

## **WAGE DEDUCTION**

### Instructions for Creditors

Read 735 ILCS 5/12-801 et seq Illinois State Statutes

#### *Beginning a Wage Deduction Proceeding*

1. Prepare Wage Deduction Notice (4 copies required):
  - a. Defendant
  - b. Employer
  - c. Court file
  - d. Your file
2. Mail a copy of the Wage Deduction Notice to the Defendant.
3. Prepare Wage Deduction Affidavit with Interrogatories on the back (6 copies required):
  - a. Original for Court
  - b. Four (4) copies for employer
  - c. Your file
4. Prepare Wage Deduction Summons (5 copies required):
  - a. Original plus one (1) copy for Sheriff/Process Server
  - b. Employer
  - c. Court file
  - d. Your file
5. File the Wage Deduction Affidavit and Notice with court clerk and issue summons.
6. Place the summons for service with the Sheriff, process server, any person over the age of 18 and not a part to the action, or by certified or registered mail, return receipt requested (see Supreme Court Rule 105(b)). Serve four copies of the Affidavit/Interrogatories, one copy each of the Summons and Wage Deduction Notice. Also include a copy of the judgment if there is no certification on the form relating to the amount of judgment, name of court and case number. File the original summons with proof of service with the clerk of the circuit court.

#### *How to Respond to Inquiries by Employers*

1. Suggest they contact their attorneys for specific legal advice.
2. Suggest that they read the interrogatories to employer and follow the instructions thereon.
3. Explain that this is a permanent wage deduction proceeding and help them with general information that will allow them to respond to the Interrogatories.
4. Make sure that you have employers file answers with the court and deliver a copy to the employee in addition to sending a copy to your office.

#### *Proceedings in Court on Return Date*

This is an area of procedure that all judges handling wage deduction proceedings must determine for their own courtroom. Generally speaking, it is recommended that the attorney appear and be prepared to enter an appropriate Order. However, this suggestion may be changed once a judges and practitioners have some experience as to how these proceedings will impact court calls.

1. Funds answer: the employer has filed an answer indicating that it is able to make deductions from the defendant's wages. Prepare a wage deduction order and have it entered by the court.
2. No funds answer: a no funds answer may be filed by the employer for one of several reasons:
  - a. The defendant is not employed.
  - b. Prior child support or other deduction orders.
  - c. Insufficient income.
  - d. Defendant filed a bankruptcy.

If faced with one of the above responses, you must prepare an order either discharging the employer or continuing the proceedings to a date in the future which will allow sufficient time for the employer to complete prior productions.

3. No answer filed by employer: if the employer fails to file an answer, the appropriate order is a conditional judgment against the employer for the full amount due the creditor. However, before issuing a summons after conditional judgment, the creditor is advised to contact the employer and determine whether or not the employer will file an answer, albeit late. If the employer is filing an answer, do not issue the summons after conditional judgment unless the answer is not, in fact, filed in a reasonable period of time.
4. Late answers by employers: If the employer files an answer after the return date of the proceedings, a motion for entry of a deduction order should be made with notice given to both the employer and the employee. If a conditional judgment has been entered, that conditional judgment should be vacated at the same time that the wage deduction order is entered.
5. Summons after conditional judgment: if the employer fails to appear in response to a summons after conditional judgment, the appropriate court order is a final judgment against the employer for the original balance due on the conditional judgment plus additional court costs. Additional interest does not accrue on the conditional judgment, only on the final judgment against the employer.

#### *After Entry of Deduction Order*

1. Send a copy of the deduction order to the employer.
2. Send a certificate of the judgment balance to the employer at the beginning of each calendar quarter. The mailing of certifications should be commenced at the end of the first full calendar quarter following the date of service of the wage deduction summons. Example: summons served April 6<sup>th</sup>; September 30<sup>th</sup> is the end of the first full calendar quarter after service of the summons. Therefore, the certificate should be mailed between October 1<sup>st</sup> and 15<sup>th</sup>.

STATE OF ILLINOIS  
IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT  
CHRISTIAN COUNTY, TAYLORVILLE, ILLINOIS

	)	
Judgment Creditor	)	Case No. _____
Plaintiff	)	
vs.	)	
	)	
Judgment Debtor	)	Name and address of attorney for Judgment Creditor or of Judgment Creditor if not represented by an Attorney:
Defendant	)	
Address of Judgment Debtor:		
Amount of Judgment: \$ _____		Return Date: _____
Name of Employer: _____		

**Wage Deduction Notice**

NOTICE: The court shall be asked to issue a wage deduction summons against the employer named above for wages due or about to become due to you. The wage deduction summons may be issued on the basis of a judgment against you in favor of the judgment creditor in the amount stated above.

The amount of wages that may be deducted is limited by federal and Illinois law.

(1) Under Illinois law, the amount of Wages that may be deducted is limited to the lesser of (i) 15% of gross weekly wages, or (ii) the amount by which disposable earnings for a week exceed the total of 45 times the federal minimum hourly wage.

(2) Under federal law, the amount of wages that may be deducted is limited to the lesser of (i) 25% of disposable earnings for a week, or (ii) the amount by which disposable earnings for a week exceed 30 times the federal minimum hourly wage.

(3) Pension and retirement benefits and refunds may be claimed as exempt from wage deduction under Illinois law.

You have the right to request a hearing before the court to dispute the wage deduction because the wages are exempt. To obtain a hearing in counties with a population of less than 1,000,000, you must notify the clerk of the court in writing at P.O. Box 617, Taylorville, Illinois 62568 on or before the return date specified above. The Clerk of the Court will provide a hearing date and the necessary forms that must be prepared by you or your attorney and sent to the judgment creditor and the employer, or their attorney, regarding the time and locations of the hearing. This notice may be sent by regular first class mail.

STATE OF ILLINOIS  
 IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT  
 CHRISTIAN COUNTY, TAYLORVILLE, ILLINOIS

	)	
Plaintiff	)	
vs.	)	Case No. _____
	)	
	)	Return Date:
Defendant	)	
and	)	_____
	)	21 to 40 days after date of issuance of summons
	)	
Employer	)	

**Affidavit for Wage Deduction Order**

\_\_\_\_\_ on oath states:

1. I believe employer \_\_\_\_\_ is indebted to the judgment debtor \_\_\_\_\_ for wages due or to become due. Employer's address is: \_\_\_\_\_

2. The last known address of the judgment debtor is: \_\_\_\_\_

I requested that a summons issue directed to employer and I certify that a copy of the attached Wage Deduction Notice was mailed to judgment debtor, by first class mail, at his/her last known address prior to filing of this wage deduction proceeding.

Name: \_\_\_\_\_  
 Attorney for Judgment Creditor: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City, State, Zip: \_\_\_\_\_  
 Telephone: \_\_\_\_\_

Affiant: \_\_\_\_\_  
 Under penalty of perjury as provided by law pursuant to 735 ILCS 5/1-109 the affiant certifies that the statements set forth herein are true and correct.

**Certificate of Attorney or Judgment Creditor**

**NOTE:** Non-attorneys must also submit a copy of the underlying judgment or a certification by the clerk of the court that entered the judgment.

I, the undersigned certify under penalties as provided by law pursuant to 735 ILCS 5/1-109 that the following information is true:

1. Judgment in the above captioned case was entered on \_\_\_\_\_.
  2. The amount of judgment was \_\_\_\_\_ \$\_\_\_\_\_
  3. Allowable costs previously expended:
    - a. Initial filing fee \_\_\_\_\_ \$\_\_\_\_\_
    - b. Original and alias summons \_\_\_\_\_ \$\_\_\_\_\_
    - c. Filing and summons costs of prior supplementary proceeding \$\_\_\_\_\_
  4. Filing and summons cost for this proceeding \_\_\_\_\_ \$\_\_\_\_\_
  5. Statutory interest due on Judgment from date above \_\_\_\_\_ \$\_\_\_\_\_
- Total \$\_\_\_\_\_

DEDUCT: Total amount paid by or on behalf of the judgment debtor prior to this proceeding \_\_\_\_\_ \$\_\_\_\_\_

BALANCE DUE JUDGMENT CREDITOR \_\_\_\_\_ \$\_\_\_\_\_

Attorney or Judgment Creditor \_\_\_\_\_

Return Date: \_\_\_\_\_

Case No. \_\_\_\_\_

### Interrogatories/Answer to Wage Deduction Proceedings

Employer/Agent: \_\_\_\_\_, certifies under penalty of perjury that the following Answer is true and correct to the best of her/his knowledge and belief concerning the property of the judgment debtor:

Debtor Name: \_\_\_\_\_ SS# \_\_\_\_\_

Do you pay monies to the judgment debtor listed above? Yes \_\_\_\_\_ No \_\_\_\_\_

State whether any funds paid to the debtor are for disability, retirement or are in any other way exempt or subject to other Court Order: \_\_\_\_\_

One Pay Period equals: \_\_\_\_\_ day(s) \_\_\_\_\_ week(s) \_\_\_\_\_ month(s)

#### Calculation to Determine Amount of Withholding:

- (A) Gross Wages minus mandatory contributions to pension or retirement plan is (A) \_\_\_\_\_
- (B) Method I – 15% of (A) = (B) \_\_\_\_\_
- Method II
- (C) Enter Total FICA, State and Federal Tax and Medicare (C) \_\_\_\_\_
- (D) Subtract (C) from (A) = (D) \_\_\_\_\_
- (E) Enter minimum wage per pay period (for each pay period, 45 times the federal minimum hourly wage or, under a wage deduction summons served on or after January 1, 2006, the minimum hourly wage prescribed by Section 4 of the Illinois Minimum Wage Law, whichever is greater) (E) \_\_\_\_\_
- (F) Subtract (E) from (D) (F) \_\_\_\_\_
- (G) Enter the lesser of line (B) or (F) (G) \_\_\_\_\_
- (H) Enter Child Support of other Court Ordered Deduction (H) \_\_\_\_\_
- (I) Subtract (H) from (G) (I) \_\_\_\_\_
- (J) Subtract Employer’s Statutory Fee (5/12-814): greater of 2% of amount required to be deducted or \$12.00 (J) \_\_\_\_\_
- (K) Amount to be applied to judgment (K) \_\_\_\_\_

Line I is the amount to be withheld from employee’s paycheck as of the date of service of Summons and not disbursed until further order of Court.

#### INSTRUCTIONS

1. Mail a copy of this Answer to the Court and mail to attorney for Plaintiff and give a copy to the Defendant.
2. You will receive a copy of a Court Order by fax or mail instructing you how to proceed and where to send deducted funds.

#### THIRD PARTY EMPLOYER CERTIFICATION

Under the penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109), the undersigned certifies that the statements set forth in this instrument are true and correct and that I have either mailed or hand delivered a copy of this completed Interrogatories/Answers to the Defendant.

Date: \_\_\_\_\_ Signature of Employer/Agent: \_\_\_\_\_

Print full name: \_\_\_\_\_

Employer Name: \_\_\_\_\_

Employer Address: \_\_\_\_\_

Employer Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

STATE OF ILLINOIS  
IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT  
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	)	
	)	Case No. _____
Plaintiff	)	
vs.	)	
	)	
	)	Address of employer:
Defendant	)	_____
	)	
	)	_____
Employer	)	

**Wage Deduction Summons**

To the employer:

YOU ARE SUMMONED and required to file answers to the judgment creditor's interrogatories, in the Office of the Clerk of this Court, Christian County Circuit Clerk, P.O. Box 617, Taylorville, IL 62568, on or before \_\_\_\_\_ (21 to 40 days after issuance of summons). However, if this summons is served on you less than 3 days before that date, you must file answers to the interrogatories on or before a new return date, to be set by the court, not less than 21 days after you were served with this summons.

This proceeding applies to non-exempt wages due at the time you were served with this summons and to wages which become due thereafter until the balance due on the judgment is paid.

IF YOU FAIL TO ANSWER, A CONDITIONAL JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE AMOUNT OF THE JUDGMENT UNPAID.

FEDERAL AGENCY EMPLOYERS: Effective upon service of this summons and pursuant to 5 USC 552(a), you are to commence to pay over deducted wages to the attorney for the judgment creditor in accordance with 735 ILCS 5/12-808.

To the officer:

This summons must be returned by the officer or other person to whom it was given for service, with indorsement of service and fees, if any, immediately after service. If service cannot be made, this summons shall be returned so indorsed. This summons may not be served later than the above date.

Witness: \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Clerk of the Circuit Court

(Seal of court)

By: \_\_\_\_\_  
Deputy

\_\_\_\_\_  
(Plaintiff's attorney or plaintiff if not represented by an attorney)

Name: \_\_\_\_\_

Attorney for: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

	( Service and return	\$ _____
SHERIFF'S FEES	( Miles _____	\$ _____
	( Total	\$ _____

I certify that I served this summons on defendants as follows:

A. Individual defendants – personal:

(The officer or other person making service, shall (a) identify as to sex, race, and approximate age of the defendant with whom the summons was left, and (b) state the place where (whenever possible in terms of an exact street address) and the date and time of the day when the summons was left with the defendant.)

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B. Individual defendants – abode:

By leaving a copy and a copy of the complaint at the usual place of abode of each individual defendant with a person of the family or a person residing there, of the age of 13 years or upwards, informing that person of the contents of the summons. (The officer or other person making service, shall (a) identify as to sex, race, and approximate age of the person, other than the defendant, with whom the summons was left; and (b) state the place where (whenever possible in terms of an exact street address) and the date and time of day when the summons was left with such person.)

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and also by sending a copy of the summons and of the complaint in a sealed envelope with postage fully prepaid, addressed to each individual defendant at his or her usual place of abode, as follows:

Name of Defendant	Mailed Address	Date of mailing
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C. Corporation defendants:

By leaving a copy and a copy of the complaint with the registered agent, officer or agent of each defendant corporation, as follows:

Defendant Corporation	Registered agent, officer or agent	Date of service
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D. Other service:

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\_\_\_\_\_, Sheriff of \_\_\_\_\_ County

By: \_\_\_\_\_, Deputy