U.S. Department of Labor

Wage and Hour Division
Washington, D.C. 20210

CCPA-26

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This will reply to your questions on Section 3 04(a) of the Consumer Credit Protection Act. You present two situations in a State in which the law on discharge because of garnishment provides no greater protection to the employee than that afforded under the Act.

(1) The employer receives a notice of garnishment that the employee is indebted to ABC Department Store in the sum of X dollars. The employee is made aware of the garnishment by his employer and obtains a release which results in no withholding of wages. Three months later, the company receives a notice of garnishment that the same employee is in debt to XYZ Grocery Store in the sum of X dollars. May the employer, without affording the employee an opportunity to release or satisfy the second garnishment, lawfully discharge him?

(2) The company receives a notice of garnishment to the effect that the employee is indebted in ABC Department Store in the sum of X dollars. The employee does not effect a release of the garnishments and the company makes appropriate withholdings and payments until the entire indebtedness is satisfied. Three months later, the company receives a second notice of garnishment that the employee is indebted to XYZ Grocery Store in the sum of X dollars. May the employer lawfully discharge the employee upon receipt of the second garnishment, without affording the employee an opportunity to gain a release and before making an initial deduction?

It is difficult to give categorical answers to your questions without knowing what the precise legal effect of the "notice of garnishment" is under State law upon the employer. To illustrate, under the New York law to which the discharge provision in section 304 was roughly patterned, an income execution must first be delivered to the employee, and he is given 20 days to make regular payments to the enforcement officer to satisfy the outstanding judgement. Only if the employee refuses to make such payments is the income execution served upon the employer, and only then is he bound thereby. See New York CPLR section 5231. In this situation there would be no subjection to garnishment within the meaning of section 304 of the Consumer Credit Protection Act, until the employer is bound or obliged to make the deduction from earnings. We read the words "subjected to garnishment" as referring to the making of the employer-garnishee accountable or liable for the earnings involved. The word "subjected" is, of course, the past participle of the verb "subject", which in the context of section 304, suggests accountability or liability. See the definitions of the word in Webster's Third International Dictionary. See also the cases abstracted at 40 Words and Phrases, p. 591,613. Garnishment itself seeks to hold the garnishee personally liable. Subjection to garnishment is the achievement of that end.

Similarly, in the situations which you pose, if the "notice of garnishment" does not of itself obligate or bind the employer to make deductions from earnings pending some opportunity upon the part of the employee to discharge his indebtedness, there would be, in our opinion, no subjection to garnishment within the meaning of section 304. If the "notice of garnishment" does of itself constitute an order binding or obligating the employer to make deductions without the

aforementioned opportunity for the employee, then there would appear to be a subjection to garnishment within the meaning of section 304.

Thus, in situation one, the answer to your question depends upon whether or not a "notice of garnishment" binds the employer to make deductions of earnings without first affording the employee an opportunity to satisfy a debt. If the "notice of garnishment" binds the employer to make the deductions without such an opportunity, then it would appear that discharge would be permitted upon receipt of the second "notice of garnishment". If the "notice of garnishment" is not so binding, discharge for subjection to garnishment would not appear to be permissible.

Again, in situation two, if the second "notice of garnishment" is binding upon the employer without the affording of an opportunity to the employee to satisfy the debt before any withholding of wages, it would appear that discharge for subjection to garnishment is permissible. It is not so binding, then there is no subjection, and therefore no right to discharge on the basis of the "notice of garnishment".

Sincerely,

Robert D. Moran
Administrator