

**WAGE ASSIGNMENTS
AND
WAGE DEDUCTION ORDERS
IN ILLINOIS**

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**Prepared by the Consumer Protection Committee
of the Chicago Council of Lawyers**

This pamphlet is intended to answer some of the most commonly asked questions about a creditor's attempt to legally collect a debt by taking a portion of a debtor's wages. In Illinois, the two most common ways in which wages may be taken by a creditor are known as a **wage deduction order** (garnishment) and a **wage assignment**. (A third method, the citation to discover assets, is not covered by this pamphlet, but is rarely used. However, if you should get one, contact a lawyer immediately.) The main difference between the wage deduction order and the wage assignment is that a wage assignment can be used without first taking you to court. A wage deduction order can be used only after the creditor has obtained a judgment against you in court. The laws concerning wage assignments are quite different from the laws governing wage deduction orders. Therefore, if you discover that your wages are being taken or are about to be taken by a creditor, you must first find out whether the creditor is using a wage assignment or a wage deduction order. If, after reading this pamphlet, you are still unsure about which method the creditor is using or what you can do about it, contact a lawyer immediately.

It should be noted, also, that there are other special situations where the rules set forth in this pamphlet may not apply, as in the cases of collection of delinquent taxes and collection of child support or alimony payments. If a creditor claims that the rules in this pamphlet do not apply to him, see a lawyer immediately.

1. How Can a Creditor Get Rights to Your Wages?

Wage Assignment. The only way a creditor can take any part of your wages by using a wage assignment is if you have signed an agreement allowing him to do so. Basically, the agreement will say that you give your wages to the creditor as security for payment of the debt. Often, sellers who grant credit using an installment contract will ask or require buyers to sign such an agreement. Typically, you may be asked to sign a wage assignment when making a large purchase like an automobile or appliance and you agree to make monthly payments. You may want to ask the seller if he will make the deal without the wage assignment. To be valid, the wage assignment agreement must, among other things, be in writing, dated, and have the words "**Wage Assignment**" in bold type at the top of the agreement and also right above or below where you sign your name. A wage assignment is good for three years, unless you change jobs, which makes it expire after two years. The wage assignment is a separate agreement from the purchase contract and must be signed separately to be valid. Often, the wage assignment agreement is attached by perforations at the bottom of the purchase contract. You are entitled to a copy of the wage assignment agreement as well as to a copy of the purchase contract.

Wage Deduction Order. A creditor can take your wages by using a wage deduction order only after he has sued you and won a judgment against you in court. If you are sued, you should receive a summons telling you when you have to appear in court. As soon as you receive a summons, you should see a lawyer. If you fail to appear in court, a judgment may be entered against you, or confirmed against you. Your creditor may then use a wage deduction order. If you do appear, you will be given a trial at which you or your lawyer can tell the judge the reasons you think you do not owe the money that the creditor is seeking. If you lose, and the judge enters a judgment against you, the creditor may then take steps to use a wage deduction order.

2. What Steps Must a Creditor Take to Enforce a Wage Assignment or Wage Deduction Order?

Wage Assignment. A creditor enforces his wage assignment rights by sending you by **registered** or **certified** mail a "*notice of intention to make a wage demand.*" This tells you that the creditor intends to make a demand on your employer for part of your wages. Since this notice must be sent to you at least 20 days before notifying your employer, this gives you a chance to try to work out the matter with the creditor before any of your wages are taken. Also, it gives you a chance to give your employer a sworn statement that you have defenses against the creditor. This prevents the creditor from using the wage assignment, and forces him to bring you to court before taking your wages. However, if you do nothing to stop the wage assignment, and if you have been in default in your payments for more than 40 days, your employer will start withholding a portion of your wages to pay to the creditor, beginning five days after the employer is notified.

Wage Deduction Order. As soon as the creditor gets a judgment against you in court, he can begin to collect his judgment by using a wage deduction order. He does this by serving a wage deduction summons on the employer. The employer must then immediately begin to withhold part of your wages.

3. How Will You First Learn That the Creditor is Seeking to Take Your Wages?

Wage Assignment. If your creditor proceeds under law, you should first learn that a creditor is seeking to use a wage assignment against you when you receive the "*notice of intention to make a wage demand,*" mentioned above. If, for some reason, you do not receive this notice, you will probably first learn of the wage assignment from your employer. If you first learn of the wage assignment by receiving your check with money deducted, you should contact a lawyer immediately, since the demand on the employer may be invalid, and the deduction improper, if you have not been notified.

Wage Deduction Order. The creditor does not have to give you any warning before serving a summons to your employer requiring him to withhold part of your wages. As mentioned above, however, you should have received notice of the suit against you which the creditor had to bring before using a wage deduction order. If your employer tells you that he is withholding wages under a wage deduction order and you have never received notice of a lawsuit, you should contact a lawyer immediately.

4. How Much of Your Wages Can the Creditor Take?

Wage Assignment. Under Illinois law, the creditor can take only the *lesser* of (a) 15% of your gross wages (wages before taxes or any other monies are deducted) or (b) the amount by which your weekly wages after deductions required by law are taken out (including federal, state and social security taxes, but not including voluntary deductions like health insurance payments) exceed 30 times the federal minimum hourly wage. **Note:** The federal minimum hourly wage has recently been raised. The law now provides that the minimum hourly wage is \$2.65 beginning January 1, 1978; \$2.90 beginning January 1, 1979; \$3.10 beginning January 1, 1980; and \$3.35 beginning January 1, 1981.

Here is an example to show you how the above rules work.

Example 1

Assume: Weekly Gross Wages	= \$120
Weekly Wages After Taxes	
Deducted (After Taxes Wages)	= \$100

The **lower** of the two figures below is the most that a creditor can take per week (in this example, \$18.00).

1. 15% of Gross Wages ($.15 \times \$120$)	= \$ 18.00
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2. After Taxes Wages Minus 30 Times
 - Federal Minimum Hourly Wage
 (\$2.65 during 1978) $(30 \times \$2.65 = \$79.50)$
 $(\$100 - \$79.50)$ = \$ 20.50

Finally, even if there are two or more creditors who have wage assignments from you and they make demands upon your employer at the same time, the total amount that can be taken from your wages cannot be increased above the maximum that one creditor could take.

Wage Deduction Order. The two Illinois rules described above for wage assignments also apply for wage deduction orders (see discussion and example above). In addition, federal law provides that the amount taken by the creditor cannot exceed 25% of your wages after taxes have been deducted.

So, putting the three rules together, here is another example.

Example 2

Assume: Weekly Gross Wages	= \$120
Weekly After Taxes Wages	= \$100

Again, the **lowest** of the three figures below is the most that a creditor can take per week (in this example, \$18.00).

1. 15% of Gross Wages $(.15 \times \$120)$ = \$ 18.00
2. 25% of After Taxes Wages $(.25 \times \$100)$ = \$ 25.00
3. After Taxes Wages Minus \$79.50
 (30 times minimum wage) $(\$100 - \$79.50)$ = \$ 20.50

Again, even if you have more than one creditor with a wage deduction order against you, the total amount that can be taken from your wages cannot be increased above the maximum that one creditor could take as set forth in these rules.

5. For How Long a Period of Time Can a Creditor Take Money From Your Wages?

Wage Assignment. A demand under a wage assignment can last no longer than 30 days or until the debt is paid, whichever is sooner. However, if the debt is not paid after 30 days, your creditor will most certainly make a new demand when the old one expires and will continue to make these demands until the debt is paid. But it is important to remember that the creditor must make a new demand every 30 days because each new demand gives you the opportunity to take the actions described in question 6 below.

Wage Deduction Order. A wage deduction summons can last no longer than 56 days or until the judgment and court costs are paid, whichever is sooner. However, if the judgment and court costs are not paid after 56 days, your creditor will most certainly serve a new summons on your employer when the old one expires and will continue to serve these summons until the judgment and court costs are paid.

6. What Steps Can You Take to Stop a Wage Assignment or Wage Deduction Order?

Wage Assignment. If you receive a notice of intention to make a wage demand (see question 2 above) from a creditor, you have 20 days to settle your differences with the creditor before any demand is made to your employer. If you settle your differences with the creditor within those 20 days, he should not make a demand. At any time, if you settle with the creditor, he can stop the proceedings immediately. Another option available to you is to sign and deliver to your employer a **Statutory Affidavit of Defense** within the 20-day period or within five days after your employer has been served with the demand. The Statutory Affidavit of Defense is a statement under oath (that is, it must be notarized when you sign it) that you have a defense to the creditor's claim against you. You need not say what that defense is, but only that you have a defense. The defense does not have

to be a complete defense, but can be a defense to only part of the creditor's claim. The Statutory Affidavit of Defense should be *exactly* in the following form:

I, (your name), hereby swear that I have a bona fide defense to the claim of (creditor's name), which claim is based on a debt contracted on the _____ day of _____, 19____, and for security on which debt a wage assignment was executed.

(your address)

Address for service of summons

(your name)

Employee

SUBSCRIBED AND SWORN TO before me this _____ day of _____,
19____

Notary Public

Often your employer will have copies of this form for you to fill out. If he does not, you should contact a lawyer or prepare your own form using the above language. You should complete three copies of this form and give one copy to your employer, send one copy to the creditor by *registered* or *certified* mail and keep one copy for yourself. If you properly fill out (remember to have it notarized) and serve the Statutory Affidavit of Defense within 20 days after receiving the notice from the creditor or within five days after the demand, the creditor cannot use the wage assignment and must take you to court, win a judgment, and then obtain a wage deduction order before taking your wages. If you are too late with your Statutory Affidavit of Defense remember that the creditor has to make a new demand after 30 days, and you will have another opportunity to use the Statutory Affidavit of Defense. Ask your employer to tell you when another demand is made,

so that you can be sure to serve the Statutory Affidavit of Defense within five days. If you feel that the creditor or employer is not honoring your Statutory Affidavit of Defense or in any other way is not following the procedures outlined in this pamphlet, contact a lawyer immediately.

CAUTION: If you have no defense to at least part of the creditor's claim, do not file a Statutory Affidavit of Defense since there are penalties for filing false statements. If you are unsure of your defense, contact an attorney.

Wage Deduction Order. The only way to stop a wage deduction order (short of losing or quitting your job) is to settle with the creditor or attack the court judgment on which the wage deduction order is based. If you received no notice of any court action before the wage deduction proceedings, or if you think the court judgment might be wrong, see a lawyer immediately.

7. Under What Circumstances Can Your Employer Fire or Suspend You for Having Wage Assignments and/or Wage Deduction Orders?

Wage Assignment. Illinois law provides that it is a criminal offense to fire or suspend an employee for having wage assignments on his paycheck no matter how many there are or how many creditors have made the demands. If your employer fires or suspends you or threatens to fire or suspend you because of wage assignments, contact a lawyer immediately.

Wage Deduction Order. It is a criminal offense for your employer to fire or suspend you if he receives wage deduction orders against you for only one indebtedness. If your employer threatens to fire or suspend you in this situation, ~~contact a lawyer immediately.~~ Note, however, that an employer can fire or suspend you if he receives wage deduction orders against you based on more than one separate debt or judgment.

SUMMARY

Below is a comparison of the major features of a wage assignment and a wage deduction order. If your questions are not answered by this pamphlet, we urge you to contact a lawyer promptly.

	WAGE ASSIGNMENT	WAGE DEDUCTION ORDER
1. Rights to Wages:	Assigned by you.	Court judgment against you.
2. Enforcement:	(a) Notice of Intention to make a wage demand--sent to you 20 days prior to notice to Employer. (b) Notification to Employer.	Wage Deduction Summons served on Employer.
3. First Knowledge:	(a) Notice of Intention to make a wage demand sent to you; or (b) Deduction from wages.	Deduction from wages.
4. How much:	Approximately 15%--see Question 4 for details.	Approximately 15%--see Question 4 for details.
5. How long:	(a) 30 days from service of Demand on Employer or until debt is satisfied, whichever is shorter. (b) New Demand necessary every 30 days.	(a) 56 days from service of Wage Deduction Summons on Employer or until judgment satisfied, whichever is shorter. (b) New Wage Deduction Summons needed every 56 days.
6. Prevention:	(a) Settle with Creditor. (b) Send Statutory Affidavit of Defense to Creditor and Employer.	(a) Settle with Creditor. (b) Attack court judgment.
7. Firing/ Suspension:	Cannot be done by Employer.	Can be done only if more than one indebtedness (more than one court judgment).

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