

WAGE DEDUCTION
INSTRUCTIONS FOR CREDITORS

A. BEGINNING A WAGE DEDUCTION PROCEEDING

Read 735 ILCS 5/12-801 et seq.

1. Prepare Wage Deduction Notice

Copies required:

Defendant
Employer
Court File
Your File

2. Mail a copy of the Wage Deduction Notice to the Defendant.

3. Prepare Wage Deduction Affidavit (**WITH** Interrogatories on Back)

Copies required:

Original for Court
Four (4) copies for Employer
Your File

4. Prepare Wage Deduction Summons

Copies required:

Original for Sheriff/Process Server
Employer
Your File

5. File the Wage Deduction Affidavit and Notice with the Court Clerk and issue Summons.

6. Place the summons for service with the Sheriff, process server, any person over the age of 18 and not a party to the action, or by Certified or Registered Mail, Return Receipt Requested (see Supreme Court Rule 105(b)). Serve four copies of the Affidavit/Interrogatories, one copy each of the Summons and Wage Deduction Notice. Also include a copy of the judgment if there is no certification on the form relating to the amount of the judgment, name of court and case number. File the original Summons with Proof of Service with the Clerk of the Circuit Clerk.

B. HOW TO RESPOND TO INQUIRIES BY EMPLOYERS

1. Suggest they contact their attorneys for specific legal advice.
2. Suggest that they read the Interrogatories to Employer and follow the instructions thereon.
3. Explain that this is a Permanent Wage Deduction proceeding and help them with general information that will allow them to respond to the Interrogatories.
4. Make sure that you have employers file Answers with the court and deliver a copy to the employee in addition to sending a copy to your office.

C. *PROCEEDINGS IN COURT ON RETURN DATE*

This is an area of procedure that all judges handling Wage Deduction Proceedings must determine for their own courtroom. Generally speaking, it is recommended that the attorney appear and be prepared to enter an appropriate Order. However, this suggestion may be changed once judges and practitioners have some experience as to how these proceedings will impact court calls.

1. Funds Answer – The employer has filed an Answer indicating that it is able to make deductions from the Defendant's wages. Prepare a Wage Deduction Order and have it entered by the Court.
2. No Funds Answer – A No Funds Answer may be filed by the employer for one of several reasons:
 - a. The defendant is not employed.
 - b. Prior child support or other deduction orders.
 - c. Insufficient income
 - d. Defendant filed a bankruptcy.

If faced with one of the above responses, you must prepare an order either discharging the employer or continuing the proceedings to a date in the future which will allow sufficient time for the employer to complete prior productions.

3. No Answer Filed By Employer – If the employer fails to file an Answer, the appropriate order is a conditional judgment against the employer for the full amount due the creditor. However, before issuing a Summons After Conditional Judgment, the creditor is advised to contact the employer and determine whether or not the employer will file an Answer, albeit late. If the employer is filing an Answer, do not issue the Summons After Conditional Judgment unless the Answer is not, in fact, filed in a reasonable period of time.
4. LATE ANSWERS BY EMPLOYERS – If the employer files an Answer after the return date of the proceedings, a motion for entry of a deduction order should be made with notice given to both the employer and the employee. If a conditional judgment has been entered, that conditional judgment should be vacated at the same time that the wage deduction order is entered.
5. SUMMONS AFTER CONDITIONAL JUDGMENT – If the employer fails to appear in response to a Summons After Conditional Judgment, the appropriate court order is a final judgment against the employer for the original balance due on the conditional judgment plus additional court costs. Additional interest does not accrue on the conditional judgment, only on the final judgment against the employer.

D. *AFTER ENTRY OF DEDUCTION ORDER*

1. Send a copy of the deduction order to the employer.
2. Send a certification of the judgment balance to the employer at the beginning of each calendar quarter. The mailing of certifications should be commenced at the end of the first full calendar quarter following the date of service of the Wage Deduction Summons.

{Example: summons served April 6th. September 30th is the end of the first full calendar quarter after service of the summons. Therefore, the Certification should be mailed between October 1st and 15th.}

WAGE DEDUCTION

CALCULATION OF INTEREST & COURT COSTS

735 ILCS 5/2-1303: Interest on Judgment

Statutory interest is 9 percent per annum from the date of judgment unless the debtor is a unit of local government (then 6 percent).

A. Calculation of amount upon which interest can be charged:
Add the following amounts:

1. Amount of judgments
2. Allowable court costs
3. Previously charged interest

Subtract all prior payments or credits on the judgment.

If the balance due is greater than the amount of the judgment, then calculate interest on the amount of the judgment only for the date of the judgment or your last calculation of interest.

If the balance due is less than the amount of the judgment, then calculate interest on the balance due from the date of the judgment or your last calculation of interest.

B. Notes to the above calculations:

1. Attorney's fees that are awarded by the court are part of the judgment and interest accrues thereon.
2. Interest should be calculated to the date that you are making the calculations or filing your pleading. It should not be calculated to the return date of your wage deduction or garnishment because the debtor may satisfy the judgment prior to the return date and the creditor is not entitled to accrued interest.

C. Recent (April 1997) case on calculation of interest:

Halloran v. Dickerson 223 Ill.Dec.325, 679 N.E.2d 774. Holding of case is that allowable court costs and pre-judgment interest are to be added to final judgment. Interest is then calculated on the basis of a 360 day year, All payments are first applied to accrued post-judgment interest and then the principal judgment.

D. Notes on Court Costs:

1. Generally, all clerk and sheriff fees are chargeable as court costs.
2. To be chargeable, witness fees and deposition expenses should be taxed by the court.
3. Non-chargeable court costs include levy bonds, replevin bonds, and expenses related to recovery of property beyond the service of the order by the sheriff (people who assist the sheriff in enforcing orders such as eviction movers, tow truck operators, locksmiths).

WAGE DEDUCTION

INSTRUCTIONS FOR EMPLOYERS IN WAGE DEDUCTION PROCEEDINGS

Read 735 ILCS 5/12-801 et seq.

1. Read and follow the instructions of the Interrogatories to Employer.
2. Employer Obligations:
 - a. To determine that all aspects of the Affidavit and Certification of Attorney are correct and conform to the law.
 - b. To assert any and all possible defenses of the Judgment Debtor to the Post Judgment proceedings and defenses not raised in the original action before Judgment. (Examples: Service, Venue, Jurisdiction, Statute of Limitations, etc.)
 - c. Deliver a copy of your Answer to the Employee, and send one to the attorney for the creditor and the Clerk of the Court.
 - d. To determine that the "Wage Deduction Order" has been properly entered of record before disbursing funds. This requires the employer to check the Court file, the Court's computer or obtain a copy of the Deduction Order.
3. Suggestions:
 - a. The calculations seem to be intimidating. They are not. They are actually simple if you follow the instructions.
 - b. Mail the original copy of your Answer to the Courthouse and a copy to the attorney for the creditor and the employee as quickly as possible.
 - c. Do not send any money to the Creditor until you have received a copy of the Wage Deduction Order.
 - d. If the employee has one or more pending Wage Deductions, calculate the dates necessary to Answer each proceeding. Then notify the Court and attorneys involved in each of the proceedings.
 - e. Child Support deductions have priority over all Wage Deduction Orders. Subtract the Child Support payments from line H on the Interrogatories to determine the funds available to the Judgment Creditor, if any.
4. If you receive a Summons After Conditional Judgment, this means that the Employer did not respond to the original Wage Deduction Summons. Immediately check the Court file to determine if there was proper service of the original Summons. Contact the attorneys for Plaintiff and arrange to file an Answer to the original proceedings if service was proper. If service was not proper, contact your attorney without delay or call Plaintiff's attorney to further discuss the matter. If you fail to respond to a Summons After Conditional Judgment, a final judgment may be entered against the employer. A final judgment means that a creditor can garnish the employer's bank accounts to collect on the judgment.
5. If the employer has any questions, they must contact their attorney. While the attorney for the creditor will be generally helpful, they are looking out for the interests of the creditor, not the employer.
6. The employer is entitled to a statutory fee of \$12.00 or 2% of the sums withheld, whichever is greater. As the \$12.00 fee is allowed only once per proceeding (not per payroll), employers are better served using the 2% calculation.

THE COURT'S PERSPECTIVE

A. *WHAT IS A WAGE DEDUCTION PROCEEDING*

A Wage Deduction proceeding is a statutory method for the payment of judgments by wage earners in which non-exempt wages are paid over to a creditor by order of court.

1. ILCS §5/12-801 provides definitions for terms used in the Act.
2. Force and effect of order:
A deduction order shall have the force and effect and be enforceable as a judgment (§5/12-802)
3. Maximum wages subject to collection:
This section basically provides that no deduction shall occur if the wage earner's net check is less than 45 times the federal minimum wage.
4. Exemptions from deduction orders:
Payments from pension & retirement plans and mandatory contributions to them.

B. *DUE PROCESS*

Various federal and state courts have ruled that due process applies to wage deduction proceedings because a judgment debtor is being separated from his or her property. The due process issues raised in prior cases concern the following areas:

1. Is there a proper final and enforceable judgment order?
2. Did the defendant receive a proper statutory wage deduction notice?
3. Are the judgment creditor's calculation of court costs, interest and the balance due correct?
4. Is the employer's calculation of sums to be paid over to the judgment creditor correct?

C. *LIEN CLAIMS*

The service of a wage deduction summons creates a lien upon the debtor's wages from the moment of service upon the employer. However, there may be competing lien claims and it is the responsibility of the Court to determine their priorities and order.

1. Spouse/child support deduction orders have priority over all wage deduction orders. A spouse/child support order will "supersede" any deduction order already entered and unsatisfied to the extent it is equal to or greater than 15% of the gross wages. If less than 15%, the creditor gets the difference.
2. Multiple wage deduction proceedings are to be honored in the order in which they are received by the employer. Subsequent wage deductions are to be honored in the order in which they are received.
3. State and Federal Liens: State and federal liens, unless relating to spouse/child support matters, have no particular priority over a wage deduction proceeding. The issue is the date of service of the lien upon the employer.