

As an employer, do I have an obligation to provide any other information to the friend of the court?

Yes, upon the friend of the court's request, you must provide a parent's full name and address, social security number, date of birth, amount of wages or other income, employment status, and information about dependent health care coverage available as a benefit of employment.

Laws pertaining to income withholding

***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.

***Consumer Credit Protection Act:** Section 303(b) of Title III of Public Law 90-321, 15 USC, 1673(b)

***Uniform Interstate Family Support Act (UIFSA):** 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 are making a valuable contribution to the lives of children when you withhold and forward support payments on a timely basis. You have become a valued partner in one of the most effective support enforcement programs in the nation. This continued partnership between the public and private sectors will ensure that Michigan's children have the opportunity to lead happy and healthy lives.

Partnership For Children:

An Employer's Guide to Income Withholding

*Developed by the
Michigan Supreme Court
State Court Administrative Office
P.O. Box 30048
Lansing, Michigan 48909
<http://www.courts.michigan.gov/scao>*

This publication is produced with IV-D Funds

Introduction

As an employer and a taxpayer, you should be aware that federal and state programs have been established to ensure that parents support their children. These programs encourage family responsibility and reduce taxpayers' costs in providing welfare benefits for the care of children. As a part of these programs, employers served with an order of income withholding must withhold income and transmit it to the Michigan State Disbursement Unit (MiSDU).

All parents who pay court-ordered support are subject to income withholding. The law requires income withholding to take place immediately for almost all new or modified support orders. Income withholding for child support is not a punishment. Rather, it is similar to withholding income tax.

This pamphlet is intended to serve as a brief summary of your legal responsibilities as an employer of a person ordered to pay support.

Who must withhold income?

Any employer or other person, referred to as a "source of income", who is served with notice of income withholding and owes or will owe income to the payer (the person who owes support). Income includes, but is not limited to, the following:

- salaries, earnings, wages, commissions, bonuses, vacation payments;
- payments due or to be due in the future from a profit-sharing plan, pension plan, insurance contract, or annuity; and
- any amount of money due to the payer as a debt of any other person, including debts of all kinds of businesses.

Must I obey an income withholding order issued by another state?

The Uniform Interstate Family Support Act allows an income withholding order from another state to be sent directly to a support payer's employer. After receiving the income withholding order, the employer is required to do the following: (a) treat an order that appears regular on its face as if the order had been issued by this state; (b)

immediately provide a copy of the order to the support payer; and (c) withhold and distribute the money as directed in the order.

When must income be withheld?

An order of income withholding is binding on an employer seven days after the employer is served with notice of the income withholding. The notice may be served by ordinary mail, and will give the date of mailing, the date to begin withholding, and where to send the money withheld.

How often do I have to send in the amounts I withhold?

Amounts withheld must be paid to the State Disbursement Unit within three days after the date withheld.

How do I know if the amount to be deducted changes?

The friend of the court is required to advise you if the order is changed. If the friend of the court serves the employer with a notice of modification of the order of income withholding, the amount withheld must be changed to conform with the court ordered modification within seven days after receipt of the notice of modification.

How long do I continue withholding money?

The order remains in effect until further order of the court. The friend of the court will send the employer a written notice to stop the withholding.

What if the employee's income is subject to garnishment or other withholding orders?

An order of income withholding for child support has priority over all other legal process under state law against the same income. This means it takes precedence over garnishments and other payroll deductions (except taxes, social security deductions, and other income withholding orders for support). However, you may be prevented from withholding the income under federal bankruptcy law and may wish to consult with your attorney if given notice of a bankruptcy stay.

What happens if I don't withhold the money?

An employer is required to implement income withholding within 7 days of the order. An employer is liable for any amount that it knowingly and intentionally fails to withhold from the employee's income except as the payment amount is limited by the Consumer Credit Protection Act.

This means the court will require you to pay the amount you should have withheld, even if you have paid it to the employee. The court may also find an employer in contempt of court for failure to obey the order.

Isn't there some limit to the amount I can take out?

The maximum amount taken out must comply with Section 303(b) of the Consumer Credit Protection Act (15 USC 1673(b)). Although deductions for garnishments normally are limited to 25% of a person's disposable income, amounts withheld for child support can exceed 50% of the employee's disposable income for a work week in certain cases (such as when the payer has no other dependents or there is an arrearage in excess of 12 weeks). If the income withholding order requires withholding of more than 50% of the employee's income, you should contact the friend of the court for information, or consult with your attorney.

What do I have to include with the payment to identify it as a support payment?

An employer must identify each withholding payment by the employee's name and social security number, case number, amount withheld, and the date on which support was withheld from the employee's income. The employer must also provide its federal employer identification number with the payment. An employer may meet these requirements through the use of an automated reporting system established by the Michigan State Disbursement Unit.

What happens if I receive more than one withholding order for the same person?

If there is more than one order of income withholding against an employee, and the total

amount to be withheld exceeds the limits imposed by Section 303(b) of the Consumer Credit Protection Act, the payments have to be allocated in the following manner:

a. If the total amount in the orders designated as current support exceeds the amount available for income withholding, you must allocate to each order a percentage of the amount available for income withholding (i.e., the amount of current support in that order divided by the total amount of current support in all the orders).

For example:

If you receive two orders, one for \$60 and one for \$90 for a total of \$150, and the maximum allowed by law for withholding is \$125, you will need to allocate the \$125 between the two orders. The \$60 order represents 40% of the total and the \$90 order represents 60%. You would pay 40% of \$125, (i.e., \$50) on one order and 60% of \$125 (i.e., \$75) on the other order.

b. If the total amount in the orders designated as current support does not exceed the amount available for income withholding, you must pay all amounts of current support. The remaining amount available for income withholding must be allocated among the orders according to the percentage of past due support each order represents of the total past due support.

For example:

You have received two orders, one for \$40 per week current support and \$25 per week on arrearages and a second for \$50 per week current support and \$15 per week on arrearages, for a combined total of \$130 per week. Based upon the employees' income, the maximum withholding that would be allowed by law is \$120 per week. The law requires that you pay the current amount on each order first, or a total of \$90. This would leave \$30 available for arrearage payments, with combined orders of \$40. To calculate the appropriate arrearage payment, you would establish percentages of the total by dividing the total amount ordered for arrearages, \$40, by the

amount required on each order. Thus, the \$25 per week order is 62.5% of the total and the \$15 per week order is 37.5% of the total. Using these percentages, payment on the first order would be \$40 current plus \$18.75 on arrearages (62.5% of \$30) and the payment on the second order would be \$50 current plus \$11.25 on arrearages (37.5% of \$30).

Note: FOC Form 11 (Notice of Income Withholding) provides a breakdown of order information. Contact the friend of the court for a copy of FOC Form 11.

The withholding order requires dependent health care premiums to be paid to the insurer or plan administrator. What if the amount of support and premium to be withheld exceeds 50% of the employee's pay?

Money withheld must first be applied to pay the full amount of current and past due support. The premium must be withheld only if it does not exceed what is allowed by the Consumer Credit Protection Act when it is added to the support amounts paid. The employer is not required to pay any portion of the premium from its own funds unless required by its agreement with the parent.

I have several employees subject to income withholding for support. Must I write a separate check for each one?

When you are subject to more than one income withholding order with the same friend of the court office, you may combine in a single payment all amounts withheld. The payment must identify the portion of the payment that is attributable to each employee, and include the employee's name, social security number, and case number.

Can I charge the employee for the costs associated with withholding?

Currently, Michigan law does not allow deduction of a fee for processing Michigan income withholding orders. For an order from another state, an employer may deduct a fee if allowed by the law

of the state of the employee's principal place of employment.

What if the employee says they do not owe the money and demands I pay them? What protects me if I am sued for these wages?

Your payment to the State Disbursement Unit in accordance with an order of income withholding discharges your liability to the employee as to that portion of the employee's income.

What do I do if the person quits, is fired, or otherwise stops working for our company?

After you have been served with an order of income withholding, you must notify the friend of the court if the employee is terminated from your company or his or her employment is interrupted for a period of 14 or more consecutive days. In case of termination, you must provide the employee's last known address and the name and address of the employee's new employer (if known).

What happens if I refuse to hire, or if I take disciplinary action against an employee because of the income withholding?

An employer who refuses to employ, discharges, disciplines, or penalizes an employee because of an order of income withholding entered against that employee is guilty of a misdemeanor. The misdemeanor is punishable by a fine up to \$500 and with full restitution to the employee, including reinstatement and payment of back pay.