

EMPLOYER INSTRUCTIONS FOR COMPLYING WITH ORDER OF WITHHOLDING

The first copy of the Order is for the employer's file. The second copy is to be given to the debtor by the employer.

Authority for Wage Withholding

Student Loans of North Dakota has been directed by federal law (P.L. 102-164, as amended by Public Law 109-171; 20 U.S.C. §1095a et seq.) to order employers of debtors with defaulted student loans to withhold fifteen percent (15%) of the disposable wages of these debtors for payment of their student loans. This federal law expressly overrides any state law to the contrary.

Calculating "Disposable Pay"

First, determine the "gross earnings" of the debtor, which means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise.

Then subtract any amounts required by law to be withheld, for example, state (if applicable) and federal income tax, and Federal FICA or OASI tax (social security). You should not include deductions for savings bonds, employee contribution to retirement plans or health insurance, and the like.

Amount of Deduction

The Order references fifteen percent (15%) of disposable pay. However, as long as the resulting figure does not exceed fifteen percent (15%) of the debtor's disposable pay, the figure may be rounded off to a flat dollar amount, particularly if payrolls are computerized and the system cannot accommodate percentages.

When to Begin Deductions and Payments

Deductions from the debtor's pay and subsequent remittance to SLND should begin with the first pay period that occurs after the issuance date set forth in the Withholding Order.

Frequency of Remittance

Although deductions must be made at each pay period, whether weekly, bi-weekly, semi-monthly, etc., remittance to SLND need not be made more than once each month. The employer is not required to change their normal pay and disbursement cycles to comply with the Withholding Order.

Terms of Withholding Order

The employer is required to withhold the appropriate amount from the debtor's wages for each pay period from the issuance date of the Withholding Order until the employer receives a "Release of the Order" form or other notification from SLND to discontinue wage withholding for a particular debtor.

When the Total Amount of the Order has been Paid

SLND will notify the employer of the final withholding payment for a particular debtor, and once a debtor's loan(s) are paid in full, the Order of Withholding will be released.

Employer Acknowledgment of Wage Withholding Obligation

This Acknowledgment has been delivered to the employer along with the Withholding Order. The employer must complete the Acknowledgment and return it to SLND within ten (10) business days.

If Debtor is No Longer Employed by the Employer When the Order is Issued

Return the Order and the completed "Acknowledgment of Wage Withholding" form to SLND within ten (10) business days of this receipt to preclude any liability for failure to comply with the Order. The employer should also include the debtor's last known address and, if known the name and address of the debtor's new employer.

Notice of Change of Employment

Also enclosed with the Withholding Order is a "Notice of Change in Employment" form, which the employer should retain in their records. If a debtor subject to wage withholding terminates employment with the employer, the employer must fill out this form and, within ten (10) business days of the termination date, return it to SLND. Such notice will stop any further liability for deductions and payments and will provide grounds for the Release of Withholding Order. The employer must provide the debtor's last known address and the name and address of the debtor's new employer, if known.

Two or More Debtors Subject to Wage Withholding

Separate checks may be sent for each debtor's payment, or payments for two (2) or more debtors may be placed in a single check, so long as the individual names, the Social Security numbers, and payment amounts are shown on the check or stub or other accompanying form.

Liability of Employers Who Fail to Comply with Withholding Order

Under the federal law, if the employer fails to withhold wages following receipt of the Withholding Order, SLND may sue the employer in a state or federal court to recover any amount that the employer fails to withhold, plus attorneys' fees, costs, and in the court's discretion, punitive damages.

Liability of Employers Who Retaliate Against Employees

Also under the federal law, an employer may not discharge from employment, refuse to employ, or take disciplinary action against an individual simply because the individual is subject to wage withholding for defaulted student loans. The affected employee may sue an employer who takes such action in a state or federal court of competent jurisdiction. If the employee prevails in such suit, the court must award attorneys' fees and in its discretion, may order reinstatement of the individual, punitive damages and back pay, or other remedies as may be reasonable and necessary.

Prior Notice to Debtor

SLND has notified the debtor that his or her wages are subject to wage withholding and the debtor has been provided an opportunity to voluntarily enter into a repayment agreement or to obtain a hearing concerning the existence or amount of this debt prior to the issuance of the Withholding Order.

IF THE EMPLOYER HAS QUESTIONS REGARDING THE WAGE WITHHOLDING, PLEASE CONTACT:



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