

# SHOW THEM THE MONEY: HOW TO HANDLE GARNISHMENT ORDERS UNDER IOWA LAW

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## I. GARNISHMENT

### A. Definitions

1. Garnishment: under the Iowa Consumer Credit Code, garnishment is “any legal or equitable procedure through which the earnings of an individual are required to be withheld for payment of a debt.” Iowa Code § 537.5105(1)(b). In order to garnish an employee’s wages, a creditor must first have a judgment entered in their favor against the debtor.
2. Judgment creditor: a party who has the right to enforce a judgment for a specific sum of money.
3. Judgment debtor: a person against whom a money judgment has been entered.
4. Garnishee: the party who is required by a garnishment order to turn over property of the judgment debtor to the judgment creditor.”
5. Disposable earnings: total earnings minus any legally required deductions. This includes federal, state, and local income tax, FICA, Social Security, Medicare, Unemployment Insurance, Workers’ Compensation. This does not include voluntary withholdings for non-reimbursed medical expenses, child care, additional retirement savings, etc.
6. Writ of execution: an order obtained from a court by a judgment creditor ordering the county sheriff’s office to collect a money judgment from a judgment debtor.
7. Execution period: the 120 day period following the issuance of a writ of execution during which the school district is required to garnish from the judgment debtor-employee’s wages.

## Why Garnishment?

8. In a recessionary economy, more people are defaulting on their debt obligations—mortgages, consumer credit. There are mechanisms in place entitling creditors to obtain payment on these debt obligations. One of these mechanisms is garnishment. As the increase of consumer debt defaults has risen, the number of school districts receiving garnishment orders has gone up as well.
9. Failure to properly garnish an employee’s salary in accordance with a lawfully-issued notice of garnishment can create liability for a school district. As we’ll discuss later, the school district may end up having to pay the judgment creditor for any amount that it failed to properly garnish from the judgment debtor-employee’s paychecks during the execution period.
10. This presentation focuses on consumer credit garnishments, which we believe schools will see more of in the coming months and years. Other areas to be aware of are garnishments for child support and tax garnishments, which are similar, but do operate under different rules regarding timelines and withholding. If you receive a garnishment order and you are not sure how to handle it, you should seek legal advice immediately.

### B. Procedure

1. When a school district is the garnishee, the sheriff must serve an original Notice of Garnishment and Interrogatories (the “Notice”) with a copy of the judgment against the defendant on the board secretary or district legal counsel. Iowa Code § 642.2(5).
2. After receiving the original Notice, you should deliver a copy of the notice to the judgment debtor-employee named in the Notice as soon as possible. Iowa Code § 642.14.
3. The Notice will also contain several interrogatories, or questions, that you will need to answer and return to the sheriff’s office. Although section 642.2(5) says the garnishee has 30 days to respond, the Notice will give you the date for filing your answers (it will actually give a date for you to answer the interrogatories in court, and tells you that, in order to avoid the court date, you should file answers with the sheriff’s office prior to the court date). Follow that date!
4. The Notice is immediately effective—so you need to determine how much should be garnished from the employee’s paycheck, and begin garnishing with the next pay cycle.

5. The Notice should also contain a page called “Instructions to Garnishee for Garnishment” (the “Instructions”). This sheet will explain where payments should be sent, and how much you are required to garnish from your employee’s paycheck. If you do not receive a copy of the Instructions along with the Notice, you may want to request one from the sheriff’s office.

a. Under Iowa law, you can only garnish up to 25% of the employee’s disposable earnings, or the amount by which the employee’s disposable earnings for that week exceed 40 times the federal minimum hourly wage, whichever is less. Iowa Code § 537.5105(2).

Thus, in order to properly garnish the employee’s paycheck, you will need to determine (1) the employee’s weekly earnings, (2) how much gets paid to the sheriff and how much gets paid to the employee per paycheck, and (3) the maximum amount that may be garnished per year, based on the employee’s annual income.

The Instructions will also help you determine how much to garnish per paycheck if your employees are paid biweekly or monthly.

b. Iowa Code § 642.21(1) sets forth the maximum amount that can be garnished from an employee’s salary, per creditor (judgment), per year:

<b>If your employee earns:</b>	<b>You may garnish this much per creditor, per year:</b>
\$12,000–\$15,999	\$400
\$16,000–\$23,999	\$800
\$24,000–\$34,999	\$1,500
\$35,000–\$49,999	\$2,000
\$50,000–???	Not more than 10% of expected disposable earnings

6. The execution period for a garnishment lasts until any of the following occurs:

- a. the writ of execution expires, which is 120 days from the issuance of the writ for consumer debt (not applicable to tax garnishments),
- b. the annual maximum amount that may be garnished per creditor under § 642.21 has been garnished (only applies to consumer debt, not tax or child support garnishments),
- c. the judgment is paid in full, or
- d. the county sheriff notifies you that the garnishment has been released by court order or by the judgment creditor.

Iowa Code § 642.22(1). As soon as any of these four events occurs, immediately stop garnishing from the employee's paycheck.

**Example 1:** You are garnishing Debby Debtor's paycheck, pursuant to a consumer credit garnishment Notice. Debby owes Cross Creditor \$10,000. Debby earns \$30,000 per year, so Cross is entitled to up to \$1,500 in garnished wages during 2010. After correctly calculating Debby's weekly disposable earnings, you garnish \$175 per biweekly paycheck and send the money to the Xanadu County Sheriff's Office. The execution period ends on July 1. As of the last paycheck before July 1, you have garnished \$175 from eight paychecks for a total of \$1400.

**Question:** Do you garnish an additional \$100 after July 1, so that Cross receives the full \$1,500?

**Answer:** No. Why not?

**Example 2:** Debtor Dave owes Creditor Chuck & Co. \$1,200 after falling behind on his Visa bills. Debtor Dave has an annual income of \$20,000, which means that Chuck & Co. is only entitled to up to \$800 per year. After properly calculating Dave's disposable earnings, you garnish \$120 from 6 paychecks (total \$720) and \$80 from the 7th paycheck. Because you have garnished \$800, you do not garnish anything from Dave's next paycheck. Chuck & Co.'s attorney sends you a letter demanding an additional \$400 to satisfy the judgment against Dave.

**Question:** Do you pay the additional \$400 to Chuck & Co.?

**Answer:** No. Why not?

**Example 3:** Daisy Debtor owes \$1,800 to Cal Creditor. Daisy makes \$45,000 per year, and so Cal is entitled to have up to \$2,000 per year garnished from Daisy’s salary. After garnishing \$1,800 from Daisy’s salary, Cal calls to demand the extra \$200 that he is entitled to under Iowa law.

**Question:** Iowa Code § 642.21 does say that a creditor is entitled to up to \$2,000 per year from an employee making between \$35,000 and \$49,999. Should you pay Cal the additional \$200?

**Answer:**

### C. Penalties

1. Failure to properly pay a garnishment may subject a school district to liability for the amount to which the creditor was entitled under that judgment:
  - a. Iowa Code § 642.2(6) states that “judgment shall be entered” against a garnishee who owed wages to the judgment debtor-employee and was properly served with the Notice “in an amount not exceeding the amount recoverable upon the judgment...but in no event shall the judgment granted by for any amount in excess of that permitted by section 642.21 and section 537.5105.”
  - b. Iowa Code § 642.13 then provides that the garnishee will be liable to the judgment creditor for the “amount of money due from the garnishee to the defendant in the main action.”
  - c. Additionally, a public employer shall not be held liable for any amount not earned by the employee at the time of service of the Notice or for the costs of a garnishment action.

**Example:** Debby, from above, owes \$10,000 to Cross. Debby’s income entitles Cross to have up to \$1,500 garnished from Debby’s paychecks in 2010. Billy the Board Secretary is properly served with the garnishment Notice, but fails to properly garnish Debby’s paychecks. Cross’s attorney sues Billy in small claims court.

**Question:** Is the school district liable, and if so, for how much?

**Answer:** Assuming the school district cannot raise any defenses to liability, it will be liable to Cross for the amount it was required to garnish in 2010: \$1,500. *See* Iowa Code §§ 537.5105, 643.2(6), 642.13, 642.21(c).

2. Additionally, public employers are prohibited from:
  - a. Withholding more from an employee's paycheck than is authorized by law;
  - b. Disposing of garnished wages other than as ordered by a written court order;
  - c. Discharging an individual from employment because the individual was subject to garnishment. Iowa Code § 642.21(2)(a)–(c).

**D. Recommendations**

1. Be proactive. As soon as you are served with a garnishment order, act immediately. They are very time-sensitive, and delays in processing garnishments now can lead to a judgment against the school district later.
2. Serve the Notice to the judgment debtor-employee and answer the Interrogatories as soon as possible.
3. Determine how much you will need to garnish per pay period, based on the employee's disposable earnings, and begin garnishing with the next available pay cycle.
4. Make sure that the garnished funds are paid to the county sheriff, and that the proper case number is attached to the payment.
5. Keep a running total of the amounts garnished and the expiration date of the execution period to make sure you are not over-garnishing your employee by garnishing more than is allowed under § 642.21 or garnishing after the execution period expires.
6. If you are unsure about any step of the process, including how much should be garnished, contact your district's legal counsel immediately.

*DISCLAIMER: This presentation is not a complete or comprehensive guide to all of the provisions of the laws discussed herein, nor does it address every factual scenario where these laws may apply. If you need any guidance regarding garnishment or other withholding issues, please seek legal counsel.*