

CIRCUIT COURT OF ILLINOIS

Sixth Judicial Circuit Champaign County

How to do a Wage Deduction Proceeding

If you already have a money judgment against someone, you are the Petitioner. The other party, who owes you the money, is the Respondent. If the Respondent is employed, you can try to garnish their wages.

The legal name for this is a wage deduction. In the Illinois law books, the wage deduction law is located at 735 ILCS 5/12-801 through 735 ILCS 5/12-819.

In a wage deduction proceeding, you serve a Summons on the Respondent/Respondent's Employer. The summons requires the employer to deduct money from the Respondent's pay and hold it for instructions from a judge. If the Respondent is earning enough, so that their wages can be garnished, the judge orders the employer to pay the deducted wages to you.

A wage deduction takes the following amount out of a Respondent's pay:

- The lesser of:
- Net pay over \$371.25 per week; or
 - 15% of gross pay.

Important: This means that nothing can be deducted if the Respondent receives less than \$371.25 per week. Legally, the first \$371.25 of net weekly pay is "exempt," and cannot be touched. To avoid disappointment, understand ahead of time that wage deduction will not necessarily get you any money.

Also, other deductions besides yours may prevent you from getting paid. If the Respondent's Employer is already making deductions for child and/or spousal support, your wage deduction probably won't get anything. Or, if another Petitioner is ahead of you and is already garnishing the Respondent's wages, that prior wage deduction must be completed before yours can begin. Finally, if the Respondent files for bankruptcy, no wage deduction order can be entered.

You need 4 forms to do a wage deduction:

- Wage Deduction Notice
- Wage Deduction Summons
- Affidavit for Wage Deduction Order
- Interrogatories to Employer - Wage Deduction

The Circuit Clerk makes these forms available on the 1st Floor of the Champaign County Courthouse at 101 East Main Street, Urbana, Illinois 61801.

STEP 1: Complete & Mail the *Wage Deduction Notice* to the Respondent.

The ***Wage Deduction Notice*** tells the Respondent you are trying to do a wage garnishment, and tells them they have the right to protect their exempt wages. It also tells the Respondent the "return date."

The return date is the deadline for the Employer to answer the ***Wage Deduction Summons***. The Employer answers by filing a completed ***Interrogatories to Employer - Wage Deduction*** with the Circuit Clerk. The completed ***Interrogatories to Employer - Wage Deduction*** says how much money the Employer deducted from the Respondent's wages.

You must choose a return date that gives you enough time to mail the ***Wage Deduction Notice*** to the Respondent and then complete the next two steps. That date must be between 21 to 40 days after the ***Wage Deduction Summons*** is issued by the Circuit Clerk. Five weeks from the day the ***Wage Deduction Summons*** is issued should be adequate.

STEP 1: (Continued)

Complete the top part of the *Wage Deduction Notice* by filling in the parties' names and the case number. Then, fill in:

- The Respondent's name and last-known address;
- the amount of the Judgment;
- the name of the Employer;
- your name and address;
- the balance due;
- the return date.

Mail 1 copy to the Respondent at their last-known address.

YOU MUST MAIL THE WAGE DEDUCTION NOTICE TO THE RESPONDENT BEFORE YOU DO THE NEXT STEPS.

STEP 2: Complete the *Affidavit for Wage Deduction Order*.

You can get this form from the Circuit Clerk's office. Complete the top part by filling in:

- The parties' names;
- The employer's name;
- The case number; and
- The return date

Below the title, *Affidavit for Wage Deduction Order*, fill in your name on the first blank.

At Paragraph 1, fill in:

- The date of the Judgment;
- Your name (the Petitioner);
- The Respondent's name;
- The amount of the Judgment

At Paragraph 2, fill in the amount (if any) that the Respondent has paid on the Judgment.

At Paragraph 3, fill in:

- The amount of the principal Judgment that remains unpaid;
- The court costs you have paid so far;
- The interest that has accumulated on the unpaid Judgment (9% per year);
- The total of principal, costs, and interest.

At Paragraph 4, fill in the Employer's name.

At Paragraph 5, fill in the Respondent's last-known address.

Then, sign and date the Affidavit.

If – and only if – you have already mailed the Wage Deduction Notice to the Respondent, sign the Certificate of Petitioner or Petitioner's Attorney.

At the bottom of the form, fill in your name, address, and phone number.

Katie M. Blakeman

Clerk of the Sixth Judicial Circuit Court

101 E. Main Street

Urbana, Illinois 61801

STEP 3: File the *Affidavit for Wage Deduction Order* and ask the Clerk to issue the *Wage Deduction Summons*.

Before going to the Circuit Clerk's window, fill out the top part of the *Wage Deduction Summons* with the parties' names, the Employer's name, the case number, and the address of the Employer. Also, fill in the return date that you put on the *Wage Deduction Notice*. At the bottom of the Summons, fill in your name, address, and phone number.

At the Circuit Clerk's window on the 1st Floor of the Courthouse, file the completed Wage Deduction Notice, Affidavit for Wage Deduction Order, Wage Deduction Summons and Interrogatories to Employer - Wage Deduction. The Clerk's office will "issue" the Summons for you.

STEP 4: Serve the Employer.

You must serve these copies on the Employer:

- *Wage Deduction Notice*;
- *Wage Deduction Summons*;
- *Affidavit for Wage Deduction Order*; and
- *Interrogatories To Employer - Wage Deduction*

YOU CANNOT SERVE THESE PAPERS YOURSELF. They must be served by the Sheriff, a private process server, or by certified mail sent by the Circuit Clerk.

Proof of Service. The sheriff's office, or private process server, must file a sworn statement that they served the papers. That sworn statement must be included in the court file. If the Clerk serves by certified mail, the Clerk should attach the returned receipt to a copy of the *Wage Deduction Summons* and include it in the court file as proof of service on the Employer. The Employer must be served at least 3 days before the return date. Be sure to check with the Clerk's office on the return date to be sure the Employer was properly served.

STEP 5: The Employer calculates the wage deduction, and answers the *Interrogatories*.

When the Employer receives the Wage Deduction Summons, they must deduct and hold the Respondent's non-exempt wages. For each pay period, the non-exempt wages are the lesser of:

- Net pay over \$371.25 per week, (45 x \$8.25/hour);
- or
- 15% of gross pay.

If the Respondent nets less than \$371.25 per week, nothing can be deducted.

In addition to making the appropriate deductions, the Employer must also answer the Interrogatories. The Employer's answer explains what deductions—if any—have been made from the Respondent's wages. The Employer must file the answered Interrogatories with the Circuit Clerk by the return date.

The Employer should also send copies of their answer to you and the Respondent.

STEP 6: After the return date, the Judge will review the Employer's answer, and, if possible, sign a *Wage Deduction Order*.

The Employer's answer to the Interrogatories will show whether the Employer deducted anything from the Respondent's wages, and if so, how much.

The Employer should send a copy of the answer to both you and the Circuit Clerk. If you do not get a copy of the Employer's answer within a few days after the return date, you can go to the Courthouse to see if the Employer filed an answer to the Interrogatories. You can request a photocopy, or simply write down the information. Copies are \$1.00 for the first page, and then 50 cents per page.

Katie M. Blakeman

Clerk of the Sixth Judicial Circuit Court
101 E. Main Street
Urbana, Illinois 61801

After the return date, you will need to provide a Wage Deduction Order for the Judge to sign. This form is also located in the Courthouse lobby.

If the file shows that you sent a copy of the **Wage Deduction Notice** to the Respondent and that the Employer properly deducted non-exempt wages, the Judge may sign a **Wage Deduction Order**. That Order requires the Employer to pay the deducted wages over to you, and to continue making deductions until the Judgment is paid in full. The Order will require the Employer to periodically send the deducted wages to you.

If the Employer says in the **Interrogatories** form that the Respondent does not have non-exempt wages to pay toward the Judgment, the Judge can enter an order called the **“Non-Withholding Wage Deduction Order.”**

This Order can continue the wage deduction lien until the Respondent earns enough for deduction to be made. You can also follow this procedure if the Respondent has insufficient wages to make payments because of child support, spousal support or a previous wage deduction. This will save you from having to repeat several of the steps if in the future the Respondent’s circumstances change, but stays with the same Employer.

CIRCUIT COURT OF ILLINOIS

Sixth Judicial Circuit
Champaign County

Petitioner

vs.

Case No: _____

Respondent

Respondent's last known address:

**Name and Address of Petitioner's
Attorney or Petitioner if not represented
by an attorney:**

Name: _____

Address: _____

City: _____

Phone: _____

Amount of Judgment: \$ _____

Balance Due: _____

Name of Employer: _____

Return Date: _____

WAGE DEDUCTION NOTICE

NOTICE: The Court has issued a Wage Deduction Summons against the Employer named above for wages due or about to become due to you. The Wage Deduction Summons was issued on the basis of a Judgment against you in favor of the Petitioner in the amount stated above. This Judgment is a lien on the Respondent's wages until the total amount due is paid.

The amount of wages that may be deducted is limited by Federal and Illinois law.

(1) Under Illinois law, the amount of wages that may be deducted is limited to the lesser of (i) 15% of gross weekly wages or (ii) the amount by which disposable earnings for a week exceed the total of 45 times the Illinois minimum hourly wage.

(2) Under Federal law, the amount of wages that may be deducted is limited to the lesser of (i) 25% of disposable earnings for a week or (ii) the amount by which disposable earnings for a week exceed 30 times the federal minimum hourly wage.

(3) Pension and retirement benefits and refunds may be claimed as exempt from wage deduction under Illinois law.

You have the right to request a hearing before the Court in Champaign County to dispute the wage deduction because the wages are exempt. To obtain a hearing you must notify the Clerk of the Court, in writing, at **Circuit Clerk, 101 East Main, Urbana, Illinois 61801** on or before the return date specified above. The Clerk of the Court will provide a hearing date and the necessary forms that must be prepared by you or your attorney and sent to the Petitioner and the Employer, or their attorney, regarding the time and location of the hearing. This Notice may be sent by regular first class mail.

CIRCUIT COURT OF ILLINOIS

**Sixth Judicial Circuit
Champaign County**

Petitioner

vs.

Case No: _____

Respondent

Address of Employer:

and

Employer

WAGE DEDUCTION SUMMONS

To the Employer:

YOU ARE SUMMONED and required to file answers to the Petitioner’s Interrogatories in the office of the Clerk of the Circuit Court, 101 East Main Street, Urbana, Illinois on or before _____, 20____.
(21 to 40 days after issuance of Summons)

However, if this Summons is served on you less than 3 days before that date, you must file answers to the Interrogatories on or before a new return date, to be set by the Court, not less than 21 days after you were served with this Summons.

This proceeding applies to non-exempt wages due at the time you were served with this Summons and to wages which become due thereafter until the balance due on the Judgment is paid.

This Summons, together with 4 copies of the Interrogatories and one copy of the Judgment and/or Certification and one copy of the Wage Deduction Notice, shall be served on the Employer.

IF YOU FAIL TO ANSWER, A CONDITIONAL JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE AMOUNT OF THE JUDGMENT UNPAID.

FEDERAL AGENCY EMPLOYERS:

Effective upon service of this Summons and pursuant to 5 USC 552 (a), you are to commence to pay over deducted wages to the attorney for the Petitioner in accordance with 735 ILCS 5/12-808.

To the officer:

This Summons must be returned by the officer or other person to whom it was given for service, with indorsement of service and fees, if any, immediately after service. If service cannot be made, this Summons shall be returned so indorsed. This Summons may not be served later than the above date.

This Summons may also be served, as provided by Supreme Court Rule 105(b), by Certified or Registered Mail, Return Receipt Requested.

WITNESS _____, 20____

(Seal of Court)

(Clerk of the Circuit Court)

Petitioner’s Attorney or Petitioner (if he/she is not represented by an Attorney)

Name: _____

Attorney for: _____

Address: _____

City/State/Zip Code: _____

Telephone: _____

TITLE III OF THE FEDERAL CONSUMER CREDIT PROTECTION ACT
RESTRICTIONS ON GARNISHMENT

Sec. 301. (a) The Congress finds:

(1) The unrestricted garnishment of compensation due for personal service encourages the making of predatory extensions of credit. Such extensions of credit divert money into excessive credit payments and thereby hinder the production and flow of goods in interstate commerce.

(2) The application of garnishment as a creditors' remedy frequently results in loss of employment by the debtor, and the resulting disruption of employment, production, and consumption constitutes a substantial burden on interstate commerce.

(3) The great disparities among the laws of the several States relating to garnishment have, in effect, destroyed the uniformity of the bankruptcy laws and frustrated the purposes thereof in many areas of the country.

(b) On the basis of the findings stated in subsection (a) of this section, the Congress determines that the provisions of this title are necessary and proper for the purpose of carrying into execution the powers of the Congress to regulate commerce and to establish uniform bankruptcy laws.

(82 Stat. 163; 15 U. S. C. 1671.)

Sec. 302. For the purpose of this title:

(a) The term "earnings" means compensation paid for personal services, whether denominated as wages, salary, commission bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(b) The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

(c) The term "garnishment" means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt.

(82 Stat. 163; 15 U. S. C. 1672.)

Sec. 303. (a) Except as provided in subsection (b) and in section 305, the maximum part of the aggregate disposable earnings of an individual for any work week which is subjected to garnishment may not exceed:

(1) 25 per centum of his disposable earnings for that week, or

(2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938 in effect at the time the earnings are payable, whichever is less. In the case of earnings for any pay period other than a week, the Secretary of Labor shall by regulation prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set fourth in paragraph (2).

(b) The restrictions of subsection (a) do not apply in the case of:

(1) any order of any court for the support of any person.

(2) any order of any court of bankruptcy under chapter XIII of the Bankruptcy Act.

(3) any debt due for any State or Federal tax.

(c) No court of the United States or any State may make, execute, or enforce any order or process in violation of this section.

(82 Stat. 163; 15 U. S. C. 1673.)

Sec. 304. (a) No employer may discharge any employee by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness.

(b) Whoever willfully violates subsection (a) of this section shall be fined not more than \$1,000, or imprisoned not more than one year, or both.

(82 Stat. 163; 15 U. S. C. 1674.)

Sec. 305. The Secretary of Labor may by regulation exempt from provisions of section 303 (a) garnishments issued under the laws of any State if he determines that the laws of the State provide restrictions on garnishment which are substantially similar to those provided in section 303 (a).

(82 Stat. 164; 15 U. S. C. 1675.)

Sec. 306. The Secretary of Labor, acting through the Wage and Hour Division of the Department of Labor, shall enforce the provisions of this title.

(82 Stat. 164; 15 U. S. C. 1676.)

Sec. 307. This title does not annul, alter or affect, or exempt any person from complying with, the laws of any State

(1) prohibiting garnishment or providing for more limited garnishments than are allowed under this title, or

(2) prohibiting the discharge of any employee by reason of the fact that his earnings have been subjected to garnishments for more than one indebtedness.

CIRCUIT COURT OF ILLINOIS

Sixth Judicial Circuit
Champaign County

Petitioner
vs.

Case No: _____

Respondent
and

Return date _____
(21 to 40 days after issuance)

Employer

AFFIDAVIT FOR WAGE DEDUCTION ORDER

_____ certifies that the following information is true and correct under the penalties as provided by Section 1-109 (perjury):

- 1. Judgment was entered in this case on _____, 20__, in favor of Petitioner _____ and against Respondent _____ for \$_____ and costs.
2. \$_____ has been paid on the Judgment.
3. There is unpaid on the Judgment \$_____ principal, \$_____ costs, \$_____ interest, \$_____ TOTAL.
4. I believe the Employer, _____, is or will be indebted to the Respondent for wages due or to become due.
5. The last known address of the Respondent is: _____.

I request that a Wage Deduction Summons be issued and directed to the Employer:

(Signature) _____
(Date) _____

CERTIFICATE OF PETITIONER OR PETITIONER'S ATTORNEY

I certify that Judgment was entered as stated in paragraph 1 above, and the Wage Deduction Notice has been mailed to the Respondent by first class mail at the Respondent's last known address.

Petitioner or Petitioner's Attorney

Petitioner's Attorney or Petitioner (if he/she is not represented by an Attorney)

Name: _____
Attorney for: _____
Address: _____
City/State/Zip: _____
Telephone: _____

Note: FOUR (4) COPIES OF THIS AFFIDAVIT MUST BE SERVED ON THE EMPLOYER. Interrogatories to Employer-Wage Deduction is to be filed on or before the return date as shown on this Affidavit and/or Summons.

CIRCUIT COURT OF ILLINOIS
Sixth Judicial Circuit
Champaign County

Petitioner

vs.

Case No: _____

Respondent

Respondent's Soc. Sec. No: _____

INTERROGATORIES TO EMPLOYER - WAGE DEDUCTION

Employer/Agent: _____ **certifies under penalty of perjury that the following answers are true and correct to the best of her/his knowledge and belief concerning the property of the Respondent:**

DO YOU PAY MONIES TO THE RESPONDENT LISTED ABOVE: YES NO

If Respondent is no longer employed by you, please give termination date: _____

STATE WHETHER ANY FUNDS paid to Respondent are for disability, retirement or are in any other way exempt or subject to another court order (**Examples: Child support, lien by Federal Government**): _____

ONE PAY PERIOD EQUALS:

_____ **day(s)** _____ **week(s)** _____ **bi-monthly** _____ **month** _____ **other**

WITHHOLDING

You are required by law to withhold the lesser of (1) 15% per week of the gross amount paid the employee named herein for any work week; or (2) the amount by which disposable earnings of said employee for a week exceed forty-five times the minimum hourly wage in effect at the time the amounts are payable (Example: the 2010 minimum wage of \$8.25 per hour; 45 x 8.25 = \$371.25).

On a Wage Deduction Order, the employer is entitled to \$12 once per proceeding (not per payroll) fee or 2% of the sums withheld.

NOTICE TO EMPLOYER - You must complete and return these Interrogatories. The original is sent back to the Circuit Clerk; you must mail a copy to the Petitioner or his/her attorney; you should give a copy to the Respondent; and you should keep a copy for yourself. **YOU MUST FILE YOUR ANSWER EVEN IF THE RESPONDENT IS NO LONGER EMPLOYED BY YOU. THE ANSWER MUST BE FILED ON OR BEFORE THE DATE ON THE SUMMONS.**

UPON RECEIPT OF THE WITHHOLDING ORDER, ANY MONEY WITHHELD IS SENT TO THE PETITIONER'S ATTORNEY OR, IF NONE, THE PETITIONER DIRECTLY. (DO NOT SEND ANY OF THE WITHHELD MONEY TO THE CLERK OF THE CIRCUIT COURT.)

HOW TO CALCULATE THE AMOUNT OF WAGES TO WITHHOLD:

A	Gross Wages, minus mandatory contributions to pensions or retirement plan	\$	A	
B	Enter total of FICA, Medicare, Federal Tax, and State Tax	\$	B	
C	Subtract Line B from Line A (This is net pay)	\$	C	
D	Enter amount of Exempt Wages	If paid every week	\$ 371.25	D
		If paid every 2 weeks	\$ 742.50	
		If paid twice a month	\$ 804.38	
		If paid every month	\$1608.75	
E	Subtract Line D from Line C	\$	E	
F	15% of Line A	\$	F	
G	Enter the LESSER of Line E or Line F	\$	G	
H	Enter amount of Child Support or other Court ordered deduction	\$	H	
I	Subtract Line H from Line G	\$	I	
J	Employer's Statutory Fee: Greater of \$12.00 or 2% of Line I	\$	J	
K	Subtract Line J from Line I: Amount to be applied to Judgment	\$	K	

Line I is the amount to be withheld from the employee's paycheck as of the date the Summons is served on you. This calculation should be done for each pay period. Do not disburse that amount until further order of the Court.

AFFIDAVIT

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the answers to the Interrogatories are true and that he/she has mailed first class or hand-delivered a copy of this answer to the Respondent at his/her last known address.

Employer/Agent: _____

 Signature

Address: _____
Print Name

Date: _____, 20____

City/State/Zip: _____

CIRCUIT COURT OF ILLINOIS

Sixth Judicial Circuit
Champaign County

Petitioner(s)

vs.

Case No: _____

Respondent(s)
and

&

Social Security No.(s)

Employer

WAGE DEDUCTION ORDER

THIS CAUSE coming on to be heard upon the return of a Wage Deduction Summons served upon the employer and the answer filed by the employer, a Wage Deduction Notice having been served upon the employee and the Court fully advised.

IT IS HEREBY ORDERED:

1. That a lien is hereby imposed upon the non-exempt wages of _____, as of the date of the service of the Wage Deduction Summons in the amount of \$ _____ which includes court costs and interest to date and credit for payments to date.
2. That _____ is ordered to deduct 15% of the Respondent's non-exempt gross wages after deductions for mandatory pension or retirement plans, or where the spouse/child support deduction order, if any, leaves funds up to 15% of the non-exempt gross wages each pay period, to be remitted to Petitioner's attorney (or Petitioner) at least monthly. No deductions may occur if Respondent's net check is less than 45 times the federal minimum wage.
3. That a Wage Deduction judgment is hereby entered against employer, _____, in the periodic sum ordered above each pay period from the Respondent, _____, for the use of the Petitioner.
4. That employer turn over to Petitioner the withheld wages from the date of service of the wage deduction proceedings to the date of this Order, pursuant to the calculations set forth herein.
5. A lien obtained hereunder shall have priority over any subsequent lien obtained hereunder, except that liens for the support of a spouse or dependent children shall have priority over all other liens obtained hereunder. Employer is further directed to file an amended Answer with this Court and send a copy to the attorney for Petitioner, or the Petitioner, informing the Court as to spouse/child support deductions received after the entry of this Order.
6. That this continuing Wage Deduction Order shall remain in effect until the judgment of \$ _____ plus 9% simple interest and costs of \$ _____ are paid in full, the Respondent ceases to be employed by the employer, the employee files a bankruptcy, or this Court enters an Order modifying this Order.
7. That any other liens or wage deduction proceedings filed after this one (other than spouse/child support) shall be held and stacked in the order received by the employer and take effect only upon the conclusion of this Order.
8. That this Court retains jurisdiction of the parties hereto and subject matter hereof to amend this Order upon any changes in circumstances.

Date: _____

Judge