More than one in ten working Americans between the ages of 35 and 44 had their wages garnished in 2013, according to a recent study performed by payroll service company ADP. Many people associate wage garnishment with “deadbeat dads” who owe spousal and child support. But ADP’s study found that many debtors were delinquent on taxes, credit cards, medical bills and student loans -- not support payments.

**Best (and Worst) States for Debtors (and Creditors)**

Although every state has a set of exemption laws intended to prevent creditors from pushing debtors into poverty, the laws vary dramatically from one state to the next. In general, exemption laws are intended to preserve subsistence wages and essential property from seizure by creditors. They also are designed to deter predatory lending practices and fraudulent claims.

A 2013 study by the National Consumer Law Center (NCLC) reports that no state meets all of its five basic standards:

1. **Wages.** Prevent debt collectors from seizing so much of the debtor's wages that the debtor is pushed below a living wage;

2. **Auto.** Allow the debtor to keep a used car of at least average value;

3. **Home.** Preserve at least a median-value home for the family;

4. **Home goods.** Prevent seizure and sale of the debtor's necessary household goods; and

5. **Cash.** Preserve at least $1,200 in a bank account so that the debtor has minimal funds to pay such essential costs as rent, utilities and commuting expenses.

Based on these standards, the NCLC study lists the following states as the most debtor-friendly:

- Massachusetts,
- Iowa,
Conversely, the study found that these states were generally "indifferent" to struggling debtors, allowing creditors to seize nearly everything a debtor owns, even essential items:

- Alabama,
- Delaware,
- Kentucky, and
- Michigan.

Of course, the most debtor-friendly states might also appear to be the least creditor-friendly (and vice versa). Sure, businesses may have more methods of recourse against delinquent customers in states that are indifferent to struggling debtors. But as an employer, the employee's morale and productivity may suffer if employees with debt problems aren't allowed to retain essential minimum assets to get back on their feet. Moreover, weak consumer protection laws could motivate struggling debtors to steal from their employers and commit other white collar crimes.

Beware of Fraudulent Wage Garnishment Claims
The recent study, which ADP completed at the request of public news agency ProPublica, covers about 13 million ADP payroll records. When its findings are extrapolated over the entire U.S. population, it suggests that 4 million workers were docked for consumer debts in 2013. These garnishments were most common among middle-aged, blue-collar workers and low-income employees who may lack the education or financial resources to effectively fight creditor claims in court.

The end of the recession won't necessarily signal a reduction in wage garnishments, however. Although mortgage debt is currently down, household debt for autos and other consumer goods has reached an all-time high of about $3.2 trillion, according to the latest data from the Federal Reserve's *Flow of Funds*.

As creditors increasingly turn to court-ordered wage garnishments to recoup delinquent accounts, it's important for consumers and their employers to understand how the process works. Here are answers to some common questions about wage garnishment.

**What Is Wage Garnishment?**

A wage garnishment is any legal or equitable procedure through which some portion of a person's earnings is required to be withheld by an employer for the payment of a debt. Most garnishments are made by a local court order, which creditors may typically file approximately 30 days after entry of judgment against the debtor.

By the time an employer receives a garnishment order, the court should have notified the employee about the garnishment action -- although many debtors ignore or fail to understand these legal notices. An employer is generally not required by federal law to notify or receive written authorization from an employee before garnishing his or her wages.

**Who Is Burdened by Wage Garnishment?**

**Employees.** Wage garnishment can be a hardship -- and an embarrassment -- to employees, who may have as much as 25 percent of their paychecks withheld for consumer debts. To make matters worse, the amount of debt can quickly mount, because creditors in some states can also:

- Impose additional costs;
- Pass along legal fees related to garnishment actions; and
- Continue to charge post-judgment interest.

**Employers.** Garnishment is also a burden to employers that have to navigate different laws depending on which states their employees live in. If an employer botches up a garnishment order against an employee, it may be fined -- or even become liable for the employee's debt, depending on the applicable federal and state wage garnishment laws.

**What Are the Federal Rules on Garnishment?**

Another unfortunate trend related to wage garnishment is fraudulent debt claims. For example, the alleged debtor in a "sewer service" scam was never served a summons about an impending collections lawsuit and, therefore, never disputed the creditor's phony claim. With the defendant absent, a court issued a default judgment, and the victim didn't learn about the fraudulent claim until after his or her paycheck was garnished, months after the judgment date.

These scams often go hand-in-hand with identify theft. Unfortunately, once a court has issued a default judgment against a debtor, it can be expensive and time-consuming for the consumer to reverse the damage.
Title III of the federal Consumer Credit Protection Act (CCPA) limits the amount of an employee's earnings that may be garnished. The amount of pay that is subject to garnishment is based on an employee's "disposable earnings," which is the amount that is left after legally required deductions are made.

Earnings include wages, salaries, commissions, bonuses, and pension or retirement plan payments. Tips are generally not considered earnings for the purposes of the federal wage garnishment law. In some cases, other income, such as rent and commissions, can also be garnished.

Examples of legally required deductions include state, federal, and local income tax, Social Security tax and state unemployment insurance. However, voluntary deductions -- such as union dues, health and life insurance premiums and retirement plan contributions (except those required by law) -- generally may not be subtracted from gross earnings when calculating disposable earnings under the CCPA.

For ordinary garnishments, including consumer debts, the maximum amount that may be withheld in any weekly period, regardless of the number of garnishment orders received by the employer, may not exceed the lesser of:

- 25 percent of the employee's disposable earnings; or
- The amount by which an employee's disposable earnings are greater than 30 times the federal minimum wage (currently $7.25 an hour).

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

**How Much Can Be Garnished for Support and Other Obligations?**

The CCPA allows up to 50 percent of a worker's disposable earnings to be garnished for alimony or child support if the worker is supporting another spouse or child -- or up to 60 percent if the worker is not. An additional 5 percent may be garnished for support payments more than 12 weeks in arrears.

Special rules also apply for bankruptcy, state or federal tax garnishments, and non-tax debts owed to federal agencies, including defaulted student loans owed to the U.S. Department of Education.

For example, the IRS can garnish an employee's wages without going to court if the following conditions have been met:

- The IRS must assess a tax and send the taxpayer a Written Notice and Demand for Payment.
- The taxpayer must have neglected or refused to pay the assessment within the prescribed time period on the notice.
- The IRS must send via certified or registered mail (or hand deliver) a Final Notice of Intent to Levy and Notice of Your Right to a Hearing to the taxpayer’s last known address or usual place of business at least 30 days before the levy.

Employers generally have at least one full pay period after receiving a Form 668-W, Notice of Levy on Wages, Salary and Other Income, before they are required to send the IRS any funds from the employee's wages.

**Can Employers Fire Employees to Avoid the Hassle of Garnishing Wages?**

The federal wage garnishment law protects an employee from being fired if pay is garnished for only one debt. However, the CCPA does not prohibit discharge because an employee's earnings are separately
garnished for two or more debts. It also doesn't protect consumers who voluntarily agree to assign wages to creditors to repay debts.

Before deciding to fire an employee whose wages are garnished several times, check state laws, which could trump the federal rules. Also be sure your company is consistent in its practice. If one person is fired for multiple garnishments and another is not, it could result in a discrimination lawsuit.

Employers who violate the CCPA's discharge restrictions may be required to reinstatement the discharged employee, pay back wages and restore improperly garnished amounts. Employers who willfully violate the discharge provisions of the law can be prosecuted criminally and fined up to $1,000, imprisoned for not more than one year -- or both.

**What Happens If State and Federal Laws Differ?**

If a state wage garnishment law differs from the CCPA, the law resulting in the smaller garnishment must be observed. State laws vary widely. Four states -- North Carolina, Pennsylvania, South Carolina and Texas -- largely prohibit wage garnishment for consumer debts. But more than half of the states have not passed legislation to override the CCPA's relatively steep wage garnishment allowances.

**Who Can Help You Comply With the Wage Garnishment Rules?**

It's important for employers to understand how federal and state wage garnishment laws work. In some cases, a garnishment order may contradict federal or state law. It is the employer's responsibility not to garnish too much (or too little) and to let the court know if the company cannot legally comply with the order.

If your company is issued a court order to withhold a portion of an employee's wages, immediately contact an attorney or a payroll adviser who is familiar with the applicable federal and state laws. Failure to properly follow the convoluted -- and sometimes contradictory -- wage garnishment rules can be a costly mistake for employers.

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**Use Polygraph Tests With Caution**

*If you suspect* that an employee has committed an illegal act, don't make plans to conduct a lie detector test unless there are special circumstances.
The law in this area, and most prominently the *Employee Polygraph Protection Act* (EPPA), makes it generally illegal to require or even request or suggest that an employee or a job applicant take a lie detector test. But there are exceptions. The law does not cover federal, state, and local governments and you can require some individuals to take a polygraph test, including:

- Certain job applicants of security firms such as armored car, alarm and guard services.
- Certain job applicants of pharmaceuticals manufacturers, distributors and dispensers.
- Certain employees if your company suspects them of workplace theft, embezzlement or other criminal acts that resulted in specific economic loss to your company.

However, even in those situations, you must follow strict standards. Before you hook someone up to a polygraph machine, take these five precautions:

1. **Conduct a thorough investigation** with the help of legal counsel and the local authorities. You must have reasonable cause to believe a particular employee was involved in an incident and had access to the property in question. The burden of proof rests with you.

2. **Give the employee written notice** that explains in detail the incident under investigation. This includes the nature and amount of the loss, and why you suspect the employee's involvement.

Under the *Employee Polygraph Protection Act* (EPPA), one of the exceptions to the ban on lie detector tests involves continuing investigations of theft, embezzlement, misappropriation of funds and industrial espionage or sabotage.

You must have a reasonable suspicion that the employee is involved in one of those crimes.

In one case, a court emphasized a key distinction when an employer offered lie detector testing. (*Gary Lee Watson v. Drummond Co. Inc.*, No. 04-15729, 11th Circ., 1/20/06).

*The facts:* Drummond Co., a coal mining company in Alabama, suspected that a group of employees were involved in theft and drug dealing and fired them.

The coal miners' union challenged the firings and suggested that the company reinstate the individuals who passed a lie detector test. The company agreed but the individuals refused. They then sued Drummond, claiming that it was violating the EPPA by using the tests for reinstatement.

*The Ruling:* The Eleventh Circuit Court disagreed, noting that:

- The union, not the employer, proposed the tests.
- The union is not an employer under the EPPA.
- The company's conduct fell under the open investigation exception to the EPPA.
3. Ask the employee to sign a consent form for the test and have the document reviewed by legal counsel. The form should describe the test, list the employee's rights, affirm the voluntary nature of the test, and provide for the release of the test results to you and the authorities.

4. Wait at least 48 hours after the employee signs the consent form before you administer the test. The waiting period does not include holidays or weekends.

5. Hire a licensed, bonded examiner with professional liability coverage.

Be sure to retain records related to the test for at least three years. This includes the notice to the employee, the employee's consent form, and the test results.

In addition, document any adverse action taken and any interviews concerning the incident and its consequences. Also, bear in mind, the law strictly limits the disclosure of information obtained during a polygraph test. Check with your attorney.

An employer who violates the law can be liable for as much as $10,000 for each violation and may be required to hire, reinstate or promote an employee as well as pay lost wages and benefits.

Resolve Customer Billing Disputes Promptly

Every business has its share of slow-paying customers and plain old bad apples who won't settle up without making a fuss.

But some companies always seem to be embroiled in lengthy and counterproductive billing disputes with their customers. Be careful that your business doesn't fall into that rut. If you find that more than five to 10 percent of your accounts receivable are late because they are lying in the "dispute" category, take corrective action to shift them into the "paid" category.

Review your accounts receivable for signs of collection problems, which generally fall into these basic categories of customers:

- **Unable to pay**, including companies that are insolvent, bankrupt, or dealing with the death of an owner. Don't waste a lot of time on these cases. There's generally nothing you can do except get in line at the courthouse and hope to recover something.
- **Financially strapped but able to pay.** This includes companies that could go to a bank and borrow the money. When these people say they can't pay, what they're really saying is they decided to pay someone else instead. Effective staff members in your accounts receivable department should be able to convince these customers to pay your company first.
- **Refusing to pay**, although they could, because of a billing dispute. This includes companies that disagree with the bill. Somebody in your firm should be responsible for resolving these accounts within 48 hours. If it takes longer, the problem generally magnifies and your customer might become alienated in the process.

Once you have that overall picture, try taking these three steps to get better results from that last category of intransigent customers:
1. Set strict deadlines for resolving billing disputes.

2. Post credits and corrections immediately once a dispute is resolved.

3. Notify customers that the disputes and errors have been corrected.

Resolving billing disputes promptly gives you a better chance of collecting past due accounts -- and keeping customers.