

## 2016 NASBO STATE CONVENTION

### UNEMPLOYMENT, WORKERS' COMP & GARNISHMENTS

Presented by:

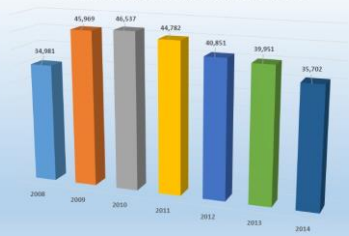
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## Unemployment

Nebraska Average Monthly Unemployed By Year



## Unemployment Benefits

- A "Contributory Employer" pays a quarterly tax on wages earned per employee per year. The tax rate is determined by a number of factors.
- A "Reimbursable Employer" elects to make payments in lieu of a quarterly combined tax; the employer is required to reimburse the Unemployment Trust Fund for all unemployment benefits paid to former employees (based on wages earned in the employment of the reimbursable employer).

## Unemployment Benefits

- Advantages of a Contributory Employer:
  - Expenses are limited pursuant to a specific formula.
  - Expense is more predictable and thus easier to budget.
  - Benefit overpayments are credited as soon as they are established.
- Disadvantage:
  - Still pay even though no claims filed.

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## Unemployment Benefits

- Advantages of Being a Reimbursable Employer:
  - If no benefits are charged, the employer pays nothing for the quarter.
  - Generally, less paperwork. (Still must file quarterly report showing number of employees and gross wages.)
- Disadvantages:
  - Still charged even in instances such as employee misconduct (after disqualification period)
  - Overpayments not reimbursed to account until paid by employee

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### Request for Separation Information Form UI 350

Request to Employer for Separation Information

**DISCLAIMER**  
This document is not intended to be used for any purpose other than to request information from the employer. It is not a contract and does not create any legal obligation. It is subject to change without notice.

**INSTRUCTIONS:** This document must be filed with the Department of Labor, Division of Unemployment Insurance, Bureau of Unemployment Insurance, 100 North 1st Street, 10th Floor, St. Paul, MN 55101. It must be filed within 30 days of the date of separation.

1. Employer Name: \_\_\_\_\_  
2. Date of Separation: \_\_\_\_\_  
3. Reason for Separation: \_\_\_\_\_  
4. Location of work: \_\_\_\_\_  
5. Date of last day worked: \_\_\_\_\_

6. Do you expect to read this document to each? ☐ Yes ☐ No. If yes, please explain how you intend to read it to each employee. If no, please explain how you intend to read it to each employee.

7. I hereby certify that the information provided on this form is true and correct to the best of my knowledge.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

This document is a form of the Department of Labor, Division of Unemployment Insurance, Bureau of Unemployment Insurance, 100 North 1st Street, 10th Floor, St. Paul, MN 55101.




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4. Explain why the claimant is no longer working for you. If the employment separation was for reasons other than **LACK OF WORK**, give details of **EACH** separation, and the separation dates if different than the last day of work above. You may attach copies of any related documents, such as company policies, written warnings, a resignation notice, etc. If needed, attach additional sheets.

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### Unemployment

- The **"Base Period"** is the one year period for which the worker's wages are considered in determining benefit eligibility
  - It is generally the first four of the last five completed calendar quarters before claim is filed
  - So, if claim is filed March 20, 2015, the base period is October 1, 2013 to September 30, 2014
  - \*\*\*An employer can receive charges over **1 ½ years** after the former employee worked there

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### Unemployment

- Any employer for whom a claimant worked since the beginning of the base period may be involved in the claim.
- Any period of employment the worker has during the benefit year may result in that employer becoming involved
- Claim renewal occurs when a worker reopens an established claim during a current benefit year
  - Follows an interruption in claims due to period of employment or other reasons for ineligibility

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## Unemployment

- **Voluntary quit.**
  - If a worker quits a job **without good cause**, a disqualification is imposed for the week of the quit, plus 2 to 13 weeks.
- **Good cause** includes: non-work related illness or injury, accompany spouse to a different job, unsafe working conditions

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## Unemployment

- **Discharge for “ordinary” misconduct.** If worker is fired for misconduct, disqualified for the week of the firing, plus 14 weeks.
- Although not in statute, misconduct defined as:
  - (1)wanton/willful disregard of employer's interests,
  - (2)deliberate violation of rules,
  - (3)disregard of standards of behavior which the employer can rightfully expect from the employee, or
  - (4)negligence with culpability, wrongful intent, evil design, or intentional and substantial disregard of the employer's interests or of the employee's duties and obligations

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## Unemployment

- Discharge for “**gross**” misconduct. If a worker is fired for gross misconduct, all benefits payable based on wages before date of such discharged are cancelled.
  - **Gross misconduct** is an act that is willful and flagrant or unlawful, e.g. theft or assault of a fellow employee during work hours.

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## Unemployment

### 48-628. Benefits; conditions disqualifying applicant; exceptions.

- **Individual shall be disqualified for benefits: \* \* \***
  - (8) For any week of unemployment if benefits claimed are based on services performed:
  - (a) In an instructional, research, or principal administrative capacity for an **educational institution, if such week commences during the period between two successive academic years or terms** or when an agreement provides instead for a similar period between two regular, but not successive, terms during such period, if such individual performs such services in the first of such academic years or terms **and if there is a contract or reasonable assurance** that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms;

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## Unemployment

- Unemployment benefits **are available for substitute teachers**, if otherwise eligible
- Stated differently: someone who substitute taught for your district for 10 days (for example) could receive unemployment benefits from your district
- Same goes for coaches and part time or seasonal employees

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## Unemployment

- Make sure a **renewal form is signed** for the upcoming school year that notes reasonable assurance of work as a substitute teacher.
- Form should provide a place for the employee to either indicate **intent to return or NOT return** for the upcoming school year.
  - A "not return" could constitute a **voluntary resignation** that may result in a disqualification for week of the quit, plus up to 13 more weeks.

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## Unemployment

- If a substitute **performs poorly**, do not simply leave him on the approved sub “list”; instead, **send notification** that he is terminated/taken off the sub list due to poor work performance.
- If a sub consistently or continually **turns down assignments**, take the same approach—let him know he is **terminated/taken off the sub list** due to the fact he is not accepting assignments
- If someone no longer wants to substitute teach, ask him to **document the fact** that he is voluntarily removing himself from employment with the district as a substitute teacher.

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## Unemployment

- Appeals:
- A written determination issued by an adjudicator concerning a question of benefit eligibility may be appealed by an employer.
- An appeal must be in writing, must state that the determination is being appealed, and must be delivered and received **within 20 days** from the **date the determination was mailed**

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## Unemployment

- Ensure **timely responses** to notices/inquiries. It is amazing how many opportunities are lost due to a lack of timely responses.
- When your school receives the initial inquiry about unemployment benefits, make sure any disqualifying information is provided (**UI350**).
- If you receive notice of an adverse determination, make sure you consider a possible appeal as **expeditiously** as possible

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## Unemployment

- **Participate** in appeal hearings.
  - Do not rely on hearsay.
  - If you have documents and witnesses that support your position, disclose them to the other side(s) and make sure they are available at the hearing.
- Prepare **documentation** of voluntary quits, termination for cause, etc. Do so at the time events occur so that the evidence is reliable

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## The Basics

- **What is an “accident”?**
  - An unexpected or unforeseen injury that occurs suddenly and violently, producing at the time objective symptoms of an injury
    - » Suddenly and violently does not mean instantaneous; rather, it means it must occur at an identifiable point in time, i.e. when an employee stopped work to seek treatment
  - Aggravation—where a work injury combines with a preexisting injury to make the injury worse, the whole disability is compensable

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## The Basics

- **“Arising out of” employment**
  - Basically, did an employment related risk cause the problem at issue?
    - » Non-strenuous walking
- **“In the course and scope” of employment**
  - Time, place and circumstances of the accident

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## The Basics

### • Reporting the “incident.”

- “In every case of reportable injury arising out of and in the course of employment, the employer . . . shall file a report thereof with the Nebraska Workers' Compensation Court.” Neb. Stat. 48-144.01
- If the incident requires more than simple first aid, REPORT IT.
  - ✦ This is NOT an admission of liability.
  - ✦ Statute of limitations concerns
  - ✦ KEY: Communicate this requirement to employees. If a first report is filed, the employee will almost certainly receive “information” from an attorney.

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## The Basics

### • Choice of Physician

- An injured employee has the right to choose his physician if the physician has previously treated the employee or an immediate family member. Neb. Stat. 48-120(2)(a)
- Generally known as a Form 50 or Choice of Physician form
- Very important to provide the employee with this form as soon as practical after an incident/injury.
  - ✦ Otherwise, the employer/insurer has almost no control over the course of treatment for the injury at issue.

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## Investigating the Claim

### • Take the Employee’s Statement

- What happened, where, when, how . . .
- Witnesses
- Previous injuries

### • Follow up with witnesses

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### Investigating the Claim

- **Continued contact with the Employee**
  - Is he or she attending his medical appointments
  - Follow up regarding medical bills
  - Return to work status and issues
  - Address problems or concerns with the process
- **Follow up with supervisors or other officials**
  - Has the employee returned to work?
  - Is he or she reporting any problems with the work?
  - Is he or she requesting a transfer to different work?
  - Is the employee declining to return to appropriate work?
- **DOCUMENT**

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### Investigating the Claim

- **Surveillance**
  - Cost-benefit analysis
  - May be useful for physicians or court
  - As with any other evidence, it may ultimately be useful for the employee
- **Social Media**

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### Investigating the Claim

- **Denying the claim**
  - Is there a "reasonable controversy" regarding the claim?
  - Penalties, interest, attorney's fees.

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## Return to Work Issues

- Temporary Partial Disability
- Temporary Total Disability
- Potential defense to temporary benefits: Employee is able to return to work but refuses to do so or is precluded from doing so for a non-injury related reason, i.e. a termination for cause

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## Return to Work Issues

- Defense to temporary benefits
  - Options:
    - Have employee attest to accuracy of the work.
    - Have the employee sign a form stating that appropriate work was available to him and he simply declines to attempt the work.
    - Identify someone who is able to address what the job requires and how the job fits within applicable restrictions.
  - Are your job descriptions accurate?
  - Do you have a policy/practice regarding accommodations?

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## Retaliation

- Exception to at-will employment.
- “[W]e recognize a public policy exception to the at-will employment doctrine and allow an action for retaliatory discharge when an employee has been discharged for filing a workers’ compensation claim.” ***Jackson v. Morris Communications Corp.*** 265 Neb. 423 (2003).
- Also applies to demotions

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## Retaliation

- “[T]he filing of a workers’ compensation claim does not insulate the employee from the requirement that he or she abide by all personnel rules . . .” **Riesen v. Irwin Industrial Tool Co.**, 272 Neb. 41 (2006).
- What happens when an employee lies with regard to his claim?

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## Workers’ Compensation

- ADA applicable to WC claims—so what?
  - There is no obligation under the ADA to create a light duty job.
  - BUT, if an injured employee is provided a light duty job that is essentially a permanent job—an accommodated regular duty job—the employee may be able to claim that he is entitled to keep the job as a reasonable accommodation.
    - So, if a job is modified for a significant period of time, employee may claim that removing such modifications violate the ADA.

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## Workers’ Compensation

- FMLA
  - “An employee may be on a workers’ compensation absence due to an on-the-job injury or illness which also qualifies as a serious health condition under the FMLA. The workers’ compensation absence and FMLA may run concurrently (subject to proper notice and designation by the employer).” 29 CFR 825.702(d)(2)

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## Avoiding Attorney Intervention

- **Communication at the outset:**
  - Required to file report of the alleged injury
    - Again, employee will likely receive information from attorneys
  - Discuss the process and benefits in general
    - Submission of bills
    - Benefits are statutorily defined—AWW, TTD, TPD, PPD, FCE, IME, MMI . . .
      - Costs of the Hammer
    - How does this impact other benefits like sick leave?

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## Avoiding Attorney Intervention

- **Factors that drive employees to attorneys**
  - Lack of understanding of the WC process.
  - Questioning severity of the injury.
    - Once a claim is accepted, this is essentially a field for experts
  - Excessive demands for documentation.
  - Premature return to work/full duty, or return to “made up” work
  - Delays in care or payments, unpaid bills and late benefit checks
    - Generally, employers have a 30 day grace period for payments, but that does not mean it should be utilized.

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## Wage Garnishments




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## Wage Garnishments

### *What is it?*

- Procedure through which the earnings of any individual are required to be withheld for payment of any debt (judgment)

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## Wage Garnishments

### *How does it start?*

- Garnishment documents:
  1. Summons and Order of Garnishment
  2. Garnishment Interrogatories
  3. Notice to Judgment Debtor form
  4. Request for Hearing form

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## Wage Garnishments

STATE OF NEBRASKA FORM NO. CG 3-1 7/83 Neb. Stat. Sec. 25-1010 REV. 6/2010	ORDER OF SUMMONS IN GARNISHMENT AND INTERROGATORIES (Prior to Judgment)	ORDER NUMBER
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IN THE COUNTY COURT OF \_\_\_\_\_ COUNTY, NEBRASKA

Plaintiff \_\_\_\_\_  
vs. \_\_\_\_\_  
Defendant \_\_\_\_\_

TO: \_\_\_\_\_

TO: THE SHERIFF OF \_\_\_\_\_ COUNTY, NEBRASKA

You will serve this summons together with the attached interrogatories upon the Garnishee herein named and make your return within **5 days**.

TO: THE GARNISHEE.  
This Order of Summons in Garnishment BEFORE JUDGMENT is based upon an Order of the Court in the sum of \$ \_\_\_\_\_ and costs.

YOU ARE OBLIGATED TO HOLD ALL PROPERTY AND CREDITS of every description of the defendant now in your possession or under your control UNTIL FURTHER DIRECTION FROM THE COURT.

WAGES MAY NOT BE GARNISHED UNTIL FINAL JUDGMENT.

YOU ARE REQUIRED BY LAW to answer the attached Interrogatories and file the same in this Court within **10 days** of SERVICE of this summons. Penalties may be imposed in the event of willful falsification.

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## Wage Garnishments

INTERROGATORIES		Document Number
IN THE DISTRICT COURT OF COUNTY, NEBRASKA		
Case ID: Old Case ID: At County: Garnishee: Caption:		
<b>WAGES</b>		
1. Is the judgment debtor currently in your employ? <input type="checkbox"/> Yes <input type="checkbox"/> No		
2. Did you owe the judgment debtor any money for wages on the date and time you were served with this garnishment? <input type="checkbox"/> Yes <input type="checkbox"/> No		
3. Will you owe earnings to the judgment debtor within the next 60 days? <input type="checkbox"/> Yes <input type="checkbox"/> No		
4. How often is the judgment debtor paid? <input type="checkbox"/> Weekly or more often <input type="checkbox"/> Biweekly <input type="checkbox"/> Semi-monthly <input type="checkbox"/> Monthly <input type="checkbox"/> Other (Please specify) _____		
5. What are the judgment debtor's earnings for the pay period? <input type="checkbox"/> \$ _____		
6. What amount are you required by law to deduct from the judgment debtor's earnings? <input type="checkbox"/> See part 3 of the Employer's Instruction Sheet		
7. What are the judgment debtor's disposable earnings for the pay period? <input type="checkbox"/> \$ _____		
8. What portion of the judgment debtor's disposable earnings are subject to this garnishment order? <input type="checkbox"/> Calculate the amount according to part 4 of the Employer's Instruction Sheet		
9. Is any portion of the judgment debtor's earnings currently withheld pursuant to any Withhold and Transmit Order, Income Withholding Order, or Garnishment Order, including an Order of Continuing Lien? <input type="checkbox"/> Yes <input type="checkbox"/> No		
If yes, attach the order and answer the question in line 10 and answer the remaining interrogatories. The amount subject to garnishment under this order for each pay period cannot exceed the amount on line 8.		
10. Answer the question in line 8 and calculate the amount subject to garnishment under this order in accordance with part 3 of the Employer's Instruction Sheet.		
11. Any portion of the judgment debtor's earnings currently withheld pursuant to:		
A. A Withhold and Transmit Order for support of a person? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> \$ _____		
If yes, what is the amount withheld for this pay period under the order? <input type="checkbox"/> \$ _____		
B. An order requiring Income Withholdings for the support of a person? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> \$ _____		

## Wage Garnishments

STATE OF NEBRASKA FORM NO. CG-3-BA Rev. 7/09 25-1011		EMPLOYERS' INSTRUCTIONS
1. The term "earnings" means compensation for personal services being, whether due or not, to the judgment debtor at the time of service of the summons and interrogatories, whether considered as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement plan. The term "earnings" excludes: (a) the portion of the judgment debtor's earnings for the pay period that are subject to garnishment under the interrogatories in these instructions; and (b) the portion of the judgment debtor's earnings for the pay period that are subject to garnishment under the interrogatories in these instructions.		
2. If you answer to the interrogatories 1 appears to the court that the judgment debtor is your employee and that you, not just the judgment debtor, receive or will owe wages for it, it is not 60 days, the judgment debtor may make an application with the court to have the garnishment earnings transferred to the court for payment to the judgment debtor. You must hold the garnishment earnings of the judgment debtor until you receive further order from the court.		
3. The amount you are required by law to deduct from the judgment debtor's earnings includes FICA, SST, and FICA.		
4. Calculate the judgment debtor's disposable earnings subject to a garnishment in accordance with these instructions, using the information on the Summons.		
A. If Line A on the Summons is checked and:		
1. If the judgment debtor's disposable earnings shown on line 7 of the interrogatories are less than these amounts, enter zero on line 11 of the interrogatories: \$217.50 for a weekly pay period, or more often; \$435.00 for a biweekly pay period; \$871.25 for a semi-monthly pay period; \$435.60 for a monthly pay period, or an equivalent amount for any other pay period; or		
2. If the judgment debtor's disposable earnings shown on line 7 of the interrogatories are within these ranges, enter the amount calculated on line 8 of the interrogatories: \$217.50 to \$435.00 for a weekly pay period or more often, enter the earnings in excess of \$217.50; \$435.00 to \$871.25 for a biweekly pay period, enter the earnings in excess of \$435.00; \$871.25 to \$435.60 for a semi-monthly pay period, enter the earnings in excess of \$871.25; \$435.60 to \$1,742.00 for a monthly pay period, enter the earnings in excess of \$435.60, or the equivalent for any other pay period; or		
3. If the judgment debtor's disposable earnings shown on line 7 of the interrogatories exceed the high end of the above		

## Wage Garnishments

### How does it start?

- Service of garnishment documents
  - Personal or residence service (i.e. by sheriff)
  - Upon the following persons:
    - "chief executive officer" (i.e. superintendent)
    - clerk or secretary
    - other official whose duty it is to maintain the official records
    - any member of the board of education
  - For schools, not by certified mail

## Wage Garnishments

### *What do you have to do?*

- Answer garnishment Interrogatories
- Withhold portion of employee's wages
- Pay balance of employee's wages to employee

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## Wage Garnishments

### *What not to do?*

- ***Spaghetti P'Ship v. Wolfe, 264 Neb. 365 (2002)***
  - Spaghetti Limited Partnership started garnishment proceedings against Glenn Wolfe
  - Employer received garnishment order/summons/interrogatories for Wolfe, its employee
  - When employer saw "Spaghetti Limited Partnership against Glenn Wolfe" written on the first page, it gave the summons and interrogatories to the employee
  - Employer did not answer the interrogatories
  - Employer continued to pay employee as usual
  - Employer ultimately required to pay garnishor full amount of earnings it had already paid to employee—i.e. **it had to pay twice**

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## Wage Garnishments

### *What do you have to do?*

- Answer garnishment Interrogatories
  - Must answer within **TEN (10) CALENDAR DAYS**

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## Wage Garnishments

### *What not to do?*

- **Fail to answer garnishment Interrogatories**
  - Garnishee presumed to be indebted to employee (judgment debtor) in the **full amount** of the judgment.
  - Rebuttable presumption

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## Wage Garnishments

### *What not to do?*

- **Fail to answer garnishment Interrogatories**
  - Presumption can be rebutted **AT TRIAL** on garnishee's liability
  - Must explain and convince judge why garnishee failed to answer garnishment Interrogatories

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## Wage Garnishments

### *What not to do?*

- **Fail to answer garnishment Interrogatories**
  - Will be held liable for full amount of payments made to employee – See *Spaghetti P'Ship v. Wolfe*
  - Garnishment amount limits (discussed later) only for benefit of employee, not garnishee

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## Wage Garnishments

### *What do you have to do?*

- Withhold portion of employee's wages
- Lesser of:
  - 25% of employee's disposable earnings
  - 15% of employee's disposable earnings, if head of family
  - Employee's disposable earnings less thirty times the federal minimum hourly wage (29 U.S.C. 206(a)(1))

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## Wage Garnishments

### *What do you have to do?*

- Disposable earnings?
  - That part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld

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## Wage Garnishments

### *What do you have to do?*

- Wage withholding limitations do not apply to:
  - Any order of any court for the support of any persons (child, spousal, etc.)
  - Any order of any court of bankruptcy under Chapter XIII of the Bankruptcy Act
  - Any debt due for any state or federal tax

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## Wage Garnishments

### *What do you have to do?*

- Pay non-garnished wages to employee
- Hold garnished wages until further order of the Court
  - Usually will pay to the Court

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## Wage Garnishments

### *What not to do?*

- Withhold all wages from employee
  - Can become a Wage Payment and Collection Act violation
- Pay all wages to employee (ignore garnishment order)

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## Wage Garnishments

- Multiple garnishments
  - Non-support garnishments rank in priority according to time of service
    - i.e. first in time has priority
  - Support garnishments have priority over non-support garnishments, regardless of time of service
    - i.e. support garnishments have super-priority

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## Wage Garnishments

- **Multiple garnishments**

- Answer all subsequent garnishment Interrogatories even though wage garnishment already in place
- Generally, only one (1) garnishment can be in effect at a time
  - Employee unlikely to have sufficient non-exempt earnings to satisfy second garnishment

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## Wage Garnishments

- **Adverse Employment Action?**

- Cannot terminate an employee because of wage garnishments "for any one indebtedness"
- Statute suggests termination may not be improper if employee had multiple judgments that result in garnishments

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## 2016 NASBO STATE CONVENTION

### UNEMPLOYMENT, WORKERS' COMP & GARNISHMENTS

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