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March 12, 2010

Name
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RE: Wage Garnishment

Ladies and Gentlemen:

You are receiving this letter because we recently consulted with one of your employees regarding the potential garnishment of their wages. Our law office specializes in bankruptcy and wage garnishments. We have prepared this form letter because employers are not always furnished up-to-date documents by creditors with writs of garnishment.

The law requires you to pay your employees a minimum \$217.50 of their wages per week after taxes. Federal law provides that, "the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed...the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage...." 15 U.S.C. § 1673. The current federal minimum wage times thirty is \$217.50. Therefore, a garnishment by a normal judgment creditor must leave the debtor at least \$217.50 per week and if that is exceeded, 75% of their net earnings. Exceptions to this general rule include wage orders in chapter 13 bankruptcy, support orders, and garnishments for state and federal taxes.

For example, if an employee earns \$400.00 every two weeks, their wages cannot be garnished because their income is less than \$217.50 times two. If an employee earns \$500.00 every two weeks, their net pay cannot be less than \$217.50 per week. We have attached the legal form titled "NOTICE OF EXEMPT PROPERTY AND INSTRUCTIONS FOR CHALLENGE TO GARNISHMENTS" for your records. Under Oregon law, this form is to be furnished to debtors upon garnishment.

We advise employers to seek counsel from their own attorney if they have questions.

Sincerely,

Eric W. Olsen
Attorney at Law
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**NOTICE OF EXEMPT PROPERTY
AND INSTRUCTIONS FOR CHALLENGE TO GARNISHMENT**

Property belonging to you may have been taken or held in order to satisfy a debt. The debt may be reflected in a judgment or in a warrant or order issued by a state agency. Important legal papers are enclosed.

YOU MAY BE ABLE TO GET YOUR PROPERTY BACK, SO READ THIS NOTICE CAREFULLY.

State and federal law specify that certain property may not be taken. Some of the property that you may be able to get back is listed below.

- (1) Wages or a salary as described in ORS 18.375 and ORS 18.385 Whichever of the following amounts to greater:
 - (a) 75 percent of you take-home wages; or
 - (b) For the following pay periods for wages subject to garnishment:
 - (1) \$218.00 for any period of one week or less;
 - (2) \$435.00 for any two-week period;
 - (3) \$468.00 for any half-month period;
 - (4) \$936.00 for any one-month period; and
 - (5) For any other period longer than one week, \$218.00 multiplied by that fraction produced by dividing then number of days for which the earnings are paid by seven. The amount calculated under this paragraph must be rounded to the nearest dollar.
- (2) Social Security benefits.
- (3) Supplemental Security Income (SSI).
- (4) Public assistance (welfare).
- (5) Unemployment benefits.
- (6) Disability benefits (other than SSI benefits).
- (7) Worker's compensation benefits.
- (8) All Social Security benefits and Supplemental Security Income benefits, and up to \$7,500.00 in exempt wages, retirement benefits, welfare, unemployment benefits and disability benefits, that are held in a bank account. You may attach copies of bank statements to the Challenge to Garnishment form if you claim this exemption.
- (9) Spousal support, child support or separate maintenance to the extent reasonable necessary for your support or the support of any of your dependents.
- (10) A homestead (house, manufactured dwelling or floating home) occupied by you, or occupied by your spouse, parent or child. Up to \$40,000.00 of the value of the homestead is exempt. If you jointly own the homestead with another person who is also liable on the debt, up to \$50,000.00 of the value of the homestead is exempt.
- (11) Proceeds from the sale of a homestead described in item 10, up to the limits described in item 10, if you hold the proceeds for less than one year and intend to use those proceeds to procure another homestead.
- (12) Household goods, furniture, radios, a television set and utensils with a combined value not to exceed \$3,000.00.
- * (13) An automobile, truck, trailer, or other vehicle with a value not to exceed \$3,000.00.
- * (14) Tools, implements, apparatus, team, harness or library that are necessary to carry on your occupation, with a combined value not to exceed \$3,000.00.
- * (15) Books, pictures and musical instruments with a combined value not to exceed \$600.00.
- * (16) Wearing apparel, jewelry and other personal items with a combined value not to exceed \$1,800.00.
- (17) Domestic animals and poultry for family use with a combined value not to exceed \$1,000.00 and their food for 60 days.
- (18) Provisions (food) and fuel for your family for 60 days.
- (19) One rifle or shotgun and one pistol. The combined value of all firearms claimed as exempt may not exceed \$1,000.00.
- (20) Public or private pensions.
- (21) Veteran's benefits and loans.
- (22) Medical assistance benefits.
- (23) Health insurance proceeds and disability proceeds of life insurance policies.
- (24) Cash surrender value of life insurance policies not payable to your estate.
- (25) Federal annuities.
- (26) Other annuities to \$250.00 per month (excess over \$250.00 per month is subject to the same exemption as wages).

- (27) Professionally prescribed health aids for you or any of your dependents.
- *(28) Elderly rental assistance allowed pursuant to ORS 310.635.
- *(29) Your right to receive, or property traceable to:
- *(a) An award under any crime victim reparation law.
- *(b) A payment of payments, not exceeding total of \$10,000.00 on account of personal bodily injury suffered by you or an individual of whom you are a dependent.
- *© A payment in compensation of loss of future earnings of you or an individual of whom you are or were a dependent, to the extent reasonably necessary for your support and the support of any of your dependents.
- (30) Amounts paid to you as an earned income tax credit under federal law.
- (31) Interest in personal property to the value of \$400.00, but this cannot be used to increase the amount of any other exemption.
- (32) Equitable interests in property.
- (33) Security deposits or prepaid rent held by a residential landlord under ORS 90.300.
- (34) If the amount shown as owing on the Debt Calculation form exceeds the amount you actually owe to the creditor, the difference between the amount owed and the amount shown on the Debt Calculation form.
- Note: if two or more people in your household owe the claim or judgment, each of them may claim the exemptions marked by an asterisk (*).
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SPECIAL RULES APPLY FOR DEBTS THAT ARE OWED FOR CHILD SUPPORT AND SPOUSAL SUPPORT.

Some property that may not otherwise be taken for payment against the debt may be taken to pay for overdue support. For instance, Social Security benefits, worker's compensation benefits, unemployment benefits, veteran's benefits and pensions are normally exempt, but only 75 percent of a lump sum payment of these benefits is exempt if the debt is owed for a support obligation.

YOU MUST ACT PROMPTLY IF YOU WANT TO GET YOUR MONEY OR PROPERTY BACK. You may seek to reclaim your exempt property by doing the following:

- (1) Fill out the Challenge to Garnishment form that you received with this notice.
- (2) Mail or deliver the Challenge to Garnishment form to the Court Administrator at the address shown on the writ of garnishment, and mail or deliver a copy of the form to the Garnishor at the address shown on the writ of garnishment. If you wish to claim wages or salary as exempt, you must mail or deliver the form within 120 days after you receive this notice. If you wish to claim that any other money or property is exempt, or claim that the property is not subject to garnishment, you must mail or deliver the form within 30 days after you receive this notice. You have the burden of showing that your challenge is made on time, so you should keep records showing when the challenge was mailed or delivered.
- (3) The law only requires that the Garnishor hold the garnished money or property for 10 days before applying it to the Creditor's use. You may be able to keep the property from being used by the Creditor by promptly following (1) and (2) above.

You should be prepared to explain your exemption in court. If you have any questions about the garnishment or the debt, you should see an attorney.

YOU MAY USE THE CHALLENGE TO GARNISHMENT FOR ONLY FOR THE FOLLOWING PURPOSES:

- (1) To claim such exemptions from garnishment as are permitted by law.
- (2) To assert that property is not garnishable property under ORS 18.618.
- (3) To assert that the amount specified in the writ of garnishment as being subject to garnishment is greater than the total amount owed.

YOU MAY NOT USE THE CHALLENGE TO GARNISHMENT FORM TO CHALLENGE THE VALIDITY OF THE DEBT.

IF YOU FILE A CHALLENGE TO A GARNISHMENT IN BAD FAITH, YOU MAY BE SUBJECT TO PENALTIES IMPOSED BY THE COURT THAT COULD INCLUDE A FINE. Penalties that you could be subject to are listed in ORS 18.715.

When you file a Challenge to Garnishment form, the Garnishee may be required to make all payments under the garnishment to the court, and the Garnishor may be required to pay to the court all amounts received by the Garnishor that are subject to the challenge to the garnishment. The Garnishee and Garnishor are subject to penalties if they do not. For a complete explanation of their responsibilities, see ORS 18.705 and ORS 18.708.