

O.C.G.A. Section 19-6-33

Current through the 2019 Regular Session of the General Assembly

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Section 19-6-33. Notice and service of income deduction order; hearing on enforcement of order; discharge of obligor; penalties

(a) As used in this Code section, the term:

(1) "Child support enforcement agency" means the entity within the Department of Human Services and its contractors that are authorized to enforce a duty of support.

(2) "Court" means judge of any court of record or an administrative law judge of the Office of State Administrative Hearings.

(3) "Earnings" means any form of payment due to an individual, regardless of source, including without limitation wages, salary, commission, bonus, workers' compensation, disability, payments pursuant to a pension or retirement program, and interest.

(4) "IV-D" means Title IV-D of the federal Social Security Act.

(5) "Obligee" means the individual to whom the payment of a support obligation is owed.

(6) "Obligor" means the individual owing a duty of support.

(7) "Payor" means the person that provides earnings to an obligor.

(b) The obligee shall provide an income deduction order and in the case of a delinquency, a notice of delinquency, to the payor. The obligee or child support enforcement agency, as applicable, shall provide the notice to payor as set forth in subsection (f) of this Code section.

(c) Service of the initial income deduction order by or upon any person who is a party to a proceeding under this Code section shall be by personal service, by certified mail, return receipt requested, by statutory overnight delivery, or by first-class mail; such order may be served electronically if permitted under Code Section 9-11-5. Service upon a payor or successor payor under this Code section shall be by first-class mail, or such order may be served electronically if permitted under Code Section 9-11-5.

(d)

(1) When an income deduction order is effective upon a delinquency in an amount equal to one month's support, the obligor may apply to a court to contest the enforcement of the income deduction order on the ground of mistake of fact regarding the amount of support owed pursuant to a support order, the amount of arrearage of support, or the identity of the obligor. The obligor shall send a copy of his or her pleading to the obligee and, if the obligee is receiving IV-D services, to the child support enforcement agency. The filing of such pleading shall not affect the enforcement of an income deduction order unless a court enters an order granting relief to the obligor. The payment of delinquent support by an obligor upon entry of an income deduction order shall not preclude the income deduction order being provided to the payor.

(2) When an obligor requests a hearing to contest enforcement of an income deduction order, a court, after due notice to all parties and the child support enforcement agency, if the obligee is receiving IV-D services, shall hear the matter within 30 days after the application is filed and shall not extend the time for hearing unless good cause for a later date is found by a court, in which event the time for a hearing may be extended for up to 30 days. A court shall enter an order resolving the matter within ten days after the hearing and provide such order to the parties and the child support enforcement agency, if the obligee is receiving IV-D services.

(e) When a court determines that an income deduction order is proper pursuant to subsection (d) of this Code section, the obligee shall cause a copy of the income deduction order and in the case of a delinquency, a notice of delinquency, to be provided to the payor. The obligee or child support enforcement agency, as applicable, shall provide the notice to payor as set forth in subsection (f) of this Code section. A copy of the notice to payor, and in the case of a delinquency, a notice of delinquency, shall also be provided to the obligor by the obligee or child support enforcement agency, as applicable.

(f) A notice to payor shall contain only information necessary for the payor to comply with the income deduction order. The payor shall have the duties, penalties, and rights specified in such notice. The notice to payor shall:

(1) Require the payor to deduct from the obligor's earnings the amount specified in the income deduction order, and in the case of a delinquency the amount specified in the notice of delinquency, and to pay such amount to the family support registry established pursuant to Code Section 19-6-33.1. The amount actually deducted plus all administrative charges shall not be in excess of the amount allowed under Section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. Section 1673(b);

(2) Instruct the payor to implement the income deduction order no later than the first pay period that occurs after 14 days following the date the notice was mailed;

(3) Instruct the payor to forward, within two business days after each payment date, to the family support registry the amount deducted from the obligor's earnings and a statement as to whether such amount totally or partially satisfies the periodic amount specified in the income deduction order;

(4) Specify that if a payor willfully fails to deduct the proper amount from the obligor's earnings, the payor shall be liable for the amount the payor should have deducted, plus costs, interest, and reasonable attorney's fees;

(5) Provide that the payor may collect up to \$25.00 against the obligor's earnings to reimburse the payor for administrative costs for the first payment of an income deduction order and up to \$3.00 for each subsequent payment. The payor shall not deduct a fee for complying with any order or notice for enrollment in a health benefit plan;

(6) State that the income deduction order and the notice to payor, and in the case of a delinquency, the notice of delinquency, are binding on the payor until:

(A) Further notice by the obligee, child support agency, or court; or

(B) The payor no longer provides earnings to the obligor;

(7) Instruct the payor that, when the payor no longer provides earnings to the obligor, the payor shall notify the obligee and shall also provide the obligor's last known address and the name and address of the obligor's new payor, if known, and that, if the payor willfully violates this paragraph, the payor shall be subject to a civil penalty not to exceed \$250.00 for the first violation and \$500.00 for any subsequent violation. If the child support enforcement agency is enforcing the income deduction order, the payor shall make such notifications to the child support enforcement agency instead of to the obligee. Penalties shall be paid to the obligee or the child support enforcement agency, whichever is enforcing the income deduction order;

(8) State that no payor may discharge an obligor by reason of the fact that earnings have been subjected to an income deduction order under Code Section 19-6-32 and that a violation of this paragraph shall subject the payor to a civil penalty not to exceed \$250.00 for the first violation and \$500.00 for any subsequent violation. Penalties shall be paid to the obligee or the child support enforcement agency, whichever is enforcing the income deduction order, if any support is owing. If no support is owing, the penalty shall be paid to the obligor;

(9) Inform the payor that the income deduction order has priority over all other legal processes under state law pertaining to the same earnings and that payment, as required by the income deduction order, is a complete defense by the payor against any claims of the obligor or his or her creditors as to the sum paid;

(10) Inform the payor that if the payor receives income deduction orders requiring that the earnings of two or more obligors be deducted and sent to the same depository, the payor may combine the amounts paid to the depository in a single payment so long as the payor identifies that portion of the payment attributable to each obligor; and

(11) Inform the payor that the payor may receive more than one income deduction order against the same obligor and shall give priority to current child support obligations up to the limits imposed under Section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. Section 1673(b).

(g) At any time an income deduction order is being enforced, the obligor may apply to a court for a hearing to contest the continued enforcement of the income deduction order on the same grounds set out in subsection (d) of this Code section, and provide a copy of the pleading requesting such hearing to the obligee and, in IV-D cases, to the child support enforcement agency. Such application shall not affect the continued enforcement of the income deduction order until a court enters an

order granting relief to the obligor. The obligee may be liable for improper receipt of moneys pursuant to an income deduction order.

(h) An obligee, or an obligee's agent, shall enforce income deduction orders against an obligor's successor payor who is located in this state in the same manner prescribed in this Code section for the enforcement of an income deduction order against a payor.

(i) The provisions of Article 3 of Chapter 11 of this title, the "Uniform Interstate Family Support Act," shall apply to:

(1) All income deduction orders originating in this state and directed to another state; and

(2) All income-withholding orders originating in another state and directed to this state.

(j) Certified copies of payment records maintained by a child support receiver or the child support enforcement agency shall, without further proof, be admitted into evidence in any legal proceeding in this state.

(k) No payor shall discharge an obligor by reason of the fact that his or her earnings have been subjected to an income deduction order under Code Section 19-6-32. A payor who violates this subsection shall be subject to a civil penalty not to exceed \$250.00 for the first violation and \$500.00 for any subsequent violation. Penalties shall be paid to the obligee or the child support enforcement agency, whichever is enforcing the income deduction order, if any support is owing. If no support is owing, the penalty shall be paid to the obligor.

(l) If a payor is not providing earnings to an obligor or when a payor no longer provides earnings to an obligor, the payor shall notify the obligee and, if the support order is being enforced by the child support enforcement agency, the child support enforcement agency shall provide the obligor's last known address and the name and address of the obligor's new payor, if known. A payor who willfully violates this subsection shall be subject to a civil penalty not to exceed \$250.00 for the first violation and \$500.00 for any subsequent violation. Penalties shall be paid to the obligee or the child support enforcement agency, whichever is enforcing the income deduction order.

History

Code 1981, § 19-6-33, enacted by Ga. L. 1989, p. 861, § 3; Ga. L. 1990, p. 8, § 19; Ga. L. 1991, p. 950, § 2; Ga. L. 1993, p. 585, § 2; Ga. L. 1994, p. 1270, § 1; Ga. L. 1997, p. 1613, § 12; Ga. L. 1999, p. 1237, § 2; Ga. L. 2000, p. 1589, § 3; Ga. L. 2002, p. 1247, § 3; Ga. L. 2017, p. 646, § 1-14/SB 137.

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