



Tax Researcher

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ALL OF US HAVE SOME "DE MINIMIS" FRINGE BENEFITS — Can You Identify Them?

Any employer-provided property or service having a value so small that accounting for it would be unreasonable or administratively impracticable, may be excluded from income as a "de minimis" fringe benefit. The frequency with which the benefit is provided is a factor to be considered when determining that the value is small. Cash and cash equivalent fringe benefits such as use of a gift card or credit card, no matter how little, are never excludible, except for occasional meal money or transportation fare.

Examples of "de minimis" benefits under the Internal Revenue Code include:

- Occasional personal use of a company copy machine
- Holiday gifts, other than cash, with a low fair market value
- Group-term life insurance payable on employee's spouse or dependent if the face amount is not more than \$2,000
- Occasional parties or picnics for employees and their guests
- Coffee, doughnuts, or soft drinks
- Occasional tickets for entertainment or sporting events
- Occasional meals or meal money provided to enable an employee to work overtime (does not apply if the meal money is based on the number of hours worked)
- Meals provided at an employer-provided eating facility if the annual revenue from the facility at least equals its direct costs
- Transportation fare provided to an employee working overtime if the amount is reasonable and not based on hours worked

However, SEASON tickets to sporting or theatrical events, free use of a company car to commute to work, or the use of an employer-owned or leased boat, hunting lodge, etc. for a weekend, may not be considered "de minimis" benefits. Therefore, withholding for Federal income tax, Social Security and Medicare taxes, and the employer-paid FUTA tax, apply to the fair market value.

GARNISHMENT ORDERS: A Command Which Employers Should Not Ignore

Employers should be knowledgeable about garnishment orders. Garnishment is a procedure through which a court may require an employer to withhold an amount from employee wages to satisfy an outstanding debt to a third party. The third-party creditor initiates this legal action against the employee, using the employer essentially as a debt-collection agent.

Garnishment orders have rules DIFFERENT from child support orders. While a garnishment order seeks to liquidate a specific debt, child support orders set up a mechanism which provides an on-going succession of deductions for the support of a child or other family dependent. Also, the maximum deduction amounts for child support orders usually are considerably greater than those for garnishments.

Both Federal and state laws govern garnishment orders, generally setting a limit on the amount of the employee's wages that may be withheld at one time, and restricting the power of an employer to discharge an employee who is the subject of a garnishment order. Federal law supersedes all state garnishment laws except those where the state law is more favorable to the employee, such as one imposing lower limits on the amounts that may be withheld.

The Federal Consumer Credit Protection Act (CCPA) restricts the maximum amount that may be garnished. For a creditor garnishment, the weekly amount withheld may not exceed the lesser of:

- 25 percent of the employee's *disposable* earnings, or
- The amount by which an employee's *disposable* earnings exceeds 30 times the current Federal minimum wage (30 x \$6.55 = \$196.50; effective 7/24/09 30 x \$7.25 = \$217.50).

When pay periods cover more than one week, multiples of the weekly restrictions should be used to calculate the maximum amounts that may be garnished.

Generally, an employee's "disposable" earnings are equal to the employee's gross earnings minus deductions required by state or Federal law. Payroll tax deductions are an example of the latter. Importantly, the definition of "earnings" subject to creditor garnishment orders may differ among states, and compared to the Federal definition.

Some states authorize the employer to withhold and retain an "administrative fee" to cover the employer's costs in complying with the creditor garnishment order. While some of these states allow the administrative fee to be taken from the garnishment deduction amount, other states permit a separate deduction for this purpose.

KANSAS, NEVADA AND WISCONSIN TO INCREASE THEIR MINIMUM WAGE RATES

Kansas has held the record for the lowest state minimum wage. However, effective 1/1/10 they will increase the state's minimum wage from \$2.65 to \$7.25. For tipped employees, the minimum cash wage will increase from \$1.59 to \$2.13 and the maximum hourly tip credit increases from \$1.06 to \$5.12.

Nevada, which has a two-tiered system, is increasing their minimum wage effective 7/1/09:

- Employer's who make a qualified health insurance plan available to their employees can pay a minimum wage of \$6.55 per hour.
- Employers who don't make a qualified health insurance plan available must pay at least \$7.55 per hour.

A qualified plan has to provide coverage for the employees and their dependents and the cost to the employee cannot exceed 10% of the employee's gross taxable income.

Nevada does not have a tip credit or training wage.

Wisconsin will be increasing their minimum wage effective 7/24/09. It will increase from \$6.50 to \$7.25 per hour. For tipped employees, the minimum cash wage rate will remain unchanged at \$2.33, but the maximum tip credit will be increased from \$4.17 to \$4.92. The Training/Youth minimum wage rate will remain at \$5.90 per hour.

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