

Effective 5/3/2023

Part 3
Income Withholding in IV-D Cases

26B-9-301 Definitions.

As used in this part and Part 4, Income Withholding in Non IV-D Cases:

- (1) "Business day" means a day on which state offices are open for regular business.
- (2) "Child" means the same as that term is defined in Section 26B-9-201.
- (3)
 - (a) "Child support" means a base child support award as defined in Section 78B-12-102, or a financial award for uninsured monthly medical expenses, ordered by a tribunal for the support of a child, including current periodic payments, all arrearages which accrue under an order for current periodic payments, and sum certain judgments awarded for arrearages, medical expenses, and child care costs.
 - (b) "Child support" includes obligations ordered by a tribunal for the support of a spouse or former spouse with whom the child resides if the spousal support is collected with the child support.
- (4) "Child support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a tribunal for child support and related costs and fees, interest and penalties, income withholding, attorney fees, and other relief.
- (5) "Child support services" means the same as that term is defined in Section 26B-9-101.
- (6) "Delinquent" or "delinquency" means that child support in an amount at least equal to current child support payable for one month is overdue.
- (7) "Immediate income withholding" means income withholding without regard to whether a delinquency has occurred.
- (8) "Income" means the same as that term is defined in Section 26B-9-101.
- (9) "Jurisdiction" means a state or political subdivision of the United States, a territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, an Indian tribe or tribal organization, or any comparable foreign nation or political subdivision.
- (10) "Obligee" means the same as that term is defined in Section 26B-9-201.
- (11) "Obligor" means the same as that term is defined in Section 26B-9-201.
- (12) "Office" means the Office of Recovery Services.
- (13) "Payor" means an employer or any person who is a source of income to an obligor.
- (14) "Support order" means the same as child support order.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-302 Administrative procedures.

Because the procedures of this part are mandated by federal law they shall be applied for the purposes specified in this part and control over any other statutory administrative procedures.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-303 Provision for income withholding in child support order -- Immediate income withholding.

- (1) Whenever a child support order is issued or modified in this state the obligor's income is subject to immediate income withholding for the child support described in the order in accordance with the provisions of this chapter, unless:
 - (a) the court or administrative body which entered the order finds that one of the parties has demonstrated good cause so as not to require immediate income withholding; or
 - (b) a written agreement which provides an alternative payment arrangement is executed by the obligor and obligee, and reviewed and entered in the record by the court or administrative body.
- (2) In every child support order issued or modified on or after January 1, 1994, the court or administrative body shall include a provision that the income of an obligor is subject to immediate income withholding in accordance with this chapter. If for any reason other than the provisions of Subsection (1) that provision is not included in the child support order the obligor's income is nevertheless subject to immediate income withholding.
- (3) In determining "good cause," the court or administrative body may, in addition to any other requirement it considers appropriate, consider whether the obligor has:
 - (a) obtained a bond, deposited money in trust for the benefit of the dependent children, or otherwise made arrangements sufficient to guarantee child support payments for at least two months;
 - (b) arranged to deposit all child support payments into a checking account belonging to the obligee, or made arrangements insuring that a reliable and independent record of the date and place of child support payments will be maintained; or
 - (c) arranged for electronic transfer of funds on a regular basis to meet court-ordered child support obligations.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-304 Office procedures for income withholding for orders issued or modified on or after October 13, 1990.

- (1) With regard to obligees or obligors who are receiving IV-D services, each child support order issued or modified on or after October 13, 1990, subjects the income of an obligor to immediate income withholding as of the effective date of the order, regardless of whether a delinquency occurs unless:
 - (a) the court or administrative body that entered the order finds that one of the parties has demonstrated good cause not to require immediate income withholding; or
 - (b) a written agreement that provides an alternative arrangement is executed by the obligor and obligee, and by the office, if there is an assignment under Section 35A-3-108, and reviewed and entered in the record by the court or administrative body.
- (2) For purposes of this section:
 - (a) "good cause" shall be based on, at a minimum:
 - (i) a determination and explanation on the record by the court or administrative body that implementation of income withholding would not be in the best interest of the child; and
 - (ii) proof of timely payment of any previously ordered support;
 - (b) in determining "good cause," the court or administrative body may, in addition to any other requirement that it determines appropriate, consider whether the obligor has:
 - (i) obtained a bond, deposited money in trust for the benefit of the dependent children, or otherwise made arrangements sufficient to guarantee child support payments for at least two months; and

- (ii) arranged to deposit all child support payments into a checking account belonging to the obligee or made arrangements insuring that a reliable and independent record of the date and place of child support payments will be maintained.
- (3) An exception from immediate income withholding shall be:
 - (a) included in the court or administrative agency's child support order; and
 - (b) negated without further administrative or judicial action:
 - (i) upon a delinquency;
 - (ii) upon the obligor's request; or
 - (iii) if the office, based on internal procedures and standards, or a party requests immediate income withholding for a case in which the parties have entered into an alternative arrangement to immediate income withholding pursuant to Subsection (1)(b).
- (4) If an exception to immediate income withholding has been ordered on the basis of good cause under Subsection (1)(a), the office may commence income withholding under this part:
 - (a) in accordance with Subsection (3)(b); or
 - (b) if the administrative or judicial body that found good cause determines that circumstances no longer support that finding.
- (5)
 - (a) A party may contest income withholding due to a mistake of fact by filing a written objection with the office within 15 days of the commencement of income withholding under Subsection (4).
 - (b) If a party contests income withholding under Subsection (5)(a), the office shall proceed with the objection as it would an objection filed under Section 26B-9-305.
- (6) Income withholding implemented under this section is subject to termination under Section 26B-9-308.
- (7)
 - (a) Income withholding under the order may be effective until the obligor no longer owes child support to the obligee.
 - (b) Appropriate income withholding procedures apply to existing and future payors and all withheld income shall be submitted to the office.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-305 Office procedures for income withholding for orders issued or modified before October 13, 1990.

- (1) With regard to child support orders issued prior to October 13, 1990, and not otherwise modified after that date, and for which an obligor or obligee is receiving IV-D services, the office shall proceed to withhold income as a means of collecting child support if a delinquency occurs under the order, regardless of whether the relevant child support order includes authorization for income withholding.
- (2) Upon receipt of a verified statement or affidavit alleging that a delinquency has occurred, the office shall:
 - (a) send notice to the payor for income withholding in accordance with Section 26B-9-306; and
 - (b) send notice to the obligor under Section 26B-9-207 that includes:
 - (i) a copy of the notice sent to the payor; and
 - (ii) information regarding:
 - (A) the commencement of income withholding; and
 - (B) the opportunity to contest the withholding or the amount withheld due to mistake of fact by filing a written request for review under this section with the office within 15 days.

- (3) If the obligor contests the withholding, the office shall:
 - (a) provide an opportunity for the obligor to provide documentation and, if necessary, to present evidence supporting the obligor's claim of mistake of fact;
 - (b) decide whether income withholding shall continue;
 - (c) notify the obligor of its decision and the obligor's right to appeal under Subsection (4); and
 - (d) at the obligor's option, return, if in the office's possession, or credit toward the most current and future support obligations of the obligor any amount mistakenly withheld and, if the mistake is attributable to the office, interest at the legal rate.
- (4)
 - (a) An obligor may appeal the office's decision to withhold income under Subsection (3) by filing an appeal with the district court within 30 days after service of the notice under Subsection (3) and immediately notifying the office in writing of the obligor's decision to appeal.
 - (b) The office shall proceed with income withholding under this part during the appeal, but shall hold all funds it receives, except current child support, in a reserve account pending the court's decision on appeal. The funds, plus interest at the legal rate, shall be paid to the party determined by the court.
 - (c) If an obligor appeals a decision of the office to a district court under Subsection (4)(a), the obligor shall provide to the obligee:
 - (i) notice of the obligor's appeal; and
 - (ii) a copy of any documents filed by the obligor upon the office in connection with the appeal.
- (5) An obligor's payment of overdue child support may not be the sole basis for not implementing income withholding in accordance with this part.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-306 Notice to payor.

Upon compliance with the applicable provisions of this part the office shall mail or deliver to each payor at the payor's last-known address written notice stating:

- (1) the amount of child support to be withheld from income;
- (2) that the child support must be withheld from the obligor's income each time the obligor is paid, but that the amount withheld may not exceed the maximum amount permitted under Section 303 (b) of the Consumer Credit Protection Act, 15 U.S.C. Sec. 1673(b);
- (3) that the payor must mail or deliver the withheld income to the office within seven business days of the date the amount would have been paid or credited to the employee but for this section;
- (4) that the payor may deduct from the obligor's income an additional amount which is equal to the amount payable to a garnishee under Rule 64D of the Utah Rules of Civil Procedure, as the payor's fee for administrative costs, but the total amount withheld may not exceed the maximum amount permitted under Section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. Sec. 1673(b);
- (5) that the notice to withhold is binding on the payor and on any future payor until further notice by the office or a court;
- (6)
 - (a) that if the payor fails to mail or deliver withheld income to the office within the time period set in Subsection (3), the payor is liable to the office for a late fee of \$50 or 10% of the withheld income, whichever is greater, for each payment that is late, per obligor; and
 - (b) that if the payor willfully fails to withhold income in accordance with the notice, the payor is liable to the office for \$1,000 or the accumulated amount the payor should have withheld, whichever is greater, plus interest on that amount;

- (7) that the notice to withhold is prior to any other legal process under state law;
- (8) that the payor must begin to withhold income no later than the first time the obligor's earnings are normally paid after five working days from the date the payor receives the notice;
- (9) that the payor must notify the office within five days after the obligor terminates employment or the periodic income payment is terminated, and provide the obligor's last-known address and the name and address of any new payor, if known;
- (10) that if the payor discharges, refuses to employ, or takes disciplinary action against an obligor because of the notice to withhold, the payor is liable to the obligor as provided in Section 26B-9-217, and to the office for the greater of \$1,000 or the amount of child support accumulated to the date of discharge which the payor should have withheld, plus interest on that amount; and
- (11) that, in addition to any other remedy provided in this section, the payor is liable for costs and reasonable attorneys' fees incurred in enforcing any provision in a notice to withhold mailed or delivered to the payor's last-known address.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-307 Payor's procedures for income withholding.

- (1)
 - (a) A payor is subject to the requirements, penalties, and effects of a notice served on the payor under Section 26B-9-306.
 - (b) A payment of withheld income mailed to the office in an envelope postmarked within seven business days of the date the amount would have been paid or credited to the obligor but for this section satisfies Subsection 26B-9-306(3).
- (2)
 - (a) If a payor fails to comply with a notice served upon the payor under Section 26B-9-306, the office, the obligee, if an assignment has not been made under Section 35A-7-108, or the obligor may proceed with a civil action against the payor to enforce a provision of the notice.
 - (b) In addition to a civil action under Subsection (2)(a), the office may bring an administrative action pursuant to Title 63G, Chapter 4, Administrative Procedures Act, to enforce a provision of the notice.
 - (c) If an obligee or obligor brings a civil action under Subsection (2)(a) to enforce a provision of the notice, the obligee or obligor may recover any penalty related to that provision under Section 26B-9-306 in place of the office.
- (3) If the obligor's child support is owed monthly and the payor's pay periods are at more frequent intervals, the payor, with the consent of the office may withhold an equal amount at each pay period cumulatively sufficient to pay the monthly child support obligation.
- (4) A payor may combine amounts which the payor has withheld from the incomes of multiple obligors into a single payment to the office. If such a combined payment is made, the payor shall specify the amount attributable to each individual obligor by name and Social Security number.
- (5) In addition to any other remedy provided in this section, a payor is liable to the office, obligee, or obligor for costs and reasonable attorney fees incurred in enforcing a provision in the notice mailed or delivered under Section 26B-9-306.
- (6) Notwithstanding this section or Section 26B-9-306, if a payor receives an income withholding order or notice issued by another state, the payor shall apply the income withholding law of the state of the obligor's principal place of employment in determining:
 - (a) the payor's fee for processing income withholding;

- (b) the maximum amount permitted to be withheld from the obligor's income;
- (c) the time periods within which the payor must implement income withholding and forward child support payments;
- (d) the priorities for withholding and allocating withheld income for multiple child support obligees; and
- (e) any term or condition for withholding not specified in the notice.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-308 Termination of income withholding.

- (1)
 - (a) At any time after the date income withholding begins, a party to the child support order may request a judicial hearing or administrative review to determine whether income withholding should be terminated due to:
 - (i) good cause under Section 26B-9-304;
 - (ii) the execution of a written agreement under Section 26B-9-304; or
 - (iii) the completion of an obligor's support obligation.
 - (b) An obligor's payment of overdue child support may not be the sole basis for termination of income withholding.
 - (c) If it is determined by a court or the office that income withholding should be terminated, the office shall give written notice of termination to each payor within 10 days after receipt of notice of that decision.
 - (d) If, after termination of income withholding by court or administrative order, an obligor's child support obligation becomes delinquent or subject to immediate and automatic income withholding under Section 26B-9-304, the office shall reinstate income withholding procedures in accordance with the provisions of this part.
 - (e) If the office terminates income withholding through an agreement with a party, the office may reinstate income withholding if:
 - (i) a delinquency occurs;
 - (ii) the obligor requests reinstatement;
 - (iii) the obligee requests reinstatement; or
 - (iv) the office, based on internal procedures and standards, determines reinstatement is appropriate.
- (2) The office shall give written notice of termination to each payor when the obligor no longer owes child support to the obligee.
- (3) A notice to withhold income, served by the office, is binding on a payor until the office notifies the payor that the obligation to withhold income has been terminated.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-309 Payor's compliance with income withholding.

- (1) Payment by a payor under this part satisfies the terms for payment of income under any contract between a payor and obligor.
- (2) A payor who complies with an income withholding notice that is regular on its face may not be subject to civil liability to any person for conduct in compliance with the notice.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-310 Violations by payor.

- (1) A payor may not discharge, refuse to hire, or discipline any obligor because of a notice to withhold served by the office under this part, or because of a notice or order served by an obligee in a civil action for income withholding.
- (2) If the payor violates Subsection (1), that payor is liable to the office, or to the obligee seeking income withholding in a civil action, for the greater of \$1,000 or the amount of child support accumulated to the date of discharge which he should have withheld, plus interest on that amount and costs incurred in collection of the amount from the payor, including a reasonable attorney fee.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-311 Priority of notice or order to withhold income.

The notice to withhold provided by Section 26B-9-306, and a notice or order to withhold issued by the court in a civil action for income withholding, are prior to all other legal collection processes provided by state law, including garnishment, attachment, execution, and wage assignment.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-312 Records and documentation -- Distribution or refund of collected income -- Allocation of payments among multiple notices to withhold.

- (1) The office shall keep adequate records to document and monitor all child support payments received under this part.
- (2) The office shall promptly distribute child support payments which it receives from a payor, to the obligee, unless those payments are owed to the department.
- (3) The office shall promptly refund any improperly withheld income to the obligor.
- (4) The office may allocate child support payments received from an obligor under this part among multiple notices to withhold which it has issued with regard to that obligor, in accordance with rules promulgated by the office to govern that procedure.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-313 Income withholding upon obligor's request.

Whether or not a delinquency has occurred, an obligor may request that the office implement income withholding procedures under this part for payment of the obligor's child support obligations.

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