

Daily Checkup for Illinois Employers: Are You Properly Responding to Child Support Orders?

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Employers must be wary of letting their guard down when responding to **child support orders** issued under the **Illinois Income Withholding for Support Act (IIWSA)** because mistakes can result in a windfall for complainants and harsh penalties for employers. Take, for example, the employer who properly withheld child support of \$82 per week from its employee but failed to pay the withheld amount to the State Disbursement Unit in a timely fashion and was penalized \$1,172,100 (see *In re Marriage of Miller*, 227 Ill. 2d 185 (2007)); or the employer who failed to withhold child support altogether and was penalized \$369,000 (see *In re Marriage of Gulla*, 382 Ill. App. 3d 498 (2d Dist. 2008)). The importance of proper compliance with notices to withhold income cannot be understated.

The cost to employers lies in the \$100-per-day penalty that will accrue if the employer knowingly fails to withhold income under the IIWSA or pays late. This penalty applies to each new infraction, and more than one late or failed payment creates the presumption that the employer knowingly failed to pay over the amounts due.

However, there is some good news for employers. Before 2012, there was no requirement that a complainant must notify the employer of late or failed payments, thereby allowing him or her to collect tens of thousands of penalty dollars for what is often a simple payroll mistake; but in 2012, the Illinois General Assembly amended the IIWSA to add a one-year statute of limitations and a notification requirement. Now, a complainant must give an employer written notice of the late or failed payment before he or she can collect the \$100-per-day penalty.

What are employers supposed to do? Employers would be wise to review existing garnishment and withholding policies, and conduct annual training sessions so that staff are aware of the strict statutory requirements that must be met. It would also be prudent for employers to use checklists and make sure withholdings are properly taken from all wages, including bonuses and commissions.

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