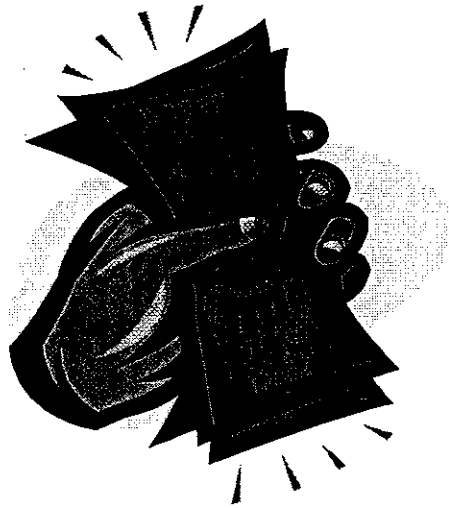


Wage Garnishment



What is it?

How do I avoid it?

How do I challenge it?

TABLE OF CONTENTS

| | |
|---|----------|
| What is Wage Garnishment? | 3 |
| When will that happen? | 3 |
| How much can be taken from my paycheck and how often? | 3 |
| Can Other Cash Payments I Receive Be Taken By My Creditors? | 4 |
| How Will I Know When My Wages Are Being Garnished? | 4 |
| How Can I Avoid Wage Garnishment? | 5 |
| Payment to Avoid Garnishment | 5 |
| appointment of a trustee | 5 |
| budget or debt counseling | 6 |
| Why is it Better to Use a Court Trustee or Debt Counseling Service | 7 |
| How Can I Avoid Future Wage Garnishments? | 7 |
| Court Hearing | 8 |
| When should I request a hearing? | 8 |
| How do I request a hearing? | 8 |
| When will the hearing be held? | 9 |
| What can I argue at the hearing? | 9 |
| What will happen at the hearing? | 9 |
| What will happen after the hearing? | 10 |
| Can I get the amount of the payment I owe changed? | 10 |
| FORMS and SAMPLES | 11 |
| Sample Demand Letter from Creditor | 12 |
| PAYMENT TO AVOID GARNISHMENT | 13 |
| PAYMENT TO AVOID GARNISHMENT (Sample) | 14 |
| Request for Hearing | 15 |
| Affidavit for Appointment of Trustee | 16 |

created by: Tracy Ulstad
NAPIL Equal Justice Fellow

revised by: Michael R. Smalz
Senior Attorney

Ohio State Legal Services Association
Columbus, OH 43215-1137

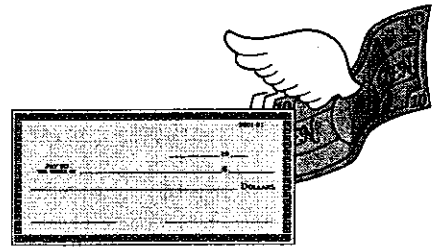
Rev. 2/2008

©2001 Ohio State Legal Services Association
Ohio State Legal Services Association ®
Southeastern Ohio Legal Services ®

Wage Garnishment

What is Wage Garnishment?

Money that you owe to someone that is taken from your paycheck BEFORE you get your paycheck.



When will that happen?

Once a judge has decided that you owe money (the court orders a judgment against you), the person you owe can ask the judge to take that money from your paycheck.

How much can be taken from my paycheck and how often?

⇒ **HOW MUCH?** Only 25% of your “disposable earnings” can be taken to pay your creditors. “Disposable earnings” is the amount you earn for one pay period, after taxes have been taken out.

For example, if you get paid \$360 (after taxes) every two weeks, your creditors can only take up to \$90 from each of your paychecks (25% of \$360 = \$90).

If you pay child support, the amount that can be taken from your paycheck will be even less.

For example, if you get paid \$360 (after taxes) every two weeks and pay \$120 per month in child support (\$60 out of each paycheck), your creditors can only take \$30 from each of your paychecks (25% of \$360 = \$90 – \$60 for child support = \$30).

⇒ **HOW OFTEN?** Under Ohio law, after one creditor has garnished your wages, no creditor can request to garnish more of your wages until 30 days have passed.

Can Other Cash Payments I Receive Be Taken By My Creditors?

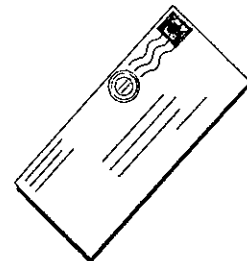
The following cash payments cannot be garnished—they are “*exempt*” from garnishment:

- worker’s compensation payments
- unemployment compensation benefits
- Ohio Works First cash assistance payments
- disability assistance payments
- insurance proceeds or interest in policy, including:
 - group insurance
 - life/endowment insurance and annuities
- spousal support and child support payments (to the extent necessary for support)
- Social Security and Supplemental Security Income (SSI) payments
- pensions up to at least \$54,000
- veterans’ benefits



How Will I Know When My Wages Are Being Garnished?

- ① Between 15– 45 days after the court decides that you owe money (the court orders a judgment against you), the creditor to whom you owe money will send you a letter demanding payment. A sample demand letter is shown on page 6 of this packet.
- ② If you do not do anything in response to this demand letter, your employer will give you some papers, including an ***Order and Notice of Garnishment and Answer of Employer***, a ***Notice to Judgment Debtor***, and a ***Request for Hearing*** form. You will receive these papers before any money is deducted from your paycheck.



The ***Notice to Judgment Debtor*** lets you know:

- ⇒ that some of your earnings will go to the person you owe, instead of into your paycheck;
- ⇒ that you have a right to keep some of your money from your paycheck;

⇒ how the amount of money that will be given to the person you owe was calculated by your employer;

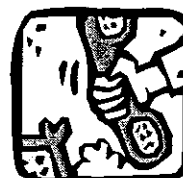
The specific calculations will be shown in the *Order and Notice of Garnishment and Answer of Employer*.

⇒ that you have a right to a hearing if you do not agree with the amount of money they are taking from your paycheck

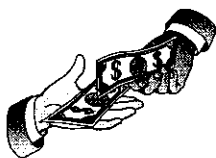
To get a hearing you must return the *Request for Hearing* form within five days of the day you receive the *Notice to Judgment Debtor*.

How Can I Avoid Wage Garnishment?

① Call the company or person that has a judgment against you. They might be willing to accept a payment plan, or even payment of less than the full amount. If you make a deal, be sure it is in writing and signed by both sides.



② Within 15 days of receiving the “Notice of Court Proceedings to Collect Debt,” do one of the following things:



→ Pay your creditor the amount due. Oftentimes, the first letter you receive demanding payment will contain a form called “**Payment to Avoid Garnishment**.” Have your employer complete this form and return it to your creditor with the payment due. You can use the fill-in-the-blank form found on page 7. Fill in the blanks using the sample on page 8 as a guideline.

or



→ Apply to your local municipal or county court for the **appointment of a trustee**. A trustee is a person who will collect the portion of your wages that will be garnished and divide it between your creditors until your debts are paid off. (This cannot be done if your debt is a late child support payment.) To apply:

Step 1: Fill in the “**Appointment of Trustee Affidavit**” provided in this packet on page 10. To complete this form you

will need to know the following information:

- the names and addresses of all your creditors,
- the amount of their claims,
- the amounts due on their claims, and
- the amount you will pay to your trustee each payday.

Step 2: Sign the affidavit in front of a notary (most lawyers are notaries and most banks have notaries as well). Have the notary sign and stamp it. Make three copies of the affidavit — after you and the notary have signed it.

Step 3: Take the original affidavit and copies to the municipal or common pleas court where you live (if you don't live in Ohio, go the Ohio court where your place of employment is located). The court will time-stamp all copies and give you a copy for your records.

Step 4: The court will designate the clerk of court to act as trustee. You will make payments to the trustee each pay period and the trustee will distribute such funds to your creditors.

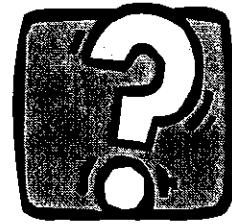
After you get a trustee appointed, call each of your creditors and let them know that you have applied for the appointment of a trustee. Once you do this, none of these creditors can garnish your wages.

WARNING: If you fail to make payments during each pay period, the trusteeship will be terminated and you will be subject to wage garnishment. You will not be able to request a new trusteeship until six months have passed.

- Join a budget or debt counseling service for an adjustment of debts and creation of payment schedule. You will be required to sign an agreement stating that you will make regular payments to the service for distribution to your creditors. These payments will be made until your debts are fully paid.

WARNING: If you fail to make any payment to the counseling service within 45 days of its due date, the service will notify your creditors of this failure and you will be subject to wage garnishment proceedings.

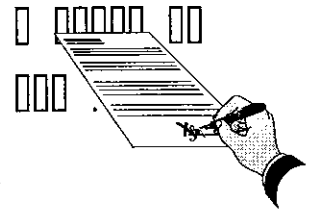
Why is it Better to Use a Court Trustee or Debt Counseling Service to Pay My Debts . . . What's So Horrible About Wage Garnishment?



- ❶ Wage garnishment requires that your employer complete extra paperwork, which they may find time-consuming and annoying. In addition, it is never good to let someone you work for know that you are having difficulty paying your bills — this makes you look disorganized. If you have a trustee or debt counseling service pay your bills, your employer is not required to do any extra work and may not ever become aware of your financial difficulties.
- ❷ Although you cannot be fired for having one wage garnishment, if you have **more than one** wage garnishment in a twelve-month period, your employer can fire you and the law will do nothing to protect you.
- ❸ A debt counselor will help you budget all of your bills and provide you the help you may need to get your finances back in order.

How Can I Avoid Future Wage Garnishments?

Contact a **consumer credit counseling service**. They will help you enter into an agreement regarding payment of your debts (called an “agreement for debt scheduling”). Under such an agreement, you will have to regularly pay a portion of your income to the consumer counseling agency who will send some of this money to each of your creditors until the debts subject to the agreement are paid off. If you have such an agreement and make regular payments to the consumer counseling agency, creditors getting payments under this agreement cannot garnish your wages.



Court Hearing

You have the right to a court hearing if you disagree with the amount of money being taken from your check.

When should I request a hearing?

If you dispute the judgment creditor's right to garnish your personal earnings because:

❶ too much money is being deducted from your paycheck, such as:

- the amount being deducted is greater than 25% of your paycheck, or
- some of your earnings are exempt (disability, worker's compensation, OWF payments)



❷ your judgment creditor did not mail you a written demand for payment at least 15 days and not more than 45 days before requesting garnishment of your wages, or



❸ you have already paid the judgment.



How do I request a hearing?

Complete the "**Request for Hearing**" form and mail it to the Clerk of Courts. You should get a copy of the **Request for Hearing** form with the **Notice to Judgment Debtor** letter sent to you by the Court. If this form was not sent to you, a copy of the form is also contained in this packet on page 9.

Fill in the blanks and mail the form back to the Court.

On the **Request for Hearing Form**, you can explain why you disagree with the amount you are supposed to pay your creditor. However, you don't have to give any reasons until the court hearing.

You must mail this Request for a Hearing form to the Court within 5 days of receiving the "Notice to Judgment Debtor" letter. If you do not mail this form to the court in this time period, your wages will be garnished and you can do nothing to prevent it.

When will the hearing be held?

If you send in the Request for Hearing form within five days of receiving it, the court will schedule a hearing no later than 12 days after receiving your request.

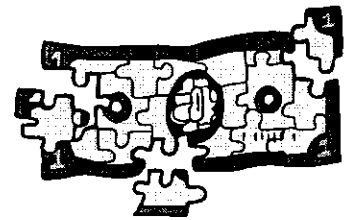


You and your creditor will receive a letter from the court telling you the date, time, and place of the hearing.

What can I argue at the hearing?

You can only argue that the wrong amount is being taken from your paycheck.

- Only 25% of each paycheck can be taken by your creditors and the following cash payments cannot be taken by creditors: worker's compensation, unemployment compensation, disability payments, OWF payments, or child support or spousal support received.
- If you pay child support, the amount that can be taken will be even less than 25%.



You cannot argue that you do not owe the money. The court has already determined that you owe money and there is nothing you can do to challenge that.



What will happen at the hearing?

The judge will decide how much money should be taken from your paycheck to pay your debt.

What will happen after the hearing?

Your wages will be garnished (money will be taken from your paycheck) until:

1. The amount you owe is paid off.
2. You get a trustee appointed to you.
3. A bankruptcy court issues an order that stops the payment.
4. A court decides that you owe money to someone else, and that debt is more important. The new debt will be paid from your paycheck instead. (No matter what, no more than 25% of each paycheck can be taken by creditors.)

Can I get the amount of the payment I owe changed?

The word "YES" is written in a large, bold, black, stylized font with a white outline and a slight shadow effect, slanted upwards to the right.

Yes, but only if you do all of the following things:

1. You and your creditor (the person you owe) BOTH ask for a change in the amount of money,
2. You and your creditor (the person you owe) BOTH agree to a new amount, and
3. The court agrees to the new amount and issues another order reflecting this amount.

KEEP IN MIND

It is against the law for your employer to fire you from your job solely because your wages are being garnished **unless** there has been more than one garnishment in any 12-month period.

FORMS and SAMPLES

(Sample Demand Letter from Creditor)

October 20, 2000

To: Joe Debtor
234 Apple St.
Cleveland Heights, OH 44321

You owe the undersigned: (Shopper Mart Inc.) \$5000, including interest and court costs, for which a judgment was obtained against you or certified in Cuyahoga County Court on September 10, 2000, payment of which is hereby demanded.

If you do not take some action within 15 days of the date of the mailing or service by the court, we will go to court and ask that your employer be ordered to withhold money from your earnings and pay it to the court to satisfy your debt. This is called garnishment earnings.

You can avoid garnishment by doing one of these things within the next 15 days: 1) pay us the amount due; 2) complete the attached form entitled "Payment to Avoid Garnishment" and return it to us with the payment, if any, shown due on it; or 3) apply to your local municipal or county court for the **appointment of a trustee** and notify us that you have applied for this appointment.

Bob Bluelight
President, Shopper Mart Inc.

PAYMENT TO AVOID GARNISHMENT

To: _____
(Name of Judgment Creditor)

Date of Mailing: _____

(Address of Judgment Creditor)

Case No. _____

City State Zip Code

_____ Court

To avoid the garnishment of personal earnings of which you have given me notice, I enclose \$ _____ to apply toward my indebtedness to you. The amount of the payment was computed as follows:

1. Total amount of indebtedness demanded: (1) \$ _____

2. Enter the amount of your earnings for one pay period (after taxes are deducted). (2) \$ _____

3. Enter your pay period (weekly, bi-weekly, semi-monthly, monthly) (3) _____

4. Enter an amount equal to 25% of the amount on line 2: (4) \$ _____

5. The current federal minimum hourly wage is (5) \$ _____

(A)

| |
|---|
| Paid weekly, 30 times minimum wage. |
| Paid bi-weekly, 60 times minimum wage. |
| Paid semi-monthly, 65 times minimum wage. |
| Paid monthly, 130 times minimum wage. |

 (5A) _____

(B) Enter the amount by which the amount on line 2 exceeds the amount on line 5(A) (5B) _____

6. Enter the lesser of the amounts on lines 1, 4, or 5(B). (6) _____
Send this amount to the judgment creditor along with this form after you have signed it:

I certify that the statements contained above are true to the best of my knowledge and belief.

(signature) _____

(printed name) _____

I certify that the amount shown on line 2 is a true statement of the judgment debtor's earnings.

(Employee's name) _____

(Employer's name) _____

(Employer's signature) _____

PAYMENT TO AVOID GARNISHMENT (Sample)

To: Shopper Mart
234 Cheap St.
Euclid, Ohio 44321

Date of Mailing: January 5, 2001
Case No. 76-1203
Washington County Municipal Court

To avoid the garnishment of personal earnings of which you have given me notice, I enclose \$42.50 to apply toward my indebtedness to you. The amount of the payment was computed as follows:

- | | |
|---|---|
| 1. Total amount of indebtedness demanded: (total amount you owe) | (1) <u>\$5,000</u> |
| 2. Enter the amount of your earnings for one pay period (after taxes are deducted). | (2) <u>\$200</u> |
| 3. Enter your pay period (weekly, bi-weekly, semi-monthly, monthly) | (3) <u>weekly</u> |
| 4. Enter an amount equal to 25% of the amount on line 2: | (4) <u>25% of \$200 = \$50</u> |
| 5. The current federal minimum hourly wage is <i>(The person you owe will fill this in)</i> | (5) <u>\$5.15</u> |
| (A) Paid once a week: 30 times minimum wage. Paid twice a week: 60 times minimum wage. Paid twice a month: 65 times minimum wage. Paid once a month: 130 times minimum wage. | (5A) <u>\$154.50</u> \$5.15 (minimum wage) x 30 (paid weekly) \$154.50 |
| (B) Enter the amount by which the amount on line 2 exceeds the amount on line 5 (A) | (5B) <u>\$42.50</u> \$200.00 (line 2) <u>-\$154.50 (line 5A)</u> \$45.50 |
| 6. Enter the lesser of the amounts on lines 1, 4, or 5(B). Send this amount to the judgment creditor along with this form after you have signed it: | (6) <u>\$45.50</u> Line 5(B) is \$45.50 Line 1 is \$5,000. Line 4 is \$50. \$45.50 is the smallest. |

I certify that the statements contained above are true to the best of my knowledge and belief.

(signature) _____

(printed name) _____

I certify that the amount shown on line 2 is a true statement of the judgment debtor's earnings.

(Employee's name) _____

(Employer's name) _____

(Employer's signature) _____

IN THE _____ COURT OF
_____, OHIO

_____))
_____)) Case No _____
_____))
_____))
Judgment Creditor) Date: _____
))
vs.))
_____))
_____)) **Request for Hearing**
_____))
_____))
Judgment Debtor))

I dispute the judgment creditor's right to garnish my personal earnings in the above case and request that a hearing in this matter be held no later than twelve days after delivery of this request to the court.

(check one)

- This is an emergency and a hearing must be held as soon as possible.
- This is not an emergency and I can wait twelve days for a hearing.

I dispute the judgment creditor's right to garnish my personal earnings for the following reasons: _____

I understand that no objections to the judgment itself will be considered at the hearing.

_____ (name)

_____ (signature)

_____ (date)

WARNING: IF YOU DO NOT DELIVER THIS REQUEST FOR HEARING OR A REQUEST IN A SUBSTANTIALLY SIMILAR FORM TO THE OFFICE OF THE CLERK OF THIS COURT WITHIN FIVE (5) BUSINESS DAYS OF YOUR RECEIPT OF IT, YOU

WAIVE YOUR RIGHT TO A HEARING, AND SOME OF YOUR PERSONAL EARNINGS WILL BE PAID TO THE CREDITOR IN SATISFACTION OF YOUR DEBT.

Creditor's Name & Address

Total Amount of Claims

Amount Due on Claims

2. I will pay the following amount of nonexempt income to the trustee appointed by the court each payday: \$_____.
3. I understand that failure to make the above-mentioned payment, every pay period until my debts are paid off, will lead to the termination of this trusteeship.

AFFIANT

State of Ohio)
 _____ County)

SS

Sworn to before me as true and subscribed in my presence by _____
 on this _____ day of _____, 20__.

 NOTARY PUBLIC
 My commission expires _____