

1 **MODEL LEGISLATION ON MANAGING LUMP-SUM**

2 **PAYMENTS FOR CHILD SUPPORT**

3 **Lump-Sum Collaborative Workgroup Document**

4 **Final Draft**

5 **EXPLANATORY NOTE**

6 This model act is designed to address lump-sum payments for child support
7 through withholding by income payers (i.e., employers) in cases enforced under Title
8 IV-D of the Social Security Act. Lump-sum reporting requirements in other, privately-
9 enforced, child support or lump-sum payments outside the employee or independent
10 contractor relationship (i.e., lottery ticket winnings or bank accounts) are outside the
11 scope of this model act.

12 This model act is intended to promote compliance with the Consumer Credit
13 Protection Act (CCPA) under 15 U.S.C. § 1672(a) and (b), particularly as interpreted by
14 the U.S. Department of Labor in Opinion Letter CCPA2018-1NA (April 12, 2018).

15 **SECTION 1. SHORT TITLE**

16 This act shall be cited as [_____].

17 **SECTION 2. PREAMBLE**

18 The legislature finds the following:

19 (1) The Lump-Sum Collaborative Workgroup – a group consisting of
20 representatives from state child support enforcement agencies and payroll professionals
21 from the American Payroll Association, prepared this model act, with technical
22 assistance from the Employer Services Team of the federal Office of Child Support
23 Enforcement.

(2) The Lump Sum Collaborative Workgroup recognizes the importance of child support for families with children and the critical role income payers play as the primary source of income for many parents who owe child support.

(3) States that have adopted a program for withholding and collection of lump-sum payments for child support arrears have seen increases in funds going to children and for necessary state child support management resources.

(4) States with programs have differing requirements regarding the management of lump-sum payments for child support arrearages, which makes communicating among states and income payers less efficient.

(5) Income payers face a risk of liability for failing to timely pay employees their earned income by holding a lump-sum payment pending a state response on whether arrears for child support are owed and withholding is required.

(6) Income payers face a risk of liability if a lump-sum payment is released to an employee before receiving a state response about arrears for child support and withholding, even if the income payer is complying with state wage and hour laws.

SECTION 3. DEFINITIONS

As used in this act:

(1) "Child support agency" means an agency or political subdivision of this state that is authorized under the laws of this state to seek enforcement of support orders or laws relating to the duty of support under Title IV-D of the Social Security Act;

(2) "Disposable Earnings" means that part of the earnings of any obligor remaining after the deduction from those earnings of any amounts required by law to be withheld.

(3) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise.

(4) "Income Withholding Order" means an order or other legal process issued by a child support agency to an obligor's employer or income payer, as defined by [insert cite], to withhold support from the income of the obligor.

(5) "Lump-Sum Payment" includes, but is not limited to, discretionary and non-discretionary bonuses, commissions, performance bonuses, merit increases, safety awards, signing bonuses, moving and relocation incentive payments, holiday pay, termination pay, and severance pay. Lump-sum payment also includes workers' compensation, insurance settlements, and personal injury settlements paid as replacement for wages owed. Lump-sum payment means income other than a periodic recurring payment of earnings on regular paydays and does not include reimbursement for expenses.

(6) "Obligor" means an individual who owes a duty of child support under a support order issued or enforced under the laws of this state.

Comment

The definitions in this section are intended to cover a broad variety of lump-sum payments that are potentially available for collection of child support as "extra money" in addition to wages or other periodic earnings, yet ensure that the amount withheld from disposable earnings is consistent with CCPA limits.

SECTION 4. REPORTING OF LUMP SUMS

An income payer who has been served with an income withholding order for an obligor by a child support agency that includes a provision for payment toward child

support arrears shall notify the child support agency before making any lump-sum payment of more than \$150 to the obligor. An income payer may report a lump-sum payment of a smaller amount or an amount yet to be determined. The notice must be in a format acceptable to the child support agency.

Comment

The requirements in this model act apply equally to large, multi-state, income payers with sophisticated computer systems and small income payers who report and remit payments on an individual basis. To manage the demands on income payers with widely different internal procedures and in recognition that lump-sum reporting is primarily intended as a supplement to an income withholding order to collect child support arrears, an income payer is not required to report lump sums unless the child support agency is already attempting to use an income withholding order to the income payer to collect an amount from recurring wage payments for those arrears. If the income withholding order does not direct the income payer to withhold for arrears, an income payer is safe to assume no arrears are owed and is not required to report any lump sums payable to the obligor.

The \$150 threshold for reporting lump sums is patterned after the threshold for using the federal offset program to collect arrears from federal income tax refunds in cases where the arrears are assigned to the government. The amount was discussed extensively by participants in the workgroup and is a reasonable approach to create standardization among states.

If an income payer does not yet know the amount of an upcoming lump-sum payment, or if an income payer does business in more than one jurisdiction with

different reporting thresholds, the income payer is protected under the act if it chooses to report lump sums of an unknown amount or an amount lower than the threshold adopted by the state. If it is easier for an income payer, all lump-sum payments can be reported under the act regardless of the amount.

SECTION 5. RETENTION OF PORTION OF LUMP SUM

(1) An income payer who reports a lump-sum payment under this act shall determine the amount of the lump-sum payment which consists of disposable earnings and may disburse 50% of that amount to the obligor.

(2) The income payer must withhold and remit to the child support agency the amount needed to comply with the Income withholding order.

(3) Notwithstanding any other provision of state law, unless otherwise agreed to by the income payer and the child support agency, the income payer may not disburse the remaining amount of the lump-sum payment before the earlier of:

(a) The 15th calendar day after the date on which the income payer reports the lump-sum payment or

(b) The date on which the income payer receives authorization from the child support agency to make all or a portion of the lump-sum payment.

Comment

This section establishes a priority for the income payer to satisfy any existing income withholding order out of a lump-sum payment.

An income payer is in the position to know whether the lump-sum payment constitutes disposable earnings for CCPA purposes. Although a withholding limit in excess of 50% may apply in certain cases, an income payer will generally not be in a

position to know whether the case facts warrant such excess withholding. Accordingly, for simplicity, and to ensure compliance with the CCPA, 50% of the portion of a lump sum that constitutes disposable earnings must be disbursed as scheduled by the income payer.

This section ensures that the income payer will wait to make a lump-sum payment to an obligor for 14 calendar days, except for the amount required to be paid to the obligor immediately to ensure CCPA compliance, in order to give the child support agency an opportunity to review the case and determine whether some or all of the retained portion of a lump-sum payment should be collected for child support.

This section places an affirmative responsibility on the child support agency to respond to an income payer report of a lump-sum payment within 14 calendar days. An agency response sooner than 14 calendar days would be better. However, for the benefit of closure in the event the child support agency does not respond, an income payer is free to disburse the remainder of the lump-sum payment to the obligor if the income payer has not heard from the child support agency after 14 calendar days.

In some jurisdictions, the child support agency and an income payer may form an understanding that a lack of response by the child support agency within 14 calendar days is tacit authorization for the income payer to disburse the remaining portion of the lump-sum payment to the obligor.

SECTION 6. RESPONSE TO LUMP-SUM NOTICE

Upon receipt of notice of a lump-sum payment under this section, the child support agency shall respond to the income payer within 14 calendar days after receiving the income payer's report of a lump-sum payment by providing:

(1) A written release indicating that some or all of the portion of the lump-sum payment retained by the income payer may be disbursed to the obligor or

(2) An amended or supplemental income withholding order or other written demand specifying the amount of the lump-sum payment to be remitted to the child support agency on behalf of the obligor.

Comment

This section, in conjunction with the preceding section, requires a child support agency to respond to an income payer's report of a lump sum either by authorizing release of some or all of the funds or by taking steps to compel the income payer to pay to the child support agency the amount that the income payer has retained from a lump-sum payment. Collection from a lump sum by a child support agency under this act is taken administratively rather than requiring judicial authorization.

SECTION 7. COLLECTION OF LUMP SUM

Any written demand under this act must be provided to the obligor and the income payer in the same manner as an income withholding order, is binding on the income payer in the same manner as an income withholding order, and can be appealed in the same manner as an income withholding order.

Comment

For simplicity, withholding from a lump-sum payment is governed by the same state laws that are applicable to income withholding orders.

SECTION 8. IMMUNITY FROM LIABILITY

An income payer who reports, withholds, or remits a lump-sum payment under this section is immune from liability.

162 **Comment**

163 An income payer who is required by state law to report lump-sum payments and
164 obey any subsequent direction from the child support agency deserves to be protected
165 from liability for acts taken to comply with state law.

166 **SECTION 9. CHOICE OF LAW**

167 The duties of an income payer under this act are governed by the laws of the
168 state of the obligor's principal place of employment.

169 **Comment**

170 For multi-state income payers, this section clarifies which state laws the income
171 payer must honor regarding the reporting, withholding, and remitting of lump-sum
172 payments, including state laws regarding proration of collections among multiple
173 families who are owed support by the same obligor.