

1256-35 Discharge for Misconduct -Garnishment of Wages

An employee's discharge due to the garnishment of his or her wages causing a disruption to or a burden on the employer is a discharge for misconduct if all of the following conditions are met:

(a)

The employee's wages have been previously garnisheed for a different judgment on a different debt while employed by the discharging employer.

(b)

The employee has been expressly forewarned by the employer's rules, prior warnings, or prior reprimands, of the possible action to be taken by the employer resulting from a writ of garnishment for a different judgment.

(c)

The employee knew or could reasonably know that a wage garnishment would be instituted for a different judgment by a creditor.

(d)

The employee has not made a good-faith effort to meet his or her financial obligations or the employee has made a good-faith effort to meet obligations but failed to take reasonable action that would have prevented the garnishment for a different judgment. COMMENTS. Subdivision (a) recognizes that a claimant cannot be lawfully discharged under state or federal law if the garnishment results from a single judgment or indebtedness (Labor Code Section 2929; 15 U.S.C.

1674). Thus, a discharge because of one or more garnishments on a single debt or judgment is not for misconduct. However, when a claimant has had wages attached for two or more debts, the specific facts leading to the discharge are determinative on whether the discharge was for misconduct. Under subdivision (b), unless a claimant has been expressly forewarned by the employer of the possible action the employer may take resulting from a wage garnishment, the discharge is not for misconduct. The employer's rules or any prior warnings or reprimands show that the claimant was aware of the possible discharge resulting from a wage garnishment. If there is no such forewarning, the discharge is not for misconduct, since there is no willful or wanton disregard of the employer's interests. EXAMPLE 1. A is separated from employment with X. While unemployed a writ of attachment is filed against A with X. Upon returning to work, A is not informed of the attempted garnishment and is rehired by X. Another creditor executes a writ of attachment with X on A and X discharges A. A's discharge is not for misconduct since A's action was not willful because A was not aware of X's policy or rules on wage garnishments and had not been warned that A would be discharged if repeated garnishments occurred. COMMENTS. Under subdivision (c), a claimant must know or be charged with reasonable knowledge that a garnishment could be instituted against him or her. This knowledge is generally acquired when a debt has been incurred and the creditor has sought payment from the claimant. EXAMPLE 2. B is employed by Y. After a prior garnishment for another debt of B's, a writ of attachment is executed by a collection agency for unpaid attorney's fees. Y discharges B. B claims that B had the understanding that B's spouse would liquidate this debt. B's discharge cannot be for misconduct since B could not reasonably know that a writ of attachment could be instituted against B and did not act willfully. COMMENTS. Under subdivision (d), if a discharged claimant tries in

good faith to meet his or her financial obligations and succeeding garnishments for a different debt still result from circumstances the claimant cannot prevent by any reasonable action or conduct, the discharge is not for misconduct. No misconduct would exist if an impatient creditor resorted to garnishment, or if the claimant was financially unable to pay or make satisfactory arrangements despite his or her best efforts. However, if the claimant fails to stop garnishment when reasonable action would have prevented garnishment, a discharge is for misconduct. The nature of the purchase resulting in the garnishment is rarely significant in determining misconduct. The fact that a garnishment stemmed from the purchase of a luxury item does not usually establish misconduct. However, if a claimant has had several garnishments, has been warned that another garnishment for a different judgment can result in discharge, and still creates a frivolous new debt which results in garnishment, the claimant's actions are not those of a reasonably prudent person who wants to preserve employment. Reasonable conduct by the claimant would have prevented the garnishment. EXAMPLE 3. C makes arrangements to pay C's creditors but a succeeding wage attachment for a different debt is nevertheless levied by an impatient creditor who had agreed to the arrangements. C's discharge resulting from this garnishment is not for misconduct since C made good-faith efforts but could not prevent the garnishment. EXAMPLE 4. D suffers a substantial loss of income, such as a wage cut, demotion, new job paying less money, or loss of outside income. D after prior garnishments fails to keep up with reduced payments. D's discharge for garnishment on a different debt does not constitute misconduct if D has explained the situation to the creditors, tried to make satisfactory arrangements, and cannot prevent further garnishments by any reasonable steps. EXAMPLE 5. E is unable to meet debts due to a serious family illness requiring a large financial outlay. Creditors decide to levy wage

garnishments on separate judgments despite E's attempts to make satisfactory arrangements. E is discharged. E's discharge is not for misconduct since no reasonable action could have prevented the garnishments. EXAMPLE 6. F has been warned by Employer Z on several occasions that continued wage attachments on different debts would result in discharge or other disciplinary action. During a period of six months, four writs of attachment had been served on Z, and two wage assignments were made. At least twice, F took time off from work to arrange to have F's wages released. F had repeatedly obtained an immediate release of F's wages by paying the amounts due. F is able to make timely payments. Z finally warns F that another attachment will result in discharge. Upon service of the next attachment, Z discharges F. F is disqualified for misconduct based on F's awareness of the existence of F's indebtedness and the possibility that the creditors would take steps to insure collection. F was able to pay and could obtain immediate release of F's wages by making arrangements with the creditors. F could have prevented the garnishment by reasonable action.