U.S. Department of Labor

Wage and Hour Division
Washington, D.C. 20210

CCPA-63

March 30, 1973

This in reply to your letter of December 12, 1972, concerning the application of the discharge proscription in Title III of the Consumer Credit Protection Act to suspensions. Section 304 of the Act provides that no employer may discharge any employee by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness.

Your client proposes to issue a warning notice to an employee after receipt of the first garnishment notice, advising him that a second garnishment within a period of a year for a different indebtedness may result in his discharge. This warning notice would further provide that a second garnishment of the same indebtedness would result in a disciplinary layoff of three days and a third garnishment on the indebtedness would result in a disciplinary layoff for five days.

This law was enacted, in part, because Congress found that "the application of garnishment as a creditors' remedy frequently results in loss of employment by the debtor, and the resulting disruption of employment, production, and consumption constitutes a substantial burden on interstate commerce." (Sec. 301(a)(2).) The intent of section 304 was to alleviate this problem by eliminating loss of employment caused by garnishment for one indebtedness. Congress was, in effect, attempting to maintain the earnings of the employee so that legitimate debts could be paid.

The legislative history of the Act also indicates that section 304 was included in the law as a protection against "firing." Whether this limitation on discharge provision would apply to a particular suspension action would depend upon an examination of all the facts in the particular case. Thus, if a suspension is for an indefinite period or of such length or made upon such conditions that the employee's return to duty is unlikely, it may well be considered tantamount to "firing" and, thus, within the term "discharge" under that section. The term "discharge" is interpreted to include any adverse action which interrupts employment to the degree that a prudent employee would look for another job to sustain himself and his dependents and will be considered tantamount to a termination of employment and thus a "discharge" within the meaning of that section would exist.

With respect to your client's proposed policy of issuing a warning that a second garnishment on a different indebtedness within one year may result in discharge, you may wish to advise your client that section 304(a) does not expressly provide any time limitations between successive garnishments for more than one indebtedness. However, where a considerable time has elapsed between the garnishments, the surrounding facts and circumstances may perhaps indicate that the employee is being discharged for only "one indebtedness"; i.e., the current indebtedness. The first indebtedness, even a year before, may no longer be a material consideration in the discharge. A determination in this area depends on a careful examination of all the facts in each given situation. You may wish to direct your client's attention to the discussion on page 8 of the pamphlet on garnishment regarding the interval between a first and second garnishment.

However, if your client were to discipline his employees, as he proposes, by a series of gradually increasing suspensions following subsequent garnishments on the same indebtedness it could result in a violation of the Act. Each situation arising under the procedure your client proposes would have to be considered on its own facts. If your client is located in the State of Ohio, the State law permits only one garnishment in any 30-day period. See Hodgson v. Cleveland Municipal Court, 326 F.Supp. 419. This provision of the Ohio law would be a factor to be considered in determining whether the employer's proposed three- and five-day suspensions would result in violation of section 304 of the Act. A single suspension of three days for an employee under these facts would not be considered tantamount to discharge for purposes of section 304 of the Act. However, your client's proposed procedure of gradually increased suspensions for subsequent garnishments on the same indebtedness could so affect the employee's ability to support himself and his dependents as to force him to seek other employment, and thus the employer would achieve indirectly what he could not do directly. That would be tantamount to a discharge.

In our administration of the Act, we find growing numbers of employers who find it unprofitable to suspend employees because of garnishment. Aside from the illogic of expecting the employee to pay a debt when his income is cut off, they have found themselves losing good workers and increasing their employee turnover costs. A suspension or discharge rule, often instituted as a crutch for firing poor workers as well as for avoiding additional payroll administration costs, has resulted in firing good workers as well. Attempts to discipline an employee because of his debt situation - a reason unconnected with his work - have, also, not improved employee relations.

Sincerely,

Ben P. Robertson
Acting Administrator
Wage and Hour Division