

§954. Income withholding

1. Availability and establishment of income withholding. Spousal support orders issued or modified by the courts in this State must have a provision for the withholding of income to ensure that withholding as a means of obtaining spousal support is available if arrearages occur. Except as provided in chapter 65, subchapter IV, income withholding against all spousal support obligations ordered by a court within the State must be implemented as follows.

A. New orders of spousal support must include a provision withholding the amount of spousal support from the income, regardless of the source, of the person obligated to pay the support. If an existing order of alimony or spousal support does not include a withholding order, the obligee may file a motion to amend the spousal support order to include an order for withholding, which the court shall grant. [PL 1997, c. 433, §1 (NEW); PL 1997, c. 433, §2 (AFF).]

B. Each order for withholding must provide for a conspicuous notice to the obligor that withholding may result if the obligor fails to make the spousal support payments and that no withholding may be made until the following conditions are met:

(1) Either the obligor requests that income withholding be implemented or the obligee determines that the payments the obligor has failed to make under the spousal support order are at least equal to the amount payable for one month;

(2) The obligee serves written notice of the amount of arrearage upon the obligor and informs the obligor that the obligee has procured a court order for income withholding;

(3) The obligee mails a copy of the determination of arrearage and a copy of the court's withholding order to the payor of funds;

(4) The obligee mails to the Department of Health and Human Services a copy of the determination of arrearage and a copy of the court's withholding order to enable the department to proceed pursuant to subsection 2; and

(5) The obligor has a 20-day period, after receiving the notice pursuant to subparagraph (2), to file a motion for determination of arrearages with respect to the amount of spousal support owed and to simultaneously request an ex parte stay of service on the payor of funds until the motion for determination is heard. Any stay issued by the court under this subsection expires in 60 days and may be reissued only upon a showing by the obligor that the obligor has made reasonable efforts to obtain a hearing on the motion for determination of arrearages during the effective period of the stay. [PL 1997, c. 433, §1 (NEW); PL 1997, c. 433, §2 (AFF); PL 2003, c. 689, Pt. B, §6 (REV).]

C. An order modifying the amount of spousal support issued after a hearing on a motion to modify spousal support may provide that payments be made outright by withholding. If so, paragraph B does not apply. [PL 1997, c. 433, §1 (NEW); PL 1997, c. 433, §2 (AFF).]

D. Notwithstanding any law to the contrary, the withholding order is binding on the payor of funds once service has been made upon the payor. The payor is liable for any amounts the payor fails to withhold after receiving notice. The payor shall withhold from the income payable to the obligor the amount specified in the order and shall monthly or more frequently remit the amounts withheld to the department. The payor may withhold a \$2 processing fee in addition to the amount withheld for support. The amount withheld may not exceed the limitations imposed by section 2356 or by 15 United States Code, Section 1673. An employer who, in contravention of this section, discharges from employment, refuses to employ or takes disciplinary action against any obligor because of the existence of an order and the obligations or additional obligations that it imposes upon the employer is subject to a fine in an amount not to exceed \$5,000. [PL 1997, c. 433, §1 (NEW); PL 1997, c. 433, §2 (AFF).]

E. When a withholding order is in effect and the obligor's employment is terminated or the periodic payment terminates, the obligor's employer or other payor of funds shall notify the department of the termination within 30 days of the termination date. The notice must include the obligor's home address and the name and address of the obligor's new employer or payor of funds, if known. [PL 1997, c. 433, §1 (NEW); PL 1997, c. 433, §2 (AFF).]

F. The order of withholding with regard to a current support obligation must be terminated if:

- (1) The department is unable to forward funds to the obligee for 3 months; or
- (2) The spousal support obligation has been eliminated by a subsequent court order.

A termination may not occur while an arrearage remains unless other provisions for its repayment have been made. [PL 1997, c. 433, §1 (NEW); PL 1997, c. 433, §2 (AFF).]

If the department is unable to forward the funds to the obligee for 3 months the funds must be returned to the obligor and notice must be given to the obligor's employer or other payor to cease withholding. [PL 1997, c. 433, §1 (NEW); PL 1997, c. 433, §2 (AFF); PL 2003, c. 689, Pt. B, §6 (REV).]

2. Department designated as administering agency. The department is designated as the agency responsible for adopting and administering procedures to receive, record and disburse all spousal support payments collected pursuant to this section.

[PL 1997, c. 433, §1 (NEW); PL 1997, c. 433, §2 (AFF).]

3. Liability of payor to obligee. An obligee may maintain an action for compensatory damages, including attorney's fees and court costs, against a payor who knowingly fails to comply with this section.

[PL 1997, c. 433, §1 (NEW); PL 1997, c. 433, §2 (AFF).]

SECTION HISTORY

PL 1997, c. 433, §1 (NEW). PL 1997, c. 433, §2 (AFF). PL 2003, c. 689, §B6 (REV).

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