

Garnishment by Private Creditors

Garnishment is an order requiring your employer or bank to take money from your paycheck or bank account to repay a debt you owe. Garnishment usually requires the creditor (person who is owed money) to get a court order, but in certain situations, such as debts to the federal government (taxes, student loans, etc.) the creditor, in this case the federal government, can order the third-party to take funds from a source of income without a court order.

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Garnishment typically occurs in two ways

1. **Garnishment of wages** - in order to repay the debt, the court sends a notice of wage garnishment (sometimes referred to as “wage attachment” or “earnings garnishment”) to the debtor (you) and their employer. This notice tells the employer to take money from an employee's paycheck to repay the outstanding debt. The amount taken out of each paycheck is set by state law and cannot be changed by the employer unless the court agrees to the change.
2. **Bank account levy** - the court can also order a bank to take money out of a debtor's bank account to repay the debt. The court will send a notice of bank levy to both the debtor and their bank. This notice tells the bank to take money from the debtor's bank account until the debt is repaid. Personal bank accounts up to the combined amount of \$5,000 are protected from a bank account levy. Some additional money in your account(s) may be safe from a bank account levy, such as two months worth of some federal benefits. See “Can my benefits be garnished?” for more information.

How much can a creditor take from my paycheck?

Under Wisconsin law, creditors can garnish (take) the **lesser** of:

- (1) 20% of your disposable income (your income after subtracting Social Security taxes and federal and state income taxes listed on your paycheck), or
- (2) the amount of your disposable income that goes over 30 times the federal minimum wage.

In other words (as of 2024):

- If you make \$217.50 or less per week, then your wages cannot be garnished.
- If you make more than \$217.50 per week but less than \$290 per week, then the amount you make above \$217.50 per week can be garnished.
- If you make \$290 or more per week then, at a maximum, 20% of your wages can be garnished.

However, if the garnishment of 20% of your disposable income would bring your income below the poverty line, the garnishment is limited to only that amount above the poverty line. Similarly, if the garnishment of 20% of your income would not leave you enough money to buy necessary items to live (rent, food, etc.) for you and your household, you can ask the court to lower or stop the garnishment.

There are times when your wages are completely exempt from garnishment, however the exemption is not automatic.

Your wages are exempt from garnishment if:

- Your household income is below the poverty line.
OR
- You receive or are eligible for public assistance that is based on income (e.g. food stamps, medical assistance like BadgerCare or Medicaid, W-2/TANF, SSI)
OR
- At least 25% of your disposable income (your income after subtracting Social Security taxes and federal and state taxes) is going towards the support of another person because of a court order.

Your wages cannot be garnished for a debt owed to a payday loan lender.

Note: The limitations above DO NOT apply if any of the following are true:

- The debt is for the support of any person, such as child support.
- The debt is for unpaid taxes.

- The garnishment order was given by a court under certain bankruptcy or debt repayment plans.

Can my benefits be garnished?

Your benefits cannot be garnished via a wage garnishment by a private creditor as they are not considered traditional “earnings” under the law. Whether or not your benefits can be garnished via a bank account levy depends on which benefits and how you receive them, among other things.

The following benefits are not garnishable by private companies like your credit card company:

- Social Security Disability Insurance (SSDI) & Retirement benefits
- Supplemental Security Income (SSI) benefits
- VA benefits
- Civil service/federal retirement/disability benefits
- Federal student aid
- Federal Railroad benefits
- Financial assistance from the Federal Emergency Management Agency (FEMA)
- Worker’s compensation & unemployment insurance benefits
- Child support, family support, or maintenance payments

A major step you can take to protect these benefits is to sign up for direct deposit of your benefit into your bank account or prepaid card. When your bank receives a garnishment order, the first thing they must do is check to see if you have received any direct deposits of federal benefits in the past two months. The bank must protect those two months’ worth of benefits for your use. You’ll have that money available to you either as you are garnished, or as you fight the garnishment in court.

If you receive your benefits by check instead of direct deposit, the bank does not have to protect two months’ worth of benefits. Instead, when the court receives a garnishment order it may immediately freeze your entire account, and you’ll have to go to court to prove that the money in the account comes from federal benefits and should not be garnished. In the meantime, you won’t have access to any of that money.

Another step you can take is not to mix your benefit money with other money. Once you move your benefit money out of the original account into another account, or move non-benefit money into the benefit account, you make it more and more difficult to trace and prove the origins of the money, leaving it open to garnishment. Make it as clear and simple as possible by keeping a separate bank account or prepaid card for your benefits.

Important: If you owe a debt for unpaid taxes, student loans, or child/spousal support, the government acting as a creditor may take money from your bank account even if the money in your account comes from federal benefits. The only exception to that is Supplemental Security Insurance, which is protected from garnishment even to pay a government debt.

How do I claim an exemption in a wage garnishment?

A creditor can only garnish your wages if they have first won a judgment against you for the debt in court. Once a creditor wins a court judgment against you for an unpaid debt, the creditor may file an earnings garnishment action. The creditor must serve you notice of the earnings garnishment, which will include instructions on whether you qualify for an exemption or limitation to the garnishment, and how to file a claim to stop the garnishment.

Usually, the documents sent by the creditor will have a form (labeled something like “Debtor’s Answer”) for you to fill out to claim an exemption to the garnishment order. If there's no form, contact the court clerk right away to get one or find the form [here](#). If you cannot access the form, write down your exemption and file it with the court as soon as possible (see instructions below).

Although you can file the Debtor’s Answer form anytime after you receive the notice, it is in your best interest to file the objection **as soon as possible**. Your objection to the garnishment order can temporarily stop the creditor from taking your money. Until the creditor receives a notice of your objection, they can begin to take your money to repay the debt.

Contents of a written objection should include:

- The case number and the case name (this can be found on the order you received from the court).
- The date of your objection.

- Your name and current contact information (mailing address, phone number, and email address).
- State the reasons for your objection. You can explain why you qualify as exempt or explain why the information is incorrect (ex: you already paid the debt). Provide calculations if possible.
- Your signature.

How will I know if I have a hearing scheduled?

The court will tell you when your hearing will be, either in the first notice of garnishment or in a different notice after you object. If you haven't gotten a hearing date after your objection, you should call your court clerk to ask about your objection status or if they've set a hearing date.

Remember: If you do not object to the garnishment order, you may not get a hearing scheduled. It is important that you object to the garnishment order as soon as possible in order to start the objection process.

A hearing is scheduled. What do I do now?

If the court schedules a garnishment hearing for your debt, **you must attend the hearing**. If you do not attend the hearing, the court may assume that you no longer want to object to the garnishment order and allow the creditor to begin or continue to take money from you.

What to bring to the hearing:

- Copies of any documents that support your objection.
 - Ex: if you are objecting to the garnishment order because your household income is below the poverty line, you should bring pay stubs as proof for the judge.
 - If you are objecting to the garnishment order because you believe you already paid the debt, you should bring receipts or some other form of proof of payment to show the judge.

Can my employer fire me because they received a garnishment order?

Your employer has to do some work if they receive a garnishment order for you. They have paperwork to fill out and payroll calculations and adjustments to make. Some might prefer to fire you rather than deal with the hassle. However, there are some protections for you in this situation.

Federal law says that an employer cannot end your employment because they received an order for **one** wage garnishment.

In Wisconsin, an employer cannot end your employment based on a garnishment related to a consumer credit transaction. If you are terminated for this reason, you can file a claim against your employer within 90 days of being fired.

Also in Wisconsin, an employer cannot charge you money or retaliate against you in any way because of a garnishment. If this happens, you may be able to bring a claim for reinstatement of your job, back wages and benefits, restoration of seniority, and attorney fees.

Contact an employment attorney if you need assistance.

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