

11 Garnishment FAQs



✘ It's bound to happen sooner or later. Maybe it already has. "It" is the experience of responding to a legal paper "garnishing" your employee's wages. Here's a look at what garnishment is all about and what you need to know to handle a garnishment against one of your own employees.

Q1. What Is Garnishment?

Answer: Garnishment is a document issued by a court or other government body ordering you, the employer, to pay part of an employee's wages to a third party that the employee owes money to. Garnishment orders are most commonly used to ensure employees pay family support orders, tax debts and lawsuits for money damages.

Q2. What Happens If You Ignore the Garnishment Order?

Answer: If you disobey or ignore the garnishment order, the creditor, i.e., third person the employee owes money to, can collect the money from *you*.

Q3. What Happens If You Obey the Garnishment Order?

Answer: As long as the garnishment order is valid, you have nothing to fear from obeying it. The problem is that if the order turns out to be invalid for any reason, paying it could make you liable to the employee (or another creditor of the employee who has dibs on the money).

Q4. So How *Should* You Respond to a Garnishment Order?

Answer: Verify that it's valid before you pay it. And do it fast. A garnishment order typically applies to the next employee payment due after you receive the order. So if there are any issue, you need to work them out immediately before making any wage payments to the employee.

Don't try to be a hero. Although garnishment orders typically include instructions, you should call the court or a lawyer if you have any questions or concerns.

Q5. How Can You Tell if a Garnishment Order Is Valid?

Answer: First and foremost, don't believe the employee or his lawyer's assurances that the garnishment is invalid or some kind of "big mistake." But there are certain flaws to look for in the actual order that *can* render a garnishment invalid:

- The individual named as the debtor on the garnishment order no longer works (or never did work) for you;
- The employee does work for you but isn't currently receiving wages because she's on leave of absence, temporary layoff, strike or other circumstances that have caused her payments to be interrupted; and/or
- The garnishment order lists the wrong name for your company as "garnishee."
Example: ABC Forestry Co. is made up of a dozen separate and distinct corporations. Jane Jones is an employee of one of these corporations, Pine Cone Trucking. Her ex-husband gets a garnishment order against Jane that lists the garnishee as "ABC Forestry." Pine Cone Trucking wouldn't be legally bound by the order.

Q6. What If the Order Is Invalid?

Answer: If you do spot one of these or some other error in the garnishment order rendering it invalid, don't just stick the order into a drawer and close the file. You need to immediately notify the court that issued the order of the error. Chances are, the creditor will then get a new order that corrects the mistake.

Q6. What If the Order Is Valid?

Answer: If you can't find grounds for doubting the validity of the order, you'll have to proceed to Phase 2 of garnishment response: calculating how much money to withhold from the employee and re-direct to the creditor. There are 3 steps:

- Determine which moneys can be garnished;
- Determine which moneys are exempt; and
- Calculate the garnishment amount on a net pay basis.

Q7. How Do You Determine Which Moneys Are Garnishable?

Answer: You need to check the laws of your province to determine what's garnishable in your province. ([Click here](#) for a Know the Laws Chart listing the family support order garnishment rules of each jurisdiction.) General principles to keep in mind:

- Salary, hourly earnings, overtime, bonuses, commissions, incentives and other moneys for services are garnishable in all jurisdictions;
- Holiday, vacation and sick pay are garnishable in most jurisdictions;
- Disability benefits are garnishable in BC, MB, NS, PE, QC (except for periodic benefits under an accident or sickness insurance contract) and YK; and
- Pension benefits and/or money in a pension plan are garnishable under certain conditions in BC, MB, NS, PE, QC, SK and YK.

Q8. How Do You Determine Which Moneys Are Exempt?

Answer: Each jurisdiction also exempts certain moneys from garnishment. There are 3 basic approaches:

- **Percentage Exemptions:** Some provinces make a percentage of moneys due to the employee exempt from garnishment, including AB (60%), NS (75%) and ON (50%—for support garnishments and 80% for garnishments that are not family support orders);
- **Dollar Amount Exemptions:** MB, NT, NU and PE use a schedule to determine a dollar amount exemption based on factors such as how much the employee is paid and how many dependents he has. (In PEI, the exemption allocates dollar amounts for specific living expenses);
- **Hybrid Approaches:** BC, QC and YK base exemptions on both percentages and fixed

dollar amounts. For example, in QC, the exemption is 70% of the excess over a certain dollar amount per dependent.

Q9. How Do You Make the Final Calculation?

Answer: It's important to keep in mind that the percentage of wages exempt from garnishment is calculated on not a gross but a *net amount payable to the employee*, i.e., net of source deductions such as CPP, EI and income tax. Some provinces also allow for deductions of union dues.

Q10. Where Do You Remit the Garnishment Payment?

Answer: The garnishment order will tell you to whom the garnishment cheque should be made payable, where to send it and how often. You might also have to list a reference number on the cheque and enclose a worksheet or other document containing certain information about the payment. Make sure you provide only the personal information requested. Furnishing more can be a violation of privacy laws.

Q11. Can You Just Fire the Employee to Avoid Dealing with the Garnishment?

Answer: Absolutely not! That's because each jurisdiction includes legal provisions protecting employees from suffering reprisals of any kind from their employer because their wages are garnished.

Conclusion: Be Prepared to Resolve Conflicting Garnishments

As if dealing with garnishment isn't hard enough, things can get especially tricky when you get multiple orders claiming the same payment. The question: If there aren't enough funds to cover all the claims, who do you pay first?

The issue of "prioritizing claims" is an enormously complex issue, one that lawyers have written volumes about. The simple answer: It depends on what kind of garnishment order is involved and/or when you get it. Keep these principles in mind:

- CRA orders for unpaid taxes get top priority;
- Family support and maintenance orders are next in line; and
- If you get two court orders from courts of different levels (e.g., small claims vs. appeals court), priority goes to the order you got first rather than which court is higher.

Also remember that you must notify the creditor under an order if you decide to suspend payment because another order has priority.