U.S. Department of Labor

Wage and Hour Division
Washington, D.C. 20210

CCPA-28

September 23, 1970

This is in reply to your letters to Mr. McAuliffe of my staff and to Mr. Nystrom of the Solicitor of Labor's staff, both dated May 14, 1970, concerning Title Ill, Restriction on Garnishment, of the Consumer Credit Protection Act.

One of the situations you discuss involves an employee who draws $50 a week against commissions for a period of 8 weeks and then receives $2000 in settlement, representing the remainder of the commissions which are due and payable. We agree with you that the employer may make no deductions pursuant to a garnishment during the 8 weeks based on the assumption that the disposable earnings per week would be less than $48. It is our opinion that the definition of "earnings" in section 302(a) is comprehensive enough to include the "draw of 50 per week".

We wish to indicate with regard to the foregoing that the aggregate disposable earnings from the commission settlement would be the $2000 minus deductions required by law. Twenty-five percent of this figure would not be included in this computation because these "earnings' would have been already subjected to possible garnishment. To add the draws previously paid to the settlement amount of $2000 would, we believe, subject them to double exposure for the purposes of garnishment. This would not appear to be contemplated by the Act.

We do not understand your question concerning income which is "static". However, it is sufficient to note that the periods which enter into the computation are the workweeks and fractions thereof for which the earnings compensate.

With regard to your question concerning a painter or a writer who receives a lump sum for his product, it would seem to be simply an evidentiary question as to how many workweeks the individual has spent on the product for the purposes of applying section 303(a) of Title III.

You state that you understand an opinion has been released to the effect that a garnishment served prior to July 1, 1970, is subject to the new Federal Wage Garnishment Law. You request confirmation.

The restrictions in section 303 are considered applicable to any amount required to be withheld on or after July 1, 1970, including that required by a garnishment initiated before that date. There is no savings clause regarding such a garnishment, and we find no expression of legislative intent that the garnishment restrictions of Title III not apply to garnishment orders or processes in being and continuing on and after the effective date of the Title. Indeed, section 303(c) of the Act clearly forbids, in addition to the making, the execution or enforcement of any order or process in violation of the restrictions in the section.

You also inquire whether the burden of compliance falls on the employer or on the creditor. We understand your question to be whether, in case a garnishment creditor receives from a garnishee-employer more than section 303 of the Act allows, the creditor or the employer may be

subject to some legal liability to the individual whose earnings have been garnished. Our tentative thinking is that either or both may be liable, depending of course on the facts of each case.

It is not feasible to predict fully or examine comprehensively at this early date all of the issues that may arise when Title III is not complied with. We are endeavoring to reduce possible problems for creditors and employers by trying to make members of the public, especially court officers, aware of the requirements of the title. Furthermore, we think that questions such as yours may not be easily answered in the abstract, because we can see questions of liability arising under either State law (e.g., under doctrines of wrongful garnishment, abuse of process, or of discharge of obligations), or under the title (remedies that the courts would provide to give effect to the statute).

To answer your question in the light of general law, we doubt that an employer could refuse to pay for work done on the ground that he has paid wages to a third person without the employee's consent and in violation of an express provision of Federal law. Again, it seems to us that a garnishment creditor may not keep monies obtained illegally, and the retention of which would constitute a frustration of the purpose of the title.

We are hopeful that Title III will not give rise to as many difficulties as you seem to suggest. With specific reference to the computation of disposable earnings, we think employers should have little difficulty determining the deductions required by law, which presumably they have been making for years. And we, on our part, in enforcing Title Ill, will take into consideration any difficulty encountered and any honest effort made to solve it.

Sincerely,

Robert D. Moran
Administrator