lawsuit in which they will finance both sides of the litigation.

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