

WAGE GARNISHMENT

A wage garnishment is a legal procedure through which a portion of the wages you have earned, but not yet received, can be withheld by your employer and turned over to a creditor who has obtained a judgment against you. State and Federal law provide that not all of your wages can be garnished. However, your employer will be required to turn over any and all of your non-exempt wages to pay the judgment against you.

A garnishment is begun by the judgment creditor serving a Garnishment Summons, Affidavit, and Disclosure upon your employer (the “Garnishee”). Most likely, it will be labeled a “Continuing Lien,” which means that your employer must keep garnishing your wages for up to 60 days. However, your employer cannot garnish more than is owed the creditor.

You must be served with the Garnishment Summons and Affidavit within 10 days after the employer is served. You have the right, under South Dakota law, to then file a Claim of Exemptions. If you do so, you may be able to speed up the release of any wages your employer improperly garnishes.

Whether you file a Claim of Exemptions or not, your employer must, within 30 days of receiving the Garnishment Summons and Affidavit, complete and return the Garnishment Disclosure form to the judgment creditor and send you a copy. This form contains the figures that determine how much the employer is taking out of your paycheck for the garnishment. You will need to study your paycheck stubs and the Disclosure form closely to determine whether your employer is garnishing more than the correct amount.

While both State and Federal laws protect some or all of your wages from garnishment, South Dakota law protects more than Federal. Because the portion of your wages that is exempt cannot be garnished to pay the judgment, it must be paid to you on your regular payday. South Dakota wage exemptions are complex, and you should obtain the help of an attorney to gain full protection under state law. The information below will give you a start to understand the law.

To calculate your weekly South Dakota wage exemption, you must first subtract from your weekly total (gross) pay the amounts required by law to be withheld; this includes, but is not limited to, Social Security (FICA), federal income tax, and other garnishments. You cannot subtract insurance, retirement, child support, or other deductions unless they are required by law. The resulting figure is your weekly “disposable earnings” (net income). You must then multiply the federal minimum wage (\$5.15/hr.) by 40 hours.

MINIMUM WAGE (5.15) x 40 = \$206.00 PER WEEK EXEMPT

At the current federal minimum wage, your wages cannot be garnished if your total disposable earnings are \$206.00 or less per week.

You have more wage exemptions if you have one or more dependents. Dependents are family

members who live with you and who you support. Add \$25.00 to the weekly total (\$206.00) for each dependent. Example: \$206.00 plus \$50.00 (spouse and 1 child) = \$256.00 weekly exempt.

If your weekly disposable earnings are MORE than the total of the federal minimum X 40 plus \$25.00 per dependent, then you need to multiply your weekly disposable earnings by 20%. An employer can garnish only the LESSER of these 2 figures (see Examples below).

Example 1:	Weekly Disposable Earnings	\$ 400.00
	2 Dependents	\$ 256.00 weekly exempt
	Difference	\$ 144.00 per week
	20% of \$ 400.00	\$ 80.00

\$ 80.00 is the maximum amount that can be taken from your paycheck per week.

Example 2:	Weekly Disposable Earnings	\$ 300.00
	2 Dependents	\$ 256.00 weekly exempt
	Difference	\$ 44.00 per week
	20% of \$ 300.00	\$ 60.00

Your employer can only take \$ 44.00 per week from your paycheck.

Example 3:	Weekly Disposable Earnings	\$ 250.00
	2 Dependents	\$ 256.00

None of your wages can be garnished as your legal exemptions are equal to or more than your actual weekly disposable earnings.

If your Claim of Exemptions totally exempts your wages (as in Example 3 above) South Dakota law provides that the wages cannot be again garnished by the same judgment creditor for 6 months, unless the opposing party in good faith believes that your financial status has changed and other funds may not be exempt. Should the same judgment creditor attempt to garnish your wages within 6 months without such knowledge, the Court may impose monetary penalties.

IMPORTANT NOTE: For child support, a person can be garnished from 50% to 65% of weekly disposable wages; the 20% minimum wage garnishment rule does not apply.