Income & Wage Withholding for Child Support

Information for South Dakota Employers, Financial Institutions and Other Payors of Income

DSS

Strong Families - South Dakota's Foundation and Our Future

Income & Wage Withholding for Child Support

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Introduction

There are more than 16 million children in the United States living in single parent households*. In more than half of those households, the custodial parent is receiving little or no child support. Many of these children are going without basic necessities. As a result, the custodial parent is forced to rely upon public assistance, thus becoming a burden on the taxpayer. In South Dakota, millions of dollars in welfare and medical benefits are spent each year to support these children.

In recent years, states have developed several new tools to collect child support more effectively. The most effective of these tools is income and wage withholding. Income and wage withholding requires employers to withhold wages of employees who have a child support obligation. It taps the noncustodial parent's wages at the source and becomes a regular deduction, just like Social Security or income taxes. Regular deductions ensure child support payments are made regularly.

Seventy-five percent of all child support collected in the United States is obtained by wage withholding. South Dakota employers withhold more than $5 million** per month for child support collections. Income and wage withholding laws also apply to financial institutions, such as banks and credit unions.

**Federal Fiscal Year 2015*
***State Fiscal Year 2016*

The Department of Social Services' Division of Child Support (DCS) has authority to issue a withholding order to employers and officers of financial institutions, requiring them to withhold money from the accounts of those noncustodial parents. Withholding is required by law for every parent who has a child support obligation. Therefore, employers should know that when an order to withhold income is issued against an employee, it doesn't necessarily mean the employee is delinquent in child support payments.

Many employers have found that withholding offers several benefits. For example, it reduces the cost of government by placing the responsibility of child support on the parents instead of the taxpayer. It also reduces the burden on the courts and other government agencies, allowing those resources to be used for other purposes. Wage withholding minimizes the stress your employee experiences when making child support payments. It eliminates the stress caused by missed payments and reduces employment absences needed for court appearances. These benefits help your employee stay more productive.

Clearly, employers provide a valuable service to children and taxpayers by withholding wages for child support. DCS has prepared this guide to answer some of the most commonly asked questions about income and wage withholding statutes.

Questions of Employers

1. How will I know that I must start with-holding child support from an employee's wages?

DCS will send you a withholding order by first class mail. This will tell you when to begin withholding, how much to deduct and where to send the money (SDCL 25-7A-30).

2. Will I have to tell the employee?

The withholding order will instruct you if you are required to provide a copy of the withholding order to the employee. You will be instructed to withhold an amount equal to the order for support and an additional amount until the delinquency is paid in full (SDCL 25-7A-31).

3. When should I begin withholding?

You should deduct the first payment from any income that is payable to the employee after the order is served. (SDCL 25-7A-34)

4. When and where do I send the payments?

Regardless of the type of pay period you have, you must transmit the amount withheld within seven business days of when the employee is paid or his or her income withheld. Do not hold partial payments until the end of the month. You must identify the date the income was withheld and transmit the payment promptly to DCS at the address stated in the withholding order (SDCL 25-7A-34).

DCS can accept electronic funds transfer (EFT) payments from employers. In you are interested in sending payments by EFT, call DCS at 605.773.3641.

5. If the amount to withhold is specified as a monthly figure, how much should I deduct each pay period?

The withholding order will specify the amount to withhold for various pay cycles.

6. Are cash advances subject to withholding?

Yes. Cash advances are considered part of the employee's compensation and are subject to withholding provisions (SDCL 25-7A-1 (8)).

7. If I withhold wages from more than one employee during a pay period, can I combine them and send them as one check?

Yes. You may combine the amounts withheld from several different employees into a single payment, identifying the amount that was withheld from each employee (SDCL 25-7A-35).

8. May I charge the employee a fee for wage withholding?

Yes. South Dakota law allows the employer or payor of income the option to deduct an amount not to exceed $3 per month from the employee's/obligor's income to cover the expenses involved in transmitting the amount withheld.

The fee cannot be deducted from the withheld amount for child support (SDCL 25-7A-34). The $3 fee is not included in the maximum 50 percent withholding limit authorized under law.

9. I would rather not get involved in withholding for child support. Can I fire or refuse to hire someone who has a withholding order against his wages?

No. An employer cannot refuse to hire, discipline, discharge or in anyway penalize an employee because of a wage withholding action. Remember, state law requires immediate withholding for any noncustodial parent who has a child support obligation. Therefore, a withholding order does not necessarily mean the employee is delinquent in child support payments (SDCL 25-7A-46).

10. What if I don't comply with the withholding order?

An employer can be prosecuted for not withholding wages as specified in the order. Also, the employer may be liable for the full amount of child support that accumulates from the date the order was served and not paid to DCS by the employer (SDCL 25-7A-45; SDCL 25-7A-46).

11. When should I stop withholding?

The withholding order remains in effect until you are notified by DCS of any changes or until you are no longer a payor of income to the employee (SDCL 25-7A-40).

12. What should I do if the employee tells me the amount to be deducted is wrong?

The employee has been told that he or she must contest the withholding order with DCS, not with his or her employer. Unless you are notified otherwise by DCS, you should proceed with the withholding as ordered.

13. In addition to wages, my employees are periodically paid a sales commission. Do I have to withhold child support from the commission?

The order to withhold income applies to other forms of income and property such as commissions, dividends, retirement benefits, bank accounts and other types of compensation and assets (SDCL 25-7A-1(8)).

14. My employee already has a wage attachment. Is there any limit to the amount that can be withheld?

The total amount withheld for cash support and health insurance premiums cannot exceed 50 percent of an employee's income after deducting the following: state, federal and local tax; Social Security tax; statutory pension contributions; Medicare taxes; and any other deductions which are required to be withheld, either by law or as a condition of employment. The law also requires you to withhold child support without regard to any prior claims of creditors. The order to withhold child support has priority over any other creditor claims or voluntary deductions made by the employee (SDCL 25-7A-32; SDCL 25-7A-37).

15. Am I also required to withhold health insurance premiums for my employee's dependent child(ren)?

Yes, if the employer has a health insurance plan available to employees and their dependents. Upon receiving notice from DCS that an employee is required to provide health insurance coverage for dependent child(ren), an employer is required to withhold the employee's share of the premiums and remit the premiums to the health insurer (SDCL 25-7A-59).

16. My employee says he or she didn't receive a notice that the withholding was being put into effect. Should I still begin withholding on the next paycheck?

Yes. You should begin the withholding as instructed. The employee should be told to contact their Child Support Specialist.

17. What should I do if I receive more than one Order to Withhold Income for the same employee?

If there are multiple orders to withhold against the same obligor/employee, the employer shall comply with all orders to the extent that the total amount withheld does not exceed 50 percent of the employee's income, giving priority to the amounts owed to current support first. If the total amount ordered to be withheld exceeds 50 percent of the employee's income, DCS suggests the employer partially satisfy each order by apportioning the total amount withheld to each of the orders for current support & then to amounts for arrears (SDCL 25-7A-35 & SDCL 25-7A-44).

18. What should I do when the employee leaves my employment?

The law requires you to provide DCS with the former employee's last known home address and his or her new employer's name and address, if known, within five days after termination of employment. If DCS does not send a termination notice, the withholding order remains in effect and should be retained in the employee's file so that it may be immediately re-activated if the obligor is re-employed (SDCL 25-7A-36).

Questions of Financial Institutions

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1. As an officer of a financial institution, how do withholding laws apply to me?

DCS has the authority to order child support payments be withheld from accounts that an obligor maintains in financial institutions. The withholding order will specify the amount due and the institution from which the money is to be withheld. The order will apply to any and all accounts maintained by the obligor in that institution. The maximum amount to be withheld and forwarded to the child support agency is the amount specified in the withholding order or the total balance of the obligor's account(s) maintained in that institution, whichever is less (SDCL 25-7A-32).

2. When and where do I send the money?

You should immediately withhold any funds from the obligor's account when the order is served. You then have seven business days to transmit the amount to DCS at the address stated in the withholding order (SDCL 25-7A-34).

Questions about Orders to Withhold Income Issued by Other States

The employer shall comply with the laws of the state of the obligor's principal place of employment for withholding of income for the following items. If you receive a withholding order from another state, and your employee's principal place of employment is within South Dakota, the following provisions apply, even though the other state's withholding order may specify differently:

- South Dakota employers are required to honor withholding orders issued by other states for collection of child support.

- The total amount withheld cannot exceed 50 percent of the obligor's aggregate and disposable weekly earnings (See question 14 on page 6).

- The employer has the option to withhold a fee not to exceed $3 per month per obligor to cover the expenses of transmitting the amount withheld (See question 8 on page 4).

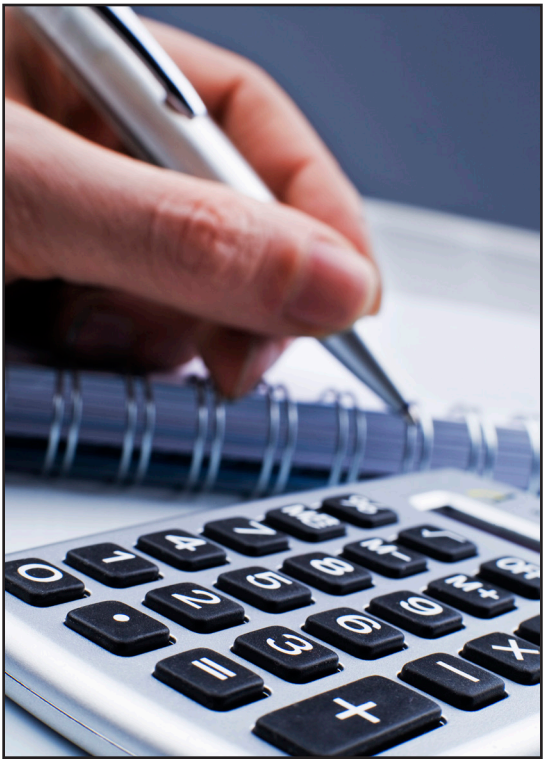
- You must transmit the amount withheld within seven business days of when the employee is paid or his or her income/property withheld. Send the payments promptly to the address specified in the withholding order.

- The employer is required to provide a copy of the withholding order to the employee, if the order directs you to do so.

✔ If there are multiple orders to withhold against the same obligor/employee, the employer shall comply with all orders to the extent that the total amount withheld does not exceed 50 percent of the employee's net income, giving priority to the amounts owed to current support first.

If the total amount ordered to be withheld exceeds 50 percent of the employee's aggregate and disposable weekly earnings, DCS suggests that the employer partially satisfy each order by apportioning the total amount withheld to each of the orders for current support, and then to amounts for arrears (SDCL 25-7A-35 and SDCL 25-7A-44).

If you have specific questions regarding multiple orders, contact DCS at 605.773.3641.



New Hire Reporting

All employers are required to report newly hired employees and any employees who are rehired 30 days or more after a termination or lay-off to a State Directory of New Hires within 20 days of the date the employee first provides services for pay. Employers are required to report W-4 information to the South Dakota Department of Labor and Regulation (DLR). The New Hire Reporting program will assist the Division of Child Support (DCS) to collect child support owed to children and reduce the taxpayers burden of welfare benefits. It will also assist the DLR in detecting invalid or fraudulent unemployment benefit claims (SDCL 25-7A-33).

Employers play a key role in this very important program by reporting all of their newly hired employees to the directory.

If you have questions regarding the new hire reporting requirements, you should contact the DLR by calling the toll-free number below or writing to the address below.

1.888.827.6078

New Hire Reporting Center
PO Box 4700
Aberdeen, SD 57402-4700
Fax: 1.888.835.8659

National Medical Support Notice

Under federal and state law, South Dakota employers will receive a form called the National Medical Support Notice (NMSN). The NMSN is a standardized federal form that all state child support enforcement agencies are required to use. It is designed to assist employers, who in the past, received many different types of documents from states to enroll children of noncustodial parents in employer health insurance plans. Use of the NMSN is intended to simplify processing for employers and plan administrators, to improve health care coverage for children, and to save tax dollars for medical assistance programs.

DCS will issue the NMSN for all child support cases along with the standard Order to Withhold Income when a noncustodial parent is not providing health insurance coverage and has been ordered to do so. Part A of the notice will inform the employer of the type of coverage required under the order, the terms of coverage, and a response form that allows the employer to notify the issuing agency of any reason it cannot provide coverage according to the terms of the order.

If the company can provide coverage, the employer forwards Part B to its insurance plan administrator. The plan administrator has 40 days from the date of the NMSN to complete Part B and a response form to allow the plan administrator to notify the issuing agency of the follow-up that will be taken in accordance with the order, when coverage will be provided and a description of the coverage.

Questions

Your cooperation in the withholding procedures is greatly appreciated. If you have further questions, please contact the Division of Child Support at the address below.

Dept. of Social Services
Division of Child Support
700 Governors Drive
Pierre, SD 57501-2291

Phone: 605.773.3641

Fax: 605.773.7295

Website:
http://dss.sd.gov/childsupport

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