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Can wages be garnished before a court date?

By Sally Herigstad



Dear To Her Credit,

My husband and I have gotten behind on some of our bills. He was served with a summons and complaint (we live in Colorado) some time back. The court date is tomorrow, so we didn't expect anything to happen until then. But at work today, when he received his paycheck, we saw that the law firm has already started wage garnishment.

Shouldn't he have gotten some type of notice before that happened? How can they do that if they haven't even been to court yet? -- *Mary*



Dear Mary,

It's a common misconception that creditors can't start [garnishment](#) until they go to court. Joshua P. Friedman, a collections and judgment enforcement attorney in Los Angeles, sets us straight.

"This is possible if the debtor read the summons and related court paperwork incorrectly," he says. "What typically happens is the plaintiff files suit and serves the lawsuit on the defendant. Depending on how they were served and what state they are in, they have a certain time period in which they must respond to the lawsuit (with answer, cross-complaint, demurrer or otherwise). At the same time, the court sets certain court dates for hearings on issues (e.g., order to show cause re: service of process; order to show cause re: default judgment; etc.)."

The court date may be months in the future. In the meantime, however, Friedman says, "If the defendant is served and does not respond to the lawsuit, the plaintiff does not need to wait until the court date to pursue a default judgment (aka a judgment in favor of the plaintiff due to defendant's failure to respond). In these scenarios, judgment will be entered prior to the first scheduled court date, and then after a short statutory period, the plaintiff, now judgment creditor, can begin to enforce the judgment against the defendant, now judgment debtor."

By now, you've already had your court date, and I assume the judgment has been rendered. The best thing you can do at this point in time is defend your income and other assets from garnishment. If the garnishment makes it difficult for you to support yourself and your family, you should be able to ask the court to adjust the amount of the garnishment.

All states have garnishment rules, but the specifics about how much time you have to respond, how much income is [exempt from garnishment](#) and so on vary from state to state. That's why it's so important to get professional legal advice. Friedman says, "The debtor should contact an attorney as soon as possible to try to have the default set aside and defend the case. Time is of the essence here."

[Bankruptcy is always an option](#) when debts have risen past the point where you can reasonably expect to ever pay them off. I hope your situation isn't that bad. You are generally much better paying off a debt, even through garnishment, than going through the expense, headache and demoralizing experience of bankruptcy. In addition, if your expenses are greater than your income, starting over with a "fresh slate" doesn't really help much. The state doesn't stay fresh very long unless underlying causes of financial problems are resolved.

A [credit counselor](#) or other financial counselor can help you look at your total financial picture and weigh all your options so you can decide how to proceed.

A wage garnishment can sometimes be a wake-up call, albeit an unpleasant one. I hope you take this time to find ways to improve your financial situation going forward. Hard times can come from human error, relationship problems, bad luck or a combination of all three. Throw in a bad economy like we've been having, and many people find themselves in a similar situation to yours. But there is always hope and a way to improve things and look to a brighter future. I hope you find the help you need and start moving toward that future soon.

To Her Credit



Sally Herigstad is a certified public accountant and the author of "Help! I Can't Pay My Bills: Surviving a Financial Crisis" (St. Martin's Press, 2006).

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National Average	14.99%
Low Interest	10.73%
Balance Transfer	12.77%
Business	13.13%
Student	13.77%
Airline	14.44%
Reward	14.70%
Cash Back	14.70%
Instant Approval	15.99%
Bad Credit	24.96%

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Sally Herigstad writes about women and credit every week for CreditCards.com. Herigstad is a writer and finance consultant for MSN Money, a personal finance software product. She is also a member of the Washington Society of Certified Public Accountants and the American Institute of Certified Public Accountants. Her Web site is <http://helpicantopaymybills.net>. Sally Herigstad lives in Kent, Wash., with her husband Gary. They have two grown children, Valia and Grant.

To Her Credit answers a question about a debt or credit issue from a CreditCards.com reader each week. [Send your question to Sally](#).

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