

Wage assignment and employers' responsibilities

Tough economic times raise some tricky HR issues—for example, when an employee's financial straits begin to affect his employer.

Must we honor a payday loan wage assignment?

Q. An employee borrowed money from a payday loan service at a very high interest rate that I feel is unfair. The payday loan service sent me a “wage assignment” notice and told me that our company must withhold money from his paychecks. What is a wage assignment, and does our company actually have to honor it?

A. A wage assignment is a document that allows a creditor to attach part of the employee's wages if the employee fails to pay a specific debt. The creditor does not have to obtain a judgment in a court proceeding before requesting payment.

Under the Illinois Wage Assignment Act (740 ILCS 170), private employers are obligated to honor a creditor's properly served demand for a valid wage assignment, unless an employee presents a timely, *valid*, written defense to the wage assignment.

What constitutes a valid assignment?

Q. How can I tell if a wage assignment is valid? How long is it valid?

A. A valid wage assignment document must have the words “Wage Assignment” printed or written in boldface letters of not less than ¼ inch in height at the head of the wage assignment and one inch above or below the line where the employee signs the assignment.

The employee must have signed the document in person, and the document must show the date of execution, the employee's Social Security number, the name of the employer at the time of execution, the amount of money loaned or the price of the articles sold or other consideration given, the rate of interest or time-price differential to be paid, if any, and the date on which such payments are due.

A wage assignment is valid for no more than three years after the employee signs it and the employer's name appears on it. If the employee changes jobs, the wage assignment is valid for two years, even though the new employer's name does not appear on the assignment.

Handling wage assignments

Q. How does the wage assignment process start?

A. Assuming that the wage assignment document complies with the formal requirements, the creditor must

serve “demand to withhold” on the employer. The demand is valid only if:

1. The employee has defaulted on the debt secured by the assignment for more than 40 days, and the default has continued to the date of the demand.
2. The demand contains a correct statement of the amount the employee is in default, and the creditor provides an original or a photocopy of the assignment to the employer.
3. The creditor has served a “notice of intention to make the demand” upon the employee, with a copy to the employer, by registered or certified mail not less than 20 days before serving the demand.

Putting on the brakes

Q. Can an employee stop the wage assignment process?

A. The employee does have a right to contest the demand. If an employee has a legal defense to the wage assignment, the employee may—within 20 days after receiving a notice of demand or within five days after the employer is served with the demand—notify the employer, in writing, of any defense to the wage assignment and send a copy of the written defense to the creditor by registered or certified mail.

As a result, the employee’s wages are not subject to a demand served by the creditor unless the employer receives a copy of a subsequent written agreement between the creditor and the employee authorizing such payments. Similarly, if the creditor receives a copy of the defense prior to serving its demand upon the employer, the creditor may not serve the demand upon the employer.

Whether the employee’s defense is legally valid is not an issue the employer must resolve. Instead, the employee and the creditor may attempt to reach another agreement or the creditor may simply bring a separate lawsuit against the employee to collect an outstanding debt.

Calculating the wage assignment payment

Q. How much must the employer withhold—and when?

A. The employer must begin payment to the creditor no sooner than five business days after service of such a demand. The employer must withhold the lesser of:

- 15% of weekly gross wages
- The amount by which the disposable earnings for a week (pay remaining after federal and state taxes, Social Security deductions and any other amounts required by law to be withheld, including required retirement contributions) exceed 45 times the federal minimum wage, unless a notice of defense is received within that five-day period.

The employer shall be paid a fee of \$12 for each wage assignment. That \$12 is credited against the debt.