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Wage garnishment rules of engagement

If you lose your job, can they still collect?

By Sally Herigstad



Dear To Her Credit,

My husband's employer was just served with an employee wage garnishment order/levy. He is planning to file a claim of exemption to adjust the 25 percent of his pay being taken out to an amount that he can afford. The department where he works is being wiped out in the next month or so, however, which means he will not have a job anymore.

My questions are:

1. How will losing his job affect the wage garnishment order?
2. Will the judgment be put on hold until he finds another job?
3. If he will be given severance pay, can the creditor get part of this?
4. Since we live in California, which is a community property state, can they come after me and garnish my wages?
5. If he files for unemployment benefits, can the creditor go after them as well?

-- Paz



Dear Paz,

Let's take your questions in order:

1. To get a garnishment order, a creditor tells the levying officer (the sheriff or other official) where the debtor works. The levying officer collects money from the employer and gives it to the creditor. Since the order is written to a particular employer, that wage garnishment order will be useless after your husband loses his job.

If the debt is for taxes, the IRS casts a wide net. "The IRS sends out letters to everyone who could be possibly employing the debtor. If the taxpayer isn't working at any of those places, the IRS is out of luck," says Rich Boggs, founder and CEO of [Nationwide Tax Relief](#).
2. When your husband gets a new job, the creditor will have to file for a wage garnishment order with the new employer. This takes some time. "It takes the IRS between 30-90 days after the employer makes payroll," says Boggs. Other creditors somehow have to find the debtor's new employer before they can file for another order.
3. "Severance pay is fully at risk," says Boggs. Any pay, severance or otherwise, that is processed through payroll is considered to be wages and can be garnished.
4. In a community property state such as California, you share debts as well as assets. If your husband owes back taxes, the IRS can garnish your wages as well as your husband's -- even if you filed separately. (If you lived in a noncommunity state and filed separately, you would

To Her Credit



Sally Hengstad 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)

Ask a question.

To Her Credit' stories

not be liable for your husband's tax debts.) Boggs says, "The IRS can levy either spouse."

Other creditors can garnish your wages as well. Joshua P. Friedman, a collections and judgment enforcement attorney in Los Angeles, says such creditors have to file a motion with the court, but they can go after your wages. They may not find it easy, however. "The hardest part in collection is locating those assets, not seizing them once you've located them. They're going to search for it, absolutely."

5. No, most creditors cannot garnish unemployment benefits unless the judgment was for spousal or child support. States cannot garnish payments from the federal government, and vice versa, according to Boggs. "States can garnish unemployment if you owe money to them. State unemployment would be immune from IRS levy." Friedman says that by the time you claim exemption for the basic necessities of life – food, a car, rent – you're not going to have to worry about having unemployment benefits garnished.

Filing the [California claim of exemption wage garnishment form](#) is a very important step your husband can take to protect your living expenses. He doesn't have much time to file the claim, however. In California, he must file for an exemption within 10 days after he receives the notice of garnishment. Your husband can get the form at the nearest small claims clerk or the sheriff's or marshal's office. After you file the claim, the court decides how much of your husband's pay is required for living expenses and cannot be garnished.

I hope your husband finds a great new job soon. Best of luck!

See related: [Ignoring credit card debt can lead to garnished wages](#)

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://helpicantpaymybills.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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