

Basic Guidelines for Federal Agencies on Child Support Withholding

Allocation for Multiple Orders:

Policy for Processing Multiple Child Support Orders for the Same Employee

Federal regulations require that some money must be paid to each order for current support if there is more than one withholding order. States have enacted laws specifying the method for apportioning funds toward current support due for each order. Thus, some money must be allocated toward each order. The orders should not be paid on a “first come, first served” basis.

OPM regulations at 5 CFR 581.305(d) state: "If a government entity is served with more than one legal process for the same moneys due or payable to an individual, the entity shall comply with section 581.303(a)." 5 CFR 581.303(a) states whenever a designated agent is validly served with legal process, the agent shall comply with all applicable provisions of 42 USC §666 and the regulations prescribed under such section by the Secretary of the Department of Health and Human Services.

The requirement for states to have a method for allocation of monies due when there are multiple obligations for one obligor is found in regulation at 45 CFR 303.100(a)(5): each state “must establish procedures for allocation of support among families, but in no case shall the allocation result in a withholding for one of the support obligations not being implemented.”

Application of the Requirement

If there is enough allowable disposable income, the employer should pay the full amount of current support due for each order. Sometimes an employee's earnings do not stretch far enough to pay all his or her claimants. If there is not enough allowable disposable income, the allocation method of the employee's principal place of employment (state of official duty station) must be followed to determine how much to pay for each order. States use one of two methods to allocate withheld payments among multiple withholding orders:

1. Prorate by allocating a percentage to each order based on the total dollar amount of current support ordered; or
2. Share equally by dividing the allowable disposable income by the total number of orders.

The majority of states prorate by allocating a percentage. General information about child support calculations and examples of calculations in both situations is provided below.

For additional information on child support enforcement and the processing of income-withholding notices, contact Robyn Large of the Federal Office of Child Support Enforcement at (540) 368-2934 or rlarge@acf.hhs.gov.

Child Support Income-withholding Calculations

Income Withholding

Income withholding is a court or administratively ordered deduction of a specified amount from a parent's income for payment of child support. A child support income withholding must be paid before all other garnishments. Not only must child support be paid first, a higher percentage of the employee's disposable income can be withheld for child support. The only withholding that takes precedence over child support is a federal tax levy issued prior to when the child support order was established.

The employer deducts the specified amount each pay period and sends it to the child support agency's State Disbursement Unit (or another address when appropriate), which then forwards the payment to the custodial parent. All employers must honor an income-withholding order/notice for child support from any state. Out-of-state income-withholding orders/notices are valid throughout the country and U.S. territories.

Processing the Income-Withholding Notice

All states are required to use a standardized withholding form entitled *Order/Notice to Withhold Income for Child Support* (OMB No. 0970-0154). Upon receipt of the Order/Notice to Withhold Income for Child Support, the employer should:

1. Document the date of receipt.
2. Determine if the order is "regular on its face" (that is, it appears to be an authentic and complete legal document. If the document is not sent by the child support enforcement agency and there is any question as to whether the document is "regular on its face", the employer has a right to request a copy of the underlying court order.).
3. Give a copy of the Order/Notice to the employee.
4. Follow the terms of the order.
5. Direct questions, if any, to the point of contact listed on the form.

Only the employee has the right to dispute the terms of a child support income-withholding order and should do so by contacting the issuing agency or tribunal. The employer cannot contest the income-withholding order. However, the employer should contact the issuing agency if unable to implement the withholding either because the individual named in the order is not an employee or because there is already a withholding in place for the child and employee.

Follow the law of the *issuing state* (this information may be accessed through the OCSE website: <http://www.acf.dhhs.gov/programs/cse/newhire/employer/contacts/contacts.htm>) for:

- Duration and amount of child support, current and overdue arrears
- Medical support terms
- Where to remit payments
- Payment of fees and costs charged (if any) by the child support enforcement agency, issuing court or custodial party's attorney.

Follow the law of the employee's *principal place of employment* (state of official duty station) for:

- When to begin withholding
- When to remit payments (this can be from 1 to 7 days after payday)
- Maximum amount to be withheld (within Consumer Credit Protection Act limits)
- How to allocate withholding across multiple child support orders
- Employer's administrative fee
- Other terms and conditions that may be set by state law.

Withholding Calculations

There are two basic steps to determine how much to withhold for child support from an employee's income: calculating disposable income and calculating allowable disposable income.

1. Disposable Income = gross pay – mandatory deductions.

- Disposable income is the amount of earnings remaining after subtracting certain mandatory deductions from an employee's gross pay.
- Mandatory deductions include federal, state and local taxes, and other deductions for federal employees as listed in the following example.
- Note that disposable income is not necessarily the same as net pay. An employee may have a deduction taken from his pay that is not mandatory, such as union dues or a credit union car loan payment.

2. Allowable Disposable Income = disposable income x CCPA % limit

- Allowable disposable income is the *maximum available* for child support withholding. The ordered amount will usually be less than the allowable disposable amount and then the ordered amount can be withheld without any problem. Even if the withholding order specifies a higher payment, the allowable disposable income is the most that can be withheld.
- The Federal Consumer Credit Protection Act (CCPA) sets limits on withholding from an employee-parent's disposable income based on his/her current family situation and child support payment history. The CCPA protects the employee from having an excessive amount withheld. (Some states have enacted laws that provide even more protection to the employee-parent's income, although most states follow the federal limits.)

- The withholding limits set by the federal CCPA are as follows:
 - 50% Supports a second family, with no arrears or < 12 weeks in arrears
 - 55% Supports a second family, and more than 12 weeks in arrears
 - 60% Single, with no arrears or < 12 weeks in arrears
 - 65% Single, and is more than 12 weeks in arrears.
 (A second family means there are other dependents, a spouse and/or child, for which the employee-parent has responsibility. In arrears means there is past due, unpaid support owed by non-custodial parent.)

Withholding Example - Allowable Disposable Income

- Weekly gross pay is \$760.
- Weekly child support due is \$295.
- Mandatory deductions total \$176.
- Employee-parent is single and does not owe back child support.

The following is a list of mandatory deductions for federal employees [See 42 U.S.C. 659(h)(2)]:

- Federal, state, and local income taxes as required by law (including FICA and Medicare)
- Health insurance premiums
- Retirement contributions including Old Age, Survivor, and Disability Insurance (OASDI) amounts and Thrift Savings Plan (TSP) contributions (but not amounts deducted for TSP loan repayments)
- Life insurance premiums (but not including contributions for supplementary coverage)
- Monies owed by the individual to the U.S. Government
- Federal employment taxes, fines, and forfeitures ordered by military court-martial.

Note the following differences between net pay and disposable income in this example. The amount of disposable income, \$584, is used to determine child support withholding limits, rather than the net pay, \$469.

<i>Gross Pay</i>	\$760.00	\$760.00
Federal income tax	(95.00)	(95.00)
FICA	(45.00)	(45.00)
Medicare	(11.00)	(11.00)
Health insurance	(25.00)	(25.00)
Union dues		(10.00)
Savings bonds		(25.00)
Union pension		(30.00)
Credit union car loan	_____	<u>(50.00)</u>
<i>Disposable Income:</i>	\$584.00	<i>Net Pay:</i> \$469.00

- Gross pay – mandatory deductions = disposable income:
\$760 – \$176 = \$584
- Disposable income x CCPA % limit = allowable disposable income:
584 x 60% = 350.40
Note that 60% is the applicable CCPA limit because the employee-parent is not supporting a second family and does not owe any back child support.
Allowable disposable income is the maximum available for child support withholding.
Allowable disposable income (from Step 2 above) is \$350.40.
- \$350.40 > \$295.00, so the full \$295 is withheld for child support.

If you take the same example but increase the weekly child support payment to \$400, you cannot withhold the full amount due. By law, you can only withhold a maximum of \$350.40. This means that the employee will fall behind by \$49.60, and will be “in arrears.” Some states charge interest on the overdue amounts. The employee has the option of paying the underpaid amount directly to the issuing agency if he or she does not want to fall into arrears, or the employee may ask that the employer “voluntarily” withhold the unpaid amount.

Special Situations

Multiple Income-Withholding Orders - Same Employee and Same Child

There should not be more than one withholding order for the same child. The issuing agencies, not the employer, are responsible for resolving any duplication. The employer receiving a duplicate withholding order should follow these steps:

- Continue to honor the first order received.
- Give your employee a copy of the second order.
- Contact the issuing agency that sent the second withholding order and inform it that you are already sending withheld payments for the same child to another jurisdiction. Provide payment information such as the amount of the withholding and where the withholding is being sent.
- Contact the issuing agency that sent the first withholding order and inform it of the second order.

Multiple Income-Withholding Orders - Same Employee and Different Children

Federal regulations require that some money must be paid to each order for current support if there is more than one withholding order. In addition, states have enacted laws specifying the method for allocating money toward current support due for each order. Thus, some money must be allocated toward all orders. The orders should not be paid on a “first come, first served” basis.

If there is enough allowable disposable income, the employer should pay the full amount of current support due for each order. Sometimes an employee's earnings will not stretch far enough to pay all his or her claimants. If there is *not* enough allowable disposable income, the allocation method of the employee's official duty station state (principal place of employment) must be followed to determine how much to pay to each order. Most states use one of two methods to allocate withheld payments among multiple withholding orders:

1. Prorate by allocating a percentage to each order based on the total dollar amount of current support ordered, or
2. Share equally by dividing the allowable disposable income by the total number of orders.

Example:

- Order A Current support owed: \$ 220/biweekly
Arrears owed: \$ 50/biweekly
- Order B Current support owed: \$ 200/biweekly
- Order C Current support owed: \$ 180/biweekly
- Employee's disposable income: \$1000/biweekly
- Allowable disposable income: \$550

Because employee is supporting more than one family and is in arrears, the CCPA limit is 55% x disposable income (55% x \$1000 = \$550)

Withholding:

- Total current support owed: \$600/biweekly
- Total arrears owed: \$ 50/biweekly
- There is not enough allowable disposable income (\$550) to withhold the entire amount of current support due for all these orders (\$600). Nothing can be withheld to satisfy the arrearage.

Allocation Methods:

Most states use one of two methods to allocate withheld payments among multiple withholding orders:

1. Allocate a percentage to each order based on the total dollar amount of current support orders.
 - Add total current support due on all withholding orders.
 - Divide each order's current support due by the total of all orders to figure each order's percentage of total.
 - Withhold the percentage of allowable disposable income for each order.

Order A	\$220.00	÷ \$600 = 36.7%
Order B	\$200.00	÷ \$600 = 33.3%
Order C	<u>\$180.00</u>	÷ \$600 = 30.0%
Total	<u>\$600.00</u>	

Allowable disposable income (maximum that can be withheld): \$550

Order A $\$550 \times 36.7\% = \201.67

Order B $\$550 \times 33.3\% = \183.33

Order C $\underline{\$550} \times 30.0\% = \underline{\$165.00}$

Total withheld $\underline{\underline{\$550.00}}$

2. Divide the allowable disposable income by the total number of orders.

Allowable disposable income (maximum that can be withheld): \$550

3 orders for the same employee (Orders A, B and C)

Dividing by 3 (the total number of orders) would yield \$183.33 to be applied to each order.

Additional calculations will be necessary because Order C requires only \$180.00. There are at least two ways to calculate the amounts to be deducted for Orders A and B:

Method 1:

1. Subtract Order C (\$180) from the total (\$550).
2. Divide the remainder (\$370) by 2 (number of remaining orders).
3. Pay \$185 each toward Orders A and B.

Method 2:

1. Subtract Order C (\$180) from \$183.33 = \$3.33.
2. Add \$1.67 apiece to the \$183.33 allocated to Orders A and B.
3. Pay \$185.00 each toward Orders A and B.

Income-withholding Questions & Answers

1. *Is there a maximum amount of money that may be withheld from an employee's paycheck?*

Yes, for all income-withholdings, the upper limit on what may be withheld is based on the Federal Consumer Credit Protection Act (CCPA). The federal withholding limits for child support and alimony are based on the disposable earnings of the employee.

The Federal CCPA limit is 50% of the disposable earnings if the employee supports a second family and 60% if the employee does not support a second family. This limit increases to 55% and 65% respectively if the employee owes arrearages that are 12 weeks or more past due.

States may choose a lower limit. Check with your state to determine exact limits. (About two-thirds of the states use the federal limits, and about one-third cap the withholding at 50% regardless of second families or arrearage amount.)

2. *How soon must employers send the child support payment that was withheld from an employee's paycheck?*

Employers need to send payment of the withheld wages within seven (7) business days, at the most, of paying wages to the employee. The state where the employer is located may set a shorter time limit for making payment.

3. *What should the employer do if the employee tells the employer the withholding is for the wrong amount or that income should not be withheld?*

The employee should contact the state child support enforcement agency if he/she disputes the order. The employer should make it clear that by law, until the employer is otherwise notified, the employer must comply with the terms of the withholding order as issued.

4. *May employers combine the child support payments from several employees into one check?*

Yes, employers may send one check each pay period to cover all child support withholdings for that pay period if:

- They are all being sent to the same receiving agency (State Disbursement Unit), and
- The employer itemizes the amount withheld from each employee, the date each amount was withheld, and a required identifier such as the case number.

5. *How will the employer know when to stop income withholding for an employee?*

In some cases, the income-withholding order states a specific date when the amount should be changed or stopped. If no such instruction is contained in the order, the employer should

continue withholding until the Child Support Enforcement Agency or court notifies the employer to change or stop the withholding.

6. *Income withholding requires extra paperwork for the employer. May the employer charge a processing fee to the employee?*

Most states allow the employer to charge the employee an administrative fee for processing the income withholding. Employers may contact their Child Support Enforcement Agency to learn what the administrative fee is in their state. Note that the total amount the employer withholds for child support *plus fees* may not exceed the maximum amount permitted under the Federal Consumer Credit Protection Act (CCPA).

7. *What if the fee plus the child support payment exceeds the maximum allowable amount under CCPA?*

If the fee plus the child support exceeds the maximum amount allowed to be withheld under the CCPA, the employer may take the entire amount of its administrative fee and make the child support payment less than the amount in the notice. The amount of support that was not paid because the employer deducted the administrative fee instead becomes part of the arrears owed by the non-custodial parent.

8. *The employer received an income-withholding order from a Child Support Enforcement Agency in another state. Must the employer send payments directly to the other state?*

Yes. Under the Uniform Interstate Family Support Act (UIFSA), employers are required to honor an income-withholding order from another state as long as the order appears to be “regular on its face.”

9. *How does the employer handle child support withholding when the employee already has garnishments or other income attachments against the paycheck?*

Child support withholdings take priority over all other claims against the same wages except federal tax liens that were entered before the child support order was established. When there are garnishments or income attachments other than federal tax liens, the employer may honor the garnishments or income attachments only after satisfying the child support obligation (to the CCPA maximum allowed limit), provided the allowable limit for that type of garnishment has not already been exhausted by the amount of the child support withheld.

10. *What should the employer do if it has received both an IRS levy and a child support income-withholding order/notice for an employee?*

The employer should notify the Child Support Enforcement Agency that a federal tax (IRS) levy was received in addition to the income-withholding order/notice. The Child Support Enforcement Agency can inform the employer if the underlying child support order was in fact established prior to the date that the IRS levy was entered. If the underlying order was not established prior to the IRS levy, the child support agency can then contact the IRS to determine if the levy may be modified to allow withholding of any child support.