

# One Law to Rule Them All

## ULC Approves Uniform Wage Garnishment Act



BY WILLIAM DUNN, CPP

“Simplicity, simplicity, simplicity!” 19th century author and philosopher Henry David Thoreau cried. “Let your affairs be as two or three and not a hundred or a thousand.”

These sentiments, if not the words themselves, may echo through the offices of many a multistate payroll department where the sheer volume of rules, laws, and regulations poses challenges both personal and professional. Throughout its history, the APA has worked to simplify the responsibilities for payroll professionals and now stands on the verge of its most ambitious effort—convincing 50 states and the nation’s capital to replace their wage garnishment laws with new provisions that will be consistent throughout the country.

The effort began five years ago when the APA approached the Uniform Law Commission (ULC) with a request to draft a model state law and culminated in July when the ULC completed its work and approved the Uniform Wage Garnishment Act (UWGA), at its annual meeting.

### What Is the ULC?

The ULC is a state-sponsored organization, and its

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commissioners, numbering more than 350, are practicing lawyers, governmental lawyers, judges, law professors, and lawyer-legislators, each of whom are appointed by their respective state or territory. The ULC has drafted more than 200 uniform laws, many of which are relied upon regularly by business and payroll professionals, including the Uniform Interstate Family Support Act, the Uniform Electronic Transactions Act, and the Uniform Commercial Code.

Major provisions of the UWGA include a limited role for the courts, identifying the terms employee and principal place of employment, serving the order, employee notice, the administrative fees, and more. Let’s look at each of these a bit closer:

### Limited Role for Courts

The UWGA attempts to limit the involvement of the courts, which will reduce costs and eliminate the necessity for employers to hire attorneys to handle their garnishments. The ULC provides this example: “An employer served with a summons will answer to the creditor rather than the court and will remit garnished amounts directly to the creditor. This approach will reduce costs, which are typically charged to the employee, and will obviate the need for an employer to retain counsel except in unusual circumstances. If an issue arises, any affected party—employee, employer, or creditor—may petition the court for relief.”

## Who Is an ‘Employee’?

For purposes of the UWGA, the term employee includes workers who are treated as employees for federal income tax purposes, former employees who are owed earnings, as well as those who are not treated as employees for federal income tax purposes but who receive periodic payments from the employer. The ULC explains that this definition “extends protection to a cadre of individuals who are classified as independent contractors but who are virtually indistinguishable from employees.”

## Principal Place of Employment

Under the UWGA, a garnishment must be served in the state where the employee’s principal place of employment is located. The objective of this provision is to provide the employee with access to the court proceeding without having to travel out of state. The act provides an exemption to this rule if the employer is not subject to jurisdiction in the state where the employee works.

## Serving the Order

Garnishments are to be served on an employer’s registered agent, if the employer has one “that can be served with reasonable diligence.” Otherwise it may be served directly on the employer.

The order itself must include the debtor’s name and last known address. It must also include the amount owed and something to identify the debt leading to the garnishment. The notice must include the name and address of the creditor’s agent to whom the payments should be sent. In a separate document that is provided only to the employer and not filed with the court, the creditor must provide the debtor’s date of birth and full social security number or else state that the date or number is not known.

## Notice to Employee

Service of the garnishment order also must include a notice for the employee that explains the garnishment process. The ULC worked with plain-language experts to craft a notice that is proven to be easily understood by a broad demographic. The notice is written in a question-and-answer format, covering the following:

1. Why am I getting this notice?
2. How much do I owe?
3. How will the amount I owe be paid?
4. What options do I have?
5. What if I don’t do anything?

## Administrative Fee

The UWGA provides for an administrative fee to be paid by the creditor at the time the order is served. The amount of the

fee is to be set by the state. Although it is paid by the creditor, it is understood that, in practice, the creditor will charge the administrative fee back to the employee as a legal fee.

When a model act is sent to legislatures for consideration, the ULC provides legislative notes to explain various issues. Regarding the administrative fee, the ULC is drafting an alternative provision that states might choose to enact. The alternative would allow for a two-fee structure. Rather than a single fee, which might be in the neighborhood of \$75, the order might require a lesser up-front fee of, say, \$20, followed by a fee to be withheld from each payment of, say, \$3.50.

There are compelling arguments for both fee structures. Both are intended to reimburse employers for the costs they incur as innocent third parties in legal disputes between creditors and debtors. The larger up-front fee is likely to discourage frivolous garnishments and has been favored by consumer advocates and attorneys representing employers. The lower up-front fee followed by a per-payment fee could be fairer to employees, especially those who change jobs before the garnishment runs its course.

See also [Inside Washington, April 2016](#); and [PAYTECH, October 2015, Government Corner](#) for more information.

## Garnishee’s Response

Once it has been served with a garnishment, the employer has 21 days to answer. Through the answer, the employer might refuse to honor the garnishment because:

1. The employee doesn’t work for the employer
2. The employee’s principal place of employment is not in the same state where the garnishment was served
3. The withholding order is incomplete, either by failing to provide necessary identifying information or by not including the statement for the employee
4. The withholding order does not include the administrative fee

If the employer provides such an answer, the creditor has 21 days to either seek dismissal of the garnishment action or request a hearing to determine whether the employer is obligated to proceed with the garnishment.

If the garnishment is in order, the employer must reply to the creditor’s agent that the debtor works for the employer. The statement must include the employee’s pay frequency and the date of the next payday. The answer must also include the name and contact information for the person the creditor should contact if further communication is necessary. For example, the creditor might notify the employer that the amount owed has changed. The employer must also notify the employee of the garnishment.

## Beginning Withholding

Withholding is to begin on the first payday that occurs at least 30 days after the employer has notified the employee of the garnishment. The ULC explains that this “gives an employee time to act after being notified of a garnishment.”

Limits on withholding are to be determined by the state. ULC explains, “The format is the same as the format found in the Consumer Credit Protection Act, which requires a certain level of protection for employees but allows the states to be more generous. Under existing law, states sometimes provide for more generous protection by changing the definition of disposable earnings found in federal law. The approach of this act is to use the federal definition of disposable earnings and permit states to express their generosity by limiting the amount subject to garnishment in this section.”

## Remittances

Once the money is withheld, the employer has five days to remit the funds to the creditor. The employer is directed to send a check to the address provided by the creditor, although alternatively, the creditor and employer may arrange for the funds to be remitted through an electronic funds transfer.

If an employer is withholding funds from multiple employees payable to a single creditor, the employer may combine the amounts into a single payment.

## Withhold Until Paid in Full

When the garnishment is served, the creditor must declare the amount owed. If the employee does not dispute the amount, the employer is to withhold until the amount is paid in full. Currently, half the states provide that withholding continues until paid in full.

The garnishment ceases when either the employer’s records show that the debt has been paid in full or the debtor no longer works for the employer. Once the employment relationship ends, the employer has 21 days to notify the creditor’s agent. Once notified that the debt has been paid or employment has been terminated, the creditor has 21 days to seek dismissal of the garnishment.

## Recordkeeping

Employers must keep a record of the amount withheld each pay period and prepare a calculation worksheet upon which the amount of the payment is determined. The UWGA provides a template for the worksheet but also acknowledges that the worksheet may differ from state to state. (For example, some states do not have income taxes to be factored into the calculation.) Employers must provide



## Top Three Takeaways

**The Uniform Wage Garnishment Act (UWGA) will replace state wage garnishment laws with a more consistent structure that aims to:**

1. Give a limited role to the courts.
2. Identify the terms employee and principal place of employment, serving the order, employee notice, the administrative fees, and more.
3. Introduce this to the states for the 2017 legislative year as the APA works with the ULC to develop a plan.

a copy of the worksheet to the employee or creditor upon request. Employers are not required to provide more than one worksheet to an employee per pay period, nor more than four worksheets to the creditor per year.

## Multiple Garnishments

Under the UWGA, multiple garnishments of equal priority may be withheld at the same time. So, if two creditor garnishments were served for the same employee, the employer would send half the amount withheld to each creditor. Nothing in the UWGA changes the priority of withholding orders under state law. For example, child support withholding orders would continue to have priority over creditor garnishments.

## Employer Sanctions

The UWGA provides sanctions for both creditors and employers that either act in bad faith or fail to fulfill their obligations under the act.

The act imposes sanctions on an employer that fails to carry out its responsibilities under the act after receiving a notification of default. Separate fines apply to failure to respond to a garnishment, failure to withhold, and failure to remit. Fines may range from \$5-\$20 a day but may not exceed the amount the debtor owes to the creditor. Any sanctions that the employer pays to the creditor must be applied to the employee’s debt. The employer cannot recoup the amount from the employees.

Sanctions may only be imposed if the debtor or creditor files a motion with the court indicating the nature of the misconduct. Further, once the employer is notified of the infraction, the employer has a period of time to come into compliance with the order. The period of time differs depending on the nature of the misconduct. Further, the court may waive all or part of the sanctions.

The UWGA also prohibits employers from firing or taking any adverse action against an employee because the employee is subject to a wage garnishment. Violations of the prohibition are enforced under the state's fair employment practices law.

### Creditor Sanctions

If a court determines that a creditor is wrongly seeking a garnishment under the act, the court may fine the creditor. The UWGA recommends that fines not exceed \$1,000.

Bad faith may be shown by either (1) failing to stop a garnishment effort within seven days of being notified by the employer or employee that the garnishment is wrongful or (2) failing to request a court hearing to determine whether the garnishment was wrongful. After seven days, a daily fine of \$50 may apply. Creditors must also immediately refund any funds withheld from the debtor in the past 60 days. Courts are also free to award further fines or to waive the fines as appropriate.

### Next Steps

In the coming months, the APA and the ULC will work together to develop a plan for introducing the UWGA in states for the 2017 legislative year. Full text of the UWGA may be found at [http://www.uniformlaws.org/shared/docs/wage%20garnishment/2016AM\\_WageGarnishment\\_As%20approved.pdf](http://www.uniformlaws.org/shared/docs/wage%20garnishment/2016AM_WageGarnishment_As%20approved.pdf). ■

