

§3127-B. Order to employer or payor of earnings

1. Order. When it is shown upon ex parte motion and affidavit that the judgment debtor has either failed to timely make 2 or more payments required by an installment order under section 3126-A or when the judgment debtor has failed to appear, after having been subpoenaed for a hearing provided for in this chapter, the court may approve the service of an order to withhold and answer on the judgment debtor's employer or other payor of earnings. The order must state the amount owed on the judgment debt, interest and costs. If the court has previously determined an installment payment amount under section 3126-A, the order must state that amount. The order must demand an answer under oath listing the dollar amounts of all earnings owed or payable to the debtor and the calculation of the judgment debtor's disposable earnings. The order must be served on the employer or other payor and on the judgment debtor within 60 days of the date of the order. A form answer must be attached to the order when served on the employer or other payor of earnings.

[PL 1999, c. 587, §5 (AMD).]

2. Withhold and answer. The employer or other payor served with the order shall calculate the maximum dollar amount of the employee's disposable earnings which may be applied to the debt under section 3126-A by using the form answer attached to the order. Within 20 days of service of the order, the employer or other payor of earnings shall:

A. File the completed form answer with the court; [PL 1987, c. 184, §11 (NEW).]

B. Serve copies of the answer on the judgment debtor and the judgment creditor in the manner provided in the Maine Rules of Civil Procedure, Rule 5; and [PL 1987, c. 184, §11 (NEW).]

C. Withhold from the employee and pay to the judgment creditor the amount of the previously ordered installment payment or the maximum dollar amount of the employee's disposable earnings which may be applied to the debt, whichever amount is less, until the court orders otherwise or the debt is satisfied. [PL 1987, c. 184, §11 (NEW).]

[PL 1999, c. 587, §5 (AMD).]

3. Hearing on motion. Within 20 days of the service of the answer of the employer or other payor of earnings, the judgment debtor or the judgment creditor may request by motion a hearing to determine what amount, if any, of the judgment debtor's earnings should be ordered payable by the employer or other payor to the judgment creditor. The motion must be served on the employer or other payor as well as the other party. After the hearing, if the court is satisfied as to the existence and amount of the judgment debtor's disposable earnings payable by the employer or other payor, it may issue an order to the employer or other payor to withhold an amount, subject to the requirements of section 3126-A, from the earnings of the judgment debtor and pay the amount to the judgment creditor. If the court fails to find disposable earnings payable by the employer or other payor, it may terminate the withholding required under subsection 2. If the court terminates withholding or reduces the amount withheld, the court may order appropriate reimbursement of the judgment debtor by either the employer or the judgment creditor. No reimbursement or retroactive withholding is permitted against the employee if the court order increases the amount withheld.

[PL 1999, c. 587, §5 (AMD).]

4. Withholding charge. An employer or other payor subject to a withholding order may charge a fee of \$1 per check issued and forwarded to the judgment creditor. This fee shall be deducted from the amount withheld prior to its remittance to the judgment creditor.

[PL 1987, c. 184, §11 (NEW).]

5. Default. Failure of an employer or other payor of earnings, duly served with an order to withhold and answer, to timely file an answer shall constitute a default and subject the employer or other payor to separate liability for an amount equal to that portion of the judgment debt which could properly have been withheld under subsection 2, plus interest. This liability accumulates unless the

employer or other payor files a late answer. When the employer files a late answer, the accumulated liability continues for 20 days from the answer or, if a motion is filed under subsection 3, until the court makes an order.

[PL 1987, c. 184, §11 (NEW).]

6. No discharge or contribution. No employer may discharge any employee because his earnings are subject to an order under this section. The employer shall not have a cause of action against the employee to recover any amounts paid by the employer to the creditor under the employer's separate liability as provided under subsection 5.

[PL 1987, c. 184, §11 (NEW).]

7. Enlargement of time limits. The time limits in this section may be enlarged as provided in the Maine Rules of Civil Procedure, Rule 6.

[PL 1987, c. 184, §11 (NEW).]

SECTION HISTORY

PL 1987, c. 184, §11 (NEW). PL 1999, c. 587, §5 (AMD).

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