



GRAY REED

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## Child and Spousal Support

### Who, What, Why . . .

*Who does it apply to:* All Texas employers are required to respond to garnishment requests. There is no minimum employee exception for child and spousal support.

*What are my obligations before receiving an order to garnish:* All employers are required to report hire date, name, address, and Social Security Number for new hires to the Texas Employee New Hire Operations Center of the Texas Attorney General's Office within twenty days of the employee's first day of work. Employers with employees in more than one state may report in each individual state or one state. If reporting in one state, however, employers must do so using the state's electronic system and notify the Federal Office of Child Support Enforcement ("OCSE") in writing.

Employers must also respond to requests from OCSE and the Texas Attorney General's Child Support Division for information regarding the identity, location, position, compensation, income, and benefits of an employee to help that office determine child support obligations.

Employers may meet each of these obligations using the Child Support Division's electronic filing system.

*What types of support exist:* Most employers associate state garnishments with child support only. As you can see from the title of this edition, however, spousal support may also be deducted. Additionally, deductions may be made for medical insurance support and child and spousal support which are past due or in arrears. There is a very specific order of priority among these types of support also. Currently due child support takes the highest priority followed by current spousal support, medical support, and child support in arrears. Spousal support in arrears then occupies the very last position.

*How does withholding work:* An employee may be required to pay up to 50% of his or her "disposable earnings" for support. Disposable earnings are those earnings above and beyond withholding required by law (state and federal taxes, Medicare, and Social Security, etc.) and exceeding union dues, non-discretionary retirement contributions, and contributions for health and disability insurance.

*What if there are multiple withholding orders:* This is the messiest part of handling child support. Employees are sometimes subject to withholding orders from different states, which require employers to divide the disposable earnings up between the various orders. There are very specific rules for applying these payments. Disposable income must be applied to the total current support for each order equally first and then equally to arrears support. Seek the advice of employment counsel or the Child Support Division to be sure these payments are correctly made.

*What about withholding for severance or bonus payments:* Employees receiving a lump sum payment in excess of \$500 as a bonus or other payout, may be required to contribute up to 50% of the disposable earnings portion of the payment to support in arrears. Employers are required to contact the Child Support Division to determine what portion of the payment must be sent in for support. Similarly, employees receiving a lump sum for severance at the end of employment must make an appropriate disposable earnings contribution to regular support equal to the number of paychecks the sum would represent. For example, a severance payment of \$10,000 for an employee who usually earns \$2,000 per month would require deductions for five months of regular support contributions.

*How do I make payment:* Employers must send the payment on the pay date on which money is withheld. Employers with more than 50 employees must remit payment electronically. Employers submitting paper checks for multiple employees must submit the proper processing form dividing all of the amounts for each employee so that the state may properly apply the payments.

*How does support for medical insurance work:* Employers may be ordered to place the dependent of an employee on the business' medical insurance even if the employee is not participating in the plan. Employers will receive a National Medical Support Notice from either the OCSE or the Child Support Division requesting that a dependent be added to a plan. Employers must complete the forms attached and return them to the requesting agency within 40 days of receipt. This will let the agency know whether the request has been met or if there is a reason it cannot be met – such as the employee's ineligibility for coverage. Employers should then deduct the premiums from the employee's pay to

the extent the plan requires deduction according to the regular withholding rules. Should the plan lapse, the employer must let the requesting agency know within 15 days.

*What if the employee leaves:* Employers must report the separation of an employee subject to a child support order to the Child Support Division and/or the OCSE within seven days of the date of separation.

## Common Situations:

*Woman on a mission:* Sadie is the owner of a taxi company in Tyler and the single parent of a beautiful daughter. Sadie has zero tolerance for ex-husbands or ex-wives who shirk their responsibility and believes that people who have child support garnishments are just above snails in the food chain. Sadie refuses to hire anyone with a child support order and finds an excuse to release all employees who become subject to a child support order while working for her. Is Sadie on a taxi ride to the big house? Well, not the big house, but Sadie is subject to a lawsuit by each and every employee she has refused to hire or let go for this reason. It is illegal to discriminate against an employee based on child support status.

*I didn't hear you:* Kevin operates Medieval Armory manufacturing replica armor for collectors all over the world. Kevin isn't a paperwork kind of guy. He ignores all requests to deduct money from his employees' wages and never reports new hires. What consequences does he face, if any? Let's just say the State of Texas does not like to be ignored. Kevin may be penalized \$25 per new hire he has neglected to report, but failing to withhold is the mother lode. Kevin is subject to a \$200 fine per pay period and becomes liable to the person who was not paid support for the amount owed, plus all attorney fees to collect it from Kevin. Kevin better have some really, really, rich collectors.

*Turn off the spigot - Now:* Cal has been waiting for this day for the last six months. His son has turned 18 and Cal is ready for the child support payments to end. Cal strides into the Human Resources office showing a copy of his son's driver's license and demands that the payments cease. Cal is planning to buy a new truck and this money will put him over the top to get it. Can Cal head to the dealership this week? Not with his child support money. HR tells Cal that it needs an order from the Child Support Division to let him off the hook. Cal runs home and brings back his divorce decree showing that child support ends at 18 for his son. All better? No. Employers are not lawyers or judges. They are not required to interpret court orders or rely upon common perception about when child support ends (which can be age 25 in some cases). Cal's employer should wait for an order from the Child Support Division. If Cal has a refund coming, he can get it from them.

## What should I do:

*Good:* Provide notice of new hires, comply with all withholding orders, and provide notice of separation when employees leave. Don't forget to deduct up to \$10 per month as an administrative fee for handling support deductions (but not medical insurance).

Good gets it done this month. Because each of the obligations above is mandatory, there is no room for employers to take a "Better" or "Best" approach.



Michael Kelsheimer focuses his practice on the employment law needs of Texas businesses and executive employees. He recognizes that the cost and expense of litigation make resolving employment disputes challenging. To help avoid these concerns, he utilizes his experience in and out of the courtroom to prevent or quickly resolve employment disputes through proactive employer planning and timely advice. When a dispute cannot be avoided, Michael relies upon his prior experience as a briefing attorney for the United States District Court and his extensive experience in employment and commercial lawsuits to secure favorable resolutions for his clients.

This guide is one in a series. For more information, or to receive the entire collection contact Michael Kelsheimer by email at [mkelsheimer@grayreed.com](mailto:mkelsheimer@grayreed.com) or by phone at **469.320.6063**