August 13, 2026

U.S. Department of Labor
Wage and Hour Division
Division of Regulations, Legislation, and Interpretation
200 Constitution Avenue, NW, Room S-3502
Washington, D.C. 20210
WHDOpinionLetters@dol.gov

REQUEST FOR AN OPINION LETTER
REGARDING TIP PAY, DISPOSABLE EARNINGS, AND WAGE GARNISHMENTS

PayrollOrg is requesting an opinion letter about whether tips are subject to the calculation of disposable earnings for purposes of wage garnishments for child support under the Consumer Credit Protection Act (CCPA) and Fair Labor Standards Act (FLSA).

PayrollOrg is not asking the U.S. Department of Labor's (DOL) Wage and Hour Division (WHD) to establish policy regarding child support obligations. The association is asking for an interpretation of congressionally enacted wage and hour laws under the jurisdiction of the DOL and WHD.

This opinion letter request is not related to an existing matter that requires the interpretation of federal law by the DOL or WHD.

About PayrollOrg

PayrollOrg, formerly the American Payroll Association, is a nonprofit and nonpartisan association representing more than 20,000 payroll professionals throughout the United States. PayrollOrg's primary mission is to educate its members and the payroll industry regarding best practices associated with paying America's workers while complying with applicable federal, state, and local laws. PayrollOrg does not represent employers and employees.

PayrollOrg's Government Relations Task Force works with government to help payroll professionals with complex compliance requirements, while minimizing the administrative burden on government, employers, and individual workers.

Explanation of Opinion Letter Request

When an employer receives an Income Withholding Order for Support (IWO)[1] from a state agency, court, or private attorney to garnish the earnings of an employee for purposes of child support, the employer must ensure that the amount withheld is calculated in accordance with the garnishment limits established by the U.S. Congress in the CCPA.[2]

The FLSA requires employers to ensure that covered employees receive fair wages under provisions for minimum wages and overtime pay subject to hours worked (29 USC §§ 201-219). Thus, an employer cannot rely solely on the withholding amount information provided on the IWO and assume that the state agency, court, or private attorney have correctly determined an employee's disposable earnings.

If an employer complies with IWO instructions in which the amount of withholding is inaccurate, they could run afoul of the CCPA and FLSA. For example, if a state child support agency includes amounts in an employee's disposable earnings that do not meet the definitions under the CCPA and FLSA and the employer withholds wages based on the IWO instructions, the garnishment amount will be higher than allowed by federal law and the employee will not receive their fair wages. The employer could be subject to penalties even if the error was made by the state agency.

The CCPA's limits are calculated as a percentage of "aggregate disposable earnings for any workweek." The term earnings is defined as "compensation paid or payable for **personal services**, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program" (emphasis added). Disposable earnings are defined as "the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld." Pub. L. 90–321, title III, § 302, May 29, 1968, 82 Stat. § 163, 15 USC § 1672.

---

[1] 42 USC § 666.

[2] 15 U.S. Code § 1673(b)(2): The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed—
(A) where such individual is supporting his spouse or dependent child (other than a spouse or child with respect to whose support such order is used), 50 per centum of such individual's disposable earnings for that week; and
(B) where such individual is not supporting such a spouse or dependent child described in clause (A), 60 per centum of such individual's disposable earnings for that week;

except that, with respect to the disposable earnings of any individual for any workweek, the 50 per centum specified in clause (A) shall be deemed to be 55 per centum and the 60 per centum specified in clause (B) shall be deemed to be 65 per centum, if and to the extent that such earnings are subject to garnishment to enforce a support order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek.

The WHD provides a sample listing of legal withholding in Fact Sheet #30, "Examples of such deductions include federal, state, and local taxes, and the employee's share of Social Security, Medicare and State Unemployment Insurance tax. It also includes withholdings for employee retirement systems required by law."

Under the FLSA and the DOL's regulations under 29 CFR § 531.52(a), a tip is defined as: "A sum presented by a customer as **a gift or gratuity in recognition of some service performed** for the customer" (emphasis added). The provided tip amount is up to the sole discretion of the customer.

Section 531.52(b) states that an employer is not allowed to exert control over an employee's tips except "to distribute tips to the employee who receives them, require employees to share tips with other employees ..., or ... distribute tips to employees in a tip pool...."

While the FLSA allows an employer in certain circumstances to use a tip credit to achieve required minimum wage amounts, the law does not mention tips as disposable earnings for purposes of calculating child support and wage garnishments. In addition, the CCPA does not reference tips in its definitions of compensation subject to garnishment (see 15 USC § 1673).

Specific Request for Interpretation of Federal Law

PayrollOrg asks the WHD to interpret federal law to answer:

1. Are amounts paid voluntarily by customers to employees (tips) defined as disposable earnings subject to child support wage garnishments?

2. Is compensation paid by employers to employees for personal services the only amount that is defined as disposable earnings and can be considered for purposes of child support?

3. If tips are not defined as disposable earnings subject to child support, is there an exception for amounts identified by employers who take a tip credit, meaning tips to reach minimum wages are defined as disposable earnings?

4. Is the definition of disposable earnings for purposes of child support subject to other laws in which employers are required to record and report tip amounts? For example, does it matter for purposes of wage garnishments if an employer is made aware of tip amounts by employees for purposes of the Internal Revenue Code or other agencies' requirements?

5. What is the definition of employer exerted control when distinguishing between amounts voluntarily paid by customers and disposable earnings paid by employers? For example, if a tip is paid by a customer with a credit card and the employer distributes the tip to the employee on the next regularly scheduled pay day as opposed to the end of the shift, is the employer exerting control under the FLSA?

6. Do federal wage and hour laws and regulations about tips, disposable earnings, and garnishment limits only apply to employees covered by the FLSA or all employees?

To discuss PayrollOrg's request for an opinion letter further, please contact me at 202-669-4001 or ajacobsohn@payroll.org.

Sincerely,

Alice P. Jacobsohn

Alice P. Jacobsohn, Esq.
Director, Government Relations

For: Government Relations Task Force
Child Support Subcommittee
Cochairs Corrinne Flores and Christena Verrill, CPP

Cc: The Honorable Keith Sonderling, Esq., Secretary of Labor
The Honorable Andrew Rogers, Esq., Administrator, Wage and Hour Division