

Chapter 16

TITLE III: CONSUMER CREDIT PROTECTION ACT (WAGE GARNISHMENT)

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16a GENERAL

16a00 Use of chapter 16.

Along with 29 CFR 870, FOH 16 contains the Wage and Hour Division (WHD)'s interpretative positions regarding Title III of the Consumer Credit Protection Act (CCPA). The interpretations included in this chapter provide guidance in the administration and enforcement of this law. Procedural matters under the CCPA are covered in FOH 52v.

16a01 CCPA general provisions and WHD's authority.

- (a) The CCPA limits the amount of an employee's earnings that may be garnished (*see* FOH 16b00) and protects an employee from being fired because wages are garnished for any single debt. *See* FOH 16c00.
- (b) WHD has no other authority with regard to garnishments. Questions over issues other than the amount being garnished under the CCPA or termination should be referred to the court or agency initiating the withholding action.

16a02 Coverage.

Coverage is general. There are no specific exemptions for government employees at the federal, state, or local levels or their political subdivisions. *See* FOH 16a08 and FOH 16a09 regarding the applicability of CCPA to such employees.

16a03 Geographical application.

The CCPA's restrictions apply wherever federal and state courts have jurisdiction. As used in the CCPA, the term state includes any state, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States (U.S.). The CCPA definition of the term state is found at 15 USC 1602(r).

16a04 Exempt states.

Pursuant to section 305, the Secretary of Labor has exempted certain states from the restrictions on garnishment contained in section 303. The list of exempt states along with the terms and conditions of the exemptions is found in 29 CFR 870.57. State representatives are listed in 29 CFR 870.57(a). Their powers and duties are stated in Reg 870.55. The state exemption on garnishment amounts does not apply to the prohibition against discharge because wages were garnished for any one debt. *See* FOH 52v01.

16a05 Garnishments, wage attachments and federal administrative garnishments distinguished from wage assignments.

- (a) Section 302(c) defines the term garnishment to mean, “any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt.” Generally, this definition refers to a court proceeding.
- (b) WHD regards a wage attachment for state, local/municipal, or federal taxes as a “legal procedure” within the meaning of section 302(c) of the act. An Internal Revenue Service attachment of wages for taxes due is an example of a wage attachment. This is the case even though there may be no actual court proceeding involved in the tax lien or levy. *See* FOH 16c01. Accordingly, such attachments are garnishments for purposes of the discharge restriction in section 304 of the CCPA.
- (c) An administrative garnishment is an amount of money withheld from a private sector employee’s disposable earnings for the payment of a non-tax debt owed the federal government. Similar garnishments for federal employees are called salary offsets. As used in this chapter, the term “administrative garnishment” includes salary offsets. Usually, administrative garnishments are instituted for the repayment of loans, such as those granted under the Federal Family Education Loan Program. Administrative garnishments *are* garnishments for purposes of the CCPA.
 - (1) They are authorized by and subject to the terms of the Debt Collection Improvement Act (DCIA), 31 USC 3720D. For federal employees the terms are set at 5 USC 5514. These laws generally limit the garnishable amount to 15 percent of disposable earnings. *See* FOH 16a05(c)(4).
 - (2) The Higher Education Act (HEA) authorizes guaranty agencies for student loans to administratively garnish up to 10 percent of disposable earnings for defaulted student loans. The Department of Education may garnish up to 15 percent under the DCIA.
 - (3) WHD has no enforcement authority with respect to such withholdings, provided they are within the CCPA’s limits. Questions over the amount of withholding on an administrative garnishment, where no CCPA violations are indicated, should be referred to the agency initiating the withholding action. *See* FOH 16a01(b).
 - (4) When a debtor agrees in writing to allow withholding of an amount greater than the DCIA or HEA limits, the deductions are considered wage assignments. *See* FOH 16a05(d).
- (d) A wage assignment is a voluntary transfer of the right to receive wages. It is ordinarily a private transaction accomplished through a contract, without any court compulsion. A wage assignment is not a garnishment within the meaning of the CCPA.

16a06 Restrictions of the CCPA are self-executing.

The garnishment restrictions of both sections 303 and 304 of the CCPA were enacted for the protection of the public generally. They are enforced as matters of public, as well as private, rights and thus do not have to be raised affirmatively. This differs from garnishment limitations of state laws framed as exemptions, designed solely for the protection of individual rights. Such state exemptions are privileges that must be pled affirmatively and, therefore, may be waived.

16a07 Applicability of the CCPA to tips and gratuities.

The application of garnishments to tips and gratuities under the CCPA is similar to the treatment of their ownership under the Fair Labor Standards Act (FLSA).

- (a) Bona fide tips are not earnings for the purposes of the CCPA. A garnishment is inherently a procedural device designed to reach and sequester earnings held by the garnishee (usually the employer). Tips paid directly to an employee by a customer are not earnings within the meaning of section 302 of the CCPA because they do not pass to the employer. This includes gratuities transferred free and clear to an employee at the direction of credit customers who add tips to the bill. However, wages paid directly by the employer to the tipped employee and the amount of the tip credit claimed, if any, by the employer are earnings for the purposes of the CCPA.
- (b) Service charges added to a customer's bill are earnings within the meaning of section 302 when passed on to the employee. For example, a restaurant charges a customer 15 percent of the check as a service charge and in turn pays this amount to the server (debtor). Because this is an automatic charge, there is no gratuity by the customer. The compensation passed from the employer (garnishee) to the server and is earnings for the purposes of the CCPA.

16a08 Garnishment of federal employees.

There are only very minor distinctions between federal and non-federal employees with respect to the reasons for or the amounts subject to garnishment. The Hatch Act Reform Amendments of 1993 included provisions allowing the wages of federal employees to be garnished for the same purposes as other individuals. The garnishment of a federal employee's wages is subject to the provisions of section 303 of the CCPA, in the same manner and to the same extent as if the agency were a private person. *See* FOH 52v03.

16a09 Garnishment of employees of states or their political subdivisions.

Applicable state or local laws regulate whether the earnings of a city, county or state employee are subject to garnishment. To the extent that state or local law permits such garnishment, the limitations imposed by the CCPA apply. WHD has no authority to enforce provisions of state or local garnishment laws. *See* FOH 16a01, FOH 52a11 and FOH 52v02.

16a10 Earnings deposited in a bank account.

A bank served with a garnishment directed at a depositor's account is not required to determine the depositor's right to an exemption under the CCPA and is not required to calculate the amount of that exemption before honoring the garnishment. *See Usery v. First National Bank of Arizona* 586 F.2nd 107 (1978).

16a11 Sick and vacation pay considered earnings under the CCPA.

Sick and vacation pay are compensation for personal services, and thus are earnings under the CCPA. Their status as subject to withholding or Federal Insurance Contributions Act (FICA) deductions is immaterial in determining whether they constitute earnings.

16a12 Disability payments from an employment-based disability plan considered earnings under the CCPA.

Disability payments from an employment-based disability plan constitute compensation for personal services, and thus are earnings under the CCPA.

16b SECTION 303 (RESTRICTION ON GARNISHMENT PROVISIONS)

16b00 Garnishment restrictions for consumer debts, support payments, and federal and state taxes.

Section 303 establishes limits on the amount of earnings available for garnishment. These limits are based on disposable earnings. See FOH 16b01. The CCPA sets three levels of protection for earnings. The first category deals with consumer debts (these are all debts not covered by the two other categories). The second concerns support payments (that is, child support and alimony). The final level pertains to debts owed for federal and state taxes or personal bankruptcy.

(a) *Garnishments for consumer debts* must not exceed the lower of:

- (1) 25 percent of disposable earnings, or
- (2) the amount by which disposable earnings exceed 30 times the minimum wage multiplied by the number of weeks or fraction thereof worked. See FOH 16b02.

The following chart shows the current maximum garnishment of disposable earnings for consumer debts. It is based on the \$7.25 an hour minimum wage. These restrictions do not apply to garnishments for child support, alimony, personal bankruptcy, or to recover state or federal taxes. See FOH 16b00(b) and (c).

<u>Weekly</u>	<u>Biweekly</u>	<u>Semimonthly</u>	<u>Monthly</u>
\$217.50 or less: <i>none</i>	\$435.00 or less: <i>none</i>	\$471.25 or less: <i>none</i>	\$942.50 or less: <i>none</i>
More than \$217.50 but less than \$290.00 amount <i>above</i> \$217.50	More than \$435.00 but less than \$580.00 amount <i>above</i> \$435.00	More than \$471.25 but less than \$628.33 amount <i>above</i> \$471.25	More than \$942.50 but less than \$1,256.66 amount <i>above</i> \$942.50
\$290.00 or more: <i>maximum 25%</i>	\$580.00 or more: <i>maximum 25%</i>	\$628.33 or more: <i>maximum 25%</i>	\$1,256.66 or more: <i>maximum 25%</i>

(b) *Garnishments for support payments* may not exceed 50 percent of disposable earnings, with the following two exceptions:

- (1) A support garnishment may be as high as 60 percent of disposable earnings, if the wage earner is not supporting a child or spouse, other than the subject of the garnishment.

- (2) An additional 5 percent of disposable earnings may be garnished, if payments are more than 12 weeks in arrears.

Note: the limits on garnishment for consumer debt (the lesser of 25 percent of disposable earnings or the amount by which disposable earnings exceed 30 times the minimum wage) do not apply to support garnishments.

- (c) There is no CCPA earnings' protection in cases of *garnishment due to any debt for federal or state tax, or personal bankruptcy*. Any amount may be garnished in such cases. See FOH 16b14.

Note: the limits on garnishment for consumer debt (the lesser of 25 percent of disposable earnings or the amount by which disposable earnings exceed 30 times the minimum wage) do not apply to cases of garnishment due to any debt for federal or state tax, or personal bankruptcy.

16b01 Earnings.

- (a) Section 302(a) defines earnings as “compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.”
- (b) Section 302(b) defines disposable earnings as, “that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.” Examples of such deductions are:
 - (1) Federal withholding taxes (FWT), state or municipal income taxes
 - (2) Employee’s share of Social Security (FICA) and state unemployment insurance taxes (UCI)
 - (3) State employee retirement systems withholding required by state law
 - (4) Federal employee retirement systems (such as Civil Service Retirement System (CSRS) and Federal Employees Retirement System (FERS)) withholding required by law. Under U.S. Office of Personnel Management (OPM) regulations, voluntary Thrift Savings Plan (TSP) deductions are treated the same as deductions required by law; however, note that WHD does not have the authority to enforce these regulations.
- (c) Deductions not required by law are disposable earnings subject to garnishment. Examples of deductions from employees’ earnings not ordinarily required by law are:
 - (1) Medical and hospital insurance premiums (these are considered required by law for federal employees under OPM regulations; however, note that WHD does not have any authority to enforce these regulations)
 - (2) Union dues and initiation fees
 - (3) U.S. saving bonds
 - (4) Salary advances

- (5) Contributions to religious, eleemosynary, or educational organizations
 - (6) Board, lodging, or other facilities
 - (7) Purchase of stock in the employer's corporation
 - (8) Wage assignments not effected by a judgment
 - (9) Retirement plan contributions (except those required by law and, under OPM regulations, TSP contributions; however, note that WHD does not have the authority to enforce the OPM regulation)
 - (10) Credit union loan payments
 - (11) Uniform rentals
 - (12) Allowances for attorney fees permitted by state law
 - (13) Garnishment service fees permitted by state law
- (d) The following example demonstrates how deductions required by law are excluded in determining disposable earnings subject to garnishment:

Weekly earnings					\$500.00
Less deductions required by law	FWT	\$85.39			
	FICA	\$37.40			
	UCI	\$5.00	Total		<u>-\$127.89</u>
Disposable earnings					\$372.11
Disposable earnings					\$372.11
Garnishment factor (<i>see</i> FOH 16b00(a))					<u>× 25%</u>
Amount garnishable					\$93.03
Disposable earnings					\$372.11
Less: amount garnishable					\$93.03
Less: internal deductions	Union dues	\$10.00			
	401(k)	\$25.00			

Charity	\$5.00	Total	<u>-\$40.00</u>
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Take home pay	\$239.08
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Internal deductions are included in disposable earnings, because the employer is not required by law to withhold them.

16b02 Disposable earnings in partial weeks.

- (a) The garnishment restrictions apply in all weeks, whether an employee has worked a full or partial week. Although the unpaid disposable earnings for a partial workweek are subject to garnishment, withholding for a consumer debt garnishment is permitted only if the employee's disposable earnings are in excess of the restriction of section 303(a)(2), currently \$154.50 ($30 \times \5.15). *See* FOH 16b00(a).
- (b) The following example takes place in a state where a garnishment writ can only capture the earnings actually earned up to the time of service. The employer of a debtor pays on a weekly basis. The workweek runs from Sunday through Saturday and payday is Thursday. The employer is served with a consumer debt garnishment on Wednesday. The employee earned \$250.00 in disposable earnings in the preceding workweek, and \$150.00 in the current one. The amount that may be garnished, under the provisions of section 303(a), is computed as follows:

<u>Period</u>	<u>Earnings amount</u>	<u>Amount garnishable</u>
Preceding workweek	$\$250.00 \times 25\%$ (disposable earnings $>$ \$206.00) =	\$62.50
Current workweek	\$150 (disposable earnings $<$ \$154.50) =	<u>\$0.00</u>
	Total garnishable	\$62.50

If withholding for the current workweek is required under another garnishment order served at the end of the week, the employer will recompute the garnishment based on the employee's earnings for the entire week.

- (c) Under section 303(a)(2), the floor for disposable earnings exempt from garnishment is determined based on the length of the pay period. This pay period restriction is not prorated or reduced in the case of earnings for partial pay periods or pay periods of less than a week. This floor does *not* apply to child support or alimony garnishments (*see* FOH 16b00(b)), or federal or state tax or personal bankruptcy garnishments. *See* FOH 16b00(c).

16b03 Determining earnings that may be subjected to garnishment for consumer debts.

- (a) 29 CFR 870.10 sets the maximum part of disposable earnings that may be subjected to consumer debt garnishment for weekly and other than weekly pay periods. Where an individual's pay period is longer than a week (*e.g.*, biweekly, semi-monthly, monthly, etc.), the earnings that may be subjected to garnishment are not dependent on the earnings or

restrictions in any particular workweek. They are determined by the amount earned up to the point when the garnishee (usually the employer) is legally bound to make deductions from such earnings pursuant to a garnishment, regardless of pay period length. See chart in FOH 16b00(a).

(b) Examples:

(1) An employee with a biweekly pay period works and is paid the following:

<u>1st week</u>	<u>2nd week</u>	<u>Total</u>
Worked 5 days: \$500.00	Worked 1 day: \$100.00	\$600.00
		<u>\$100.00</u>
		\$500.00

In this example, \$125.00 is garnishable for consumer debts. It does not matter that the employee's disposable earnings for the second workweek were less than \$154.50, because the employer pays on a biweekly basis. In order for any consumer garnishment to take place in a 2-week pay period, disposable income must be greater than \$309.00. In a biweekly pay period, when disposable earnings are between \$309.00 and \$412.00, only the amount in excess of \$309.00 is subject to such garnishment. When the disposable earnings are in excess of \$412.00, as in the above example, up to 25 percent of the biweekly disposable earnings may be garnished for consumer debts. See FOH 16b00(a).

(2) A company pays on a semi-monthly basis. Pay periods run from the 1st through the 15th and the 16th through the end of the month. The employer pays employees in full on the last day of the pay period. The firm is served with a garnishment on the 17th. The debtor employee has accrued 2 day's disposable earnings in the amount of \$200.00. No wages would be subject to garnishment at this time, because in a semimonthly pay period disposable earnings must be greater than \$334.75 for any garnishment to take place. See FOH 16b00(a). The employee's disposable earnings in any particular workweek are not material. Therefore, in those states that do not allow the garnishment of future earnings, the employer could not withhold on a garnishment order issued that day. The garnishment amount will be recomputed on all wages for the period, if another garnishment is served at the end of the pay period.

(c) The restrictions of section 303 are applicable to the pay period of the individual whose earnings are subjected to garnishment. Where there is a hold-back period for wages earned, the multiple limitations prescribed in the statute and 29 CFR 870.10 are applied separately to the earnings for each pay period. Earnings for two or more pay periods are not lumped together.

(d) Section 302(a) of the CCPA states "[t]he term 'earnings' means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program." The statutory definition generally embraces compensation for personal services. When the employment contract provides *furnished facilities*, such as *meals* and *lodging*, the dollar value of the furnished facilities is part of the earnings and must be considered in applying the restrictions of section 303(a).

- (e) The Supreme Court has held that the statutory terms “earnings” and “disposable earnings” are, for the purposes of the CCPA, generally confined to *periodic* payments of compensation. They do *not* pertain to every asset that is traceable in some way to such compensation. See *Kokoszka v. Belford*, 417 US 642 (1974). Under this decision, certain lump sum payments, such as *tax refunds*, are neither periodic payments, nor subject to the limitations imposed by the CCPA. The treatment of *lump sum severance* or *pension payments* is not clear and contact should be made with the National Office, Office of Policy, Family and Medical Leave Act (FMLA) Team with the facts involved prior to making a final determination for any particular case. It is the WHD’s position that *bonuses* are considered earnings for the pay period in which they are received, and subject to the limits on garnishment.

16b04 Withholding taxes: required by law to be withheld.

As specified in FOH 16b01(a)(1), federal, state, or municipal income tax withholdings are considered deductions required by law, and thus subtracted from gross earnings to determine disposable earnings. Some employees do not claim the number of income tax exemptions to which they are entitled. In such cases the WHD will accept the amount of withholding tax actually withheld, as shown on the payroll, regardless of the number of exemptions to which the employee is entitled.

16b05 Garnishee’s attorney fees are subject to consumer debt restrictions of section 303(a).

The withholding of a garnishee’s (employer’s) attorney fees from a debtor’s earnings allowed under state law is not considered to be required by law. They are not deducted from gross earnings, in determining the employee’s disposable earnings pursuant to section 302(b). They are subject to the restrictions of section 303(a). Further, such deductions may *not* reduce the employee’s earnings below the minimum wage or overtime required by the law. See FOH 16b01(b)(12).

16b06 Creditor’s attorney fees.

A creditor’s attorney fees may be collected through a wage garnishment order, when allowed by state law. The attorney fees are not considered to be required by law when determining disposable earnings. They are subject to the CCPA section 303(a) limits on garnishment amounts. See FOH 16b01(b)(12).

16b07 Attorney fees in support cases (alimony and child support).

The awarding of attorney fees in support cases constitutes part of the support award. Therefore, if a court orders garnishment of a husband’s earnings to collect the attorney fees incurred by a wife during a support case, the earnings are subject to the section 303(b)(2) limit (*i.e.*, 50 to 65 percent of disposable earnings). In a case pertaining to a wage garnishment order involving a domestic relations matter, care must be given to determine whether the order is for support (subject to the 50 to 65 percent limit) or property settlement (subject to the 25 percent limit). See FOH 16b01(b)(12) and FOH 16b13.

16b08 Service charges deducted pursuant to state law.

In some cases, a state law may permit an employer to deduct a service fee each time a deduction is made. Such deductions are not considered to be required by law, for the purpose of determining the employee’s disposable earnings. Thus, they are subject to the restrictions

of section 303(a). Further, such deductions may *not* reduce the employee's earnings below the minimum wage or overtime required by the FLSA or wage determination in the case of a government contract. *See* FOH 16b01(b)(13).

16b09 **Excess garnishment withholdings are not wages.**

29 CFR 531.39(b) states, “[w]hen the payment to a third person of monies withheld pursuant to a court order under which the withholding exceeds that permitted by the CCPA, the excess will not be considered equivalent to payment of wages to the employee for purpose of the Fair Labor Standards Act.” Therefore, amounts withheld by the employer from an employee's earnings under a garnishment order in excess of the withholdings allowed by section 303 of the CCPA are not wages pursuant to section 3(m) of the FLSA. Accordingly, where such excess withholdings decrease wages below the compensation due under the FLSA a violation of that act exists. This is not altered by the fact that such excess withholdings are for the benefit of the employee, paid to a third person and the employer derives no profit or benefit from the transaction.

16b10 **Draw against commission.**

The definition of “earnings” in section 302(a) of the act includes, “compensation paid or payable ... whether denominated as wages, salary, commission....” WHD considers a draw against commission to be earnings. As such, the draw is subject to the restrictions of section 303(a), in the same manner as other forms of compensation.

For example, for a period of 8 weeks an employee receives disposable earnings in the amount of \$150.00 a week, as a draw against commission. The employer may make no deduction pursuant to a consumer debt garnishment during the 8 weeks, because only disposable earnings in excess of \$154.50 may be withheld. At the end of the 8-week period, the employee receives \$6,000.00 settling the *remainder* of commissions earned. After subtracting the deductions required by law from this \$6,000.00, 25 percent is available for garnishment. The \$1200.00 drawn during the first 8 weeks of this period *is not included* in the total subject to garnishment. These wages constitute the earnings subject to capture in each week of the 8-week period. *See* FOH 16b00.

16b11 **Section 303 restrictions are separately applicable to each employment situation.**

The restrictions of section 303 are separately applicable to each employer (garnishee), where an employee (debtor) works for more than one employer in the same pay period. Each employment must be separate and distinct (*i.e.*, the employers must be completely disassociated and act independently of each other), in order for the garnishments to be treated separately. An employee whose pay period is a week, and who works for two different employers in the week receiving \$140.00 in disposable earnings from each is an example of such an employee. The employee's wages are not subject to garnishment for a consumer debt even though the total earnings for the week are \$280.00, because the employee's disposable earnings from each employer are less than \$154.50. *See* FOH 16b00(a).

16b12 **Effect of excepted (section 303(b)) garnishments.**

Garnishments for consumer debts may not exceed the amount permitted under section 303(a). *See* FOH 16b00(a). Support garnishments are limited to the amount permitted under section 303(b)(2). *See* FOH 16b00(b). Once the applicable limit is reached, no other garnishment

may be made, unless it is further excepted (*e.g.*, bankruptcy or state taxes). The following example demonstrates the principle. Pursuant to a garnishment order for support, an employer withholds \$90.00 a week from the wages of an employee who has disposable earnings of \$240.00 a week. A garnishment order for the collection of a retail credit debt is also served. The section 303(a)(1) limit for consumer debt garnishments of 25 percent applies to the retail debt. Under the formula for consumer debts, a maximum of \$60.00 (25 percent of \$240.00) is garnishable. The \$90.00 support payments may be withheld, because the restrictions of section 303(a) do not apply to court orders for support. No consumer debt garnishment may be made, because the amount already garnished is more than the amount that may be withheld under section 303(a)(1). Additional withholdings could be made for those purposes listed in section 303(b).

16b13 **Court orders involving family support and property settlement agreements.**

The provisions of section 303(b)(2) only apply to orders for alimony, support or maintenance. A court order for specific performance of an agreement that is truly or substantially a property settlement agreement is not considered, “for the support of any person,” within the meaning of section 303(b)(1). A garnishment resulting from such an order is, therefore, subject to the restrictions of section 303(a).

16b14 **Bankruptcy.**

The section of the Bankruptcy Act under which the bankruptcy is filed determines if the CCPA’s limitations apply to garnishment orders related to the bankruptcy. The CCPA does *not* limit garnishment orders of courts acting under chapter XIII of the Bankruptcy Act. *See* CCPA section 303(b)(1)(B). Chapter XIII provides post-bankruptcy consumer protections and remedies separate from the CCPA. The CCPA is designed to provide such protections pre-bankruptcy, in the hope of preventing personal bankruptcy. The CCPA limitations do apply to garnishment orders filed under other chapters of the Bankruptcy Act. *See Kokoszka v. Belford*, 417 US 642 (1974).

16c **SECTION 304 (RESTRICTION ON DISCHARGE PROVISIONS)**

16c00 **Subjected to garnishment.**

Section 304(a) provides a restriction on discharge from employment because an employee’s earnings were subjected to garnishment for any one indebtedness. *See* FOH 16c03. Earnings are subjected to garnishment when the employer is *legally bound* to make deductions from the earnings of an employee to satisfy a garnishment order. Where a binding garnishment order absorbs all disposable earnings and the employer may, therefore, not make deductions for additional garnishments until satisfying the first order, section 304 prohibits discharge from employment until the employer is legally bound to withhold for the second garnishment. Thus, in such a case, there is no second garnishment until the second garnishment is actionable.

16c01 **Restriction on discharge applies to all garnishments.**

The restriction on discharge of section 304(a) applies to *all* types of garnishments. The protection provided by section 304(a) is available even though the amount of the garnishment withholdings is not subject to the restrictions of section 303(a). For example, if a tax debt

results in the garnishment of earnings and there are no previous garnishments, discharging the employee for the garnishment would violate section 304(a). *See* FOH 16a05(b) and (c).

16c02 Discharge for non-tax debts owed the federal government.

The DCIA and HEA prohibit an employer from discharging, refusing to employ, or taking any disciplinary action against an individual subject to an administrative garnishment. WHD has no enforcement authority with regard to these provisions, questions should be referred to the agency initiating the garnishment. *See* FOH 16a05(c). A CCPA violation exists if an employee is terminated because of a single administrative garnishment. A CCPA violation does not exist if the discharge is based on an administrative garnishment in conjunction with any other garnishment. *See* FOH 52v13(b)(3).

16c03 One indebtedness.

- (a) The term *one indebtedness* refers to a single debt, regardless of the number of levies made or the number of separate garnishment proceedings instituted in connection with the indebtedness. In cases of garnishment after judgment, it is WHD policy that the judgment itself is a debt. This debt may represent one or more claims of a single creditor or the claims of several creditors who joined in the proceeding. Also, the protection against discharge is renewed with each employment since the new employer has not been a garnishee with respect to that employee.
- (b) As provided in paragraph (a) above, there is a distinction between a single debt and the garnishment proceeding brought to collect it. After a garnishment proceeding for one debt becomes effective, the law does not prohibit discharge if there is another garnishment proceeding *pursuant to a second debt*. Such multiple garnishments need not be from different creditors. They may be from the same or different creditors so long as they involve separate debts. All of the facts in the particular case must be considered, to determine whether there is more than one debt. Ordinarily, a separate debt may be identified as the full amount of the debt represented by a single judgment.
- (c) The distinction between a single debt and the garnishment proceeding(s) brought to collect it has particular importance in states only allowing garnishment of wages earned prior to the garnishment order being served, or that of future wages subject to a time limitation. In such states, the judgment creditor may need to secure a number of garnishment orders to collect the full amount of the single debt represented by a judgment. Section 304(a) prohibits discharge of an employee under such circumstances.
- (d) An employee discharged after a second garnishment that occurred long after the first may have been discharged solely because of the second garnishment. As a rule of thumb, where the interval between successive garnishments for separate debts exceeds one year WHD will carefully scrutinize a discharge from employment following the latest garnishment. A determination of whether a violation of section 304(a) exists must be based on all the facts and circumstances. *See* FOH 52v13(b)(1).

16c04 Discharge: suspension, demotion, and/or transfer.

- (a) Although the protection provided by section 304 is limited to discharge, a suspension for an indefinite period or for so long that the employee's return to duty is unlikely may be considered tantamount to a discharge. A careful examination of all the facts in a particular

case is needed to determine if the limitation on discharge provision applies to a particular suspension action. A suspension would not be considered a discharge, if the employee can obtain the funds necessary to satisfy the garnishment or can otherwise secure a release from the garnishment. However, a suspension action may be a discharge within the meaning of section 304(a), if the employee is unable to secure a release or obtain funds to satisfy the garnishment and is no longer in pay status to enable the earning of wages to apply against the debt. *See* FOH 52v13(b)(2).

- (b) The term “discharge” is interpreted to include any adverse action that interrupts employment to the degree that a prudent employee would look for another job. A long suspension is considered tantamount to a termination of employment, and thus a discharge within the meaning of section 304(a). For example, if an employer disciplines an employee by a series of gradually increased suspensions of several days duration following subsequent garnishments on the same indebtedness, it could result in a violation of section 304(a). Even where a suspension is 5 or 10 days long, the circumstances may indicate that a discharge in violation of section 304(a) exists.
- (c) A demotion and/or transfer based wholly or in part on a single garnishment is constructively a discharge in violation of section 304(a). A reasonable interpretation of the effect of transferring a person to a position paying less money is that of a discharge.

16c05 Filing bankruptcy.

Section 304 does not apply to the filing of bankruptcy proceedings. Therefore, an employer is not restricted under the CCPA from discharging an employee for filing bankruptcy. Section 525 of the Bankruptcy Act contains protections from discriminatory treatment due to the filing of bankruptcy. WHD has no authority to enforce the provisions of the Bankruptcy Act.

16c06 Statute of limitations.

- (a) The CCPA does not prescribe any time limit during which an improperly discharged employee or the Department of Labor must file a complaint pursuant to section 304. In any case instituted *solely* under section 304(a), the relief sought is elimination of the adverse effects of the unlawful action and redress of the employee’s rights by such means as attaining restoration to the same employment held before wrongful discharge and restitution of the wages and benefits lost as a result of the illegal discharge. Such relief is equitable in nature.
- (b) In an equitable action, the employee’s neglect or omission to assert a right is to be considered in terms of whether there has been not mere delay but an inexcusable one prejudicial to the employer. Delay operates as a bar against the assertion of rights provided the employee knows of them and takes no steps to enforce them until the condition of the employer, in good faith, becomes so changed that restoration to the employee’s former state is impossible or where witnesses and records necessary to the employer’s defense are no longer available. These are considerations in applying the general rule that persons who seek the aid of equity must show the use of reasonable diligence in asserting their rights and demanding their protection. Inexcusable delay by the employee *and* consequent detriment to the employer will generally prove a bar to the exercise of equity jurisdiction. *See* FOH 52v13(b)(5).

16c07 Discharge may not be based, either wholly or partly, on a single garnishment.

A violation of section 304(a) can exist even if garnishment is not the only factor for an employee's discharge. Thus, WHD interprets section 304(a) to mean that only where garnishment for a single indebtedness plays no real part in the discharge is it beyond the prohibition of the act.