**Section 160.75 Withholding of Income to Secure Payment of Support**

a) Definitions

The definitions contained in Section 15 of the Income Withholding for Support Act [750 ILCS 28/15] shall apply in this Section.

b) Entry of Order for Support Containing Income Withholding Provisions; Income Withholding Notice

1) The Department, through its legal representative, shall request that when entering an order for support the court include in the order the following income withholding provisions, as required by law:

A) that an income withholding notice be prepared by the Department and served immediately upon any payor of the obligor, unless a written agreement is reached between and signed by both parties providing for an alternative arrangement, approved and entered into the record by the court, which ensures payment of support. In that case, the Department, through its legal representative, shall request that the order for support provide that an income withholding notice is to be prepared and served only if the obligor becomes delinquent in paying the order for support; and

B) a dollar amount to be paid until payment in full of any delinquency that accrues after entry of the order for support; the dollar amount not to be less than 20 percent of the total of the current support amount and the amount to be paid periodically for payment of any arrearage stated in the order for support; and

C) the obligor's Social Security Number disclosed to the court as required by law; and

D) if the obligor is not a United States citizen, the obligor's alien registration number, passport number, and home country's social security or national health number disclosed to the court as required by law.

2) The income withholding notice prepared by the Department shall:

A) be in the standard format prescribed by the federal Department of Health and Human Services; and

B) state the date of entry of the order for support upon which the income withholding notice is based; and

C) direct any payor to withhold the dollar amount required for current support under the order for support; and

D) direct any payor to withhold the dollar amount required to be paid periodically under the order for support for payment of the amount of any arrearage stated in the order for support; and

E) state the amount of the payor income withholding fee as provided by law; and

F) state that the amount actually withheld from the obligor's income for support and other purposes, including the payor's withholding fee, may not be in excess of the maximum amount permitted under the federal Consumer Credit Protection Act; and

G) state the duties of the payor and the fines and penalties provided by law for failure to withhold and pay over income and for discharging, disciplining, refusing to hire, or otherwise penalizing the obligor because of the duty to withhold and pay over income; and

H) state the rights, remedies, and duties of the obligor, as provided by law; and

I) include the Social Security Number of the obligor; and

J) contain the signature of the obligee or the printed name and telephone number of the authorized representative of the public office, except that the failure to contain the signature of the obligee or the printed name and telephone number of the authorized representative of the public office shall not affect the validity of the income withholding notice; and

K) direct any payor to pay over amounts withheld for payment of support to the State Disbursement Unit.

3) Notwithstanding the exception to immediate income withholding referred to in subsection (b)(1)(A), if the court finds at the time of any hearing that an arrearage has accrued, the Department, through its legal representative, shall request that the court order immediate service of an income withholding notice upon the payor, as required by law.

c) Service of Income Withholding Notice

1) If the order for support requires immediate service of an income withholding notice, the Department shall serve the notice on the payor within two business days after the date the order is received if the payor's address is known on that date, or, if the address is unknown on that date, within two business days after locating the payor's address. If the Department receives the payor's address from the Illinois Directory of New Hires, as established under Section 1801.1 of the Unemployment Insurance Act [820 ILCS 405/1801.1], the Department shall serve an income withholding notice and, where applicable, a National Medical Support Notice, on the payor within two business days after the date information regarding the obligor and payor is entered into the Illinois Directory of New Hires.

2) The Department may serve the income withholding notice on the payor or its superintendent, manager, or other agent by ordinary mail or certified mail, return receipt requested, by facsimile transmission or other electronic means, by personal delivery, or by any method provided by law for service of a summons. At the time of service on the payor and as notice that withholding has commenced, the Department shall serve a copy of the income withholding notice on the obligor by ordinary mail addressed to his or her last known address. A copy of the income withholding notice together with proofs of service on the payor and the obligor shall be filed by the Department with the Clerk of the Circuit Court.

3) Notwithstanding the fact that the order for support, under the exception to immediate withholding referred to in subsection (b)(1)(A), provides that an income withholding notice is to be prepared and served only if the obligor becomes delinquent in paying the order for support, the Department shall serve an income withholding notice on the payor prior to accrual of a delinquency if the obligor executes a written waiver of that condition and requests immediate service on the payor.

4) At any time after the initial service of an income withholding notice, the Department may serve any other payor of the obligor with the same income withholding notice without further notice to the obligor. A copy of the income withholding notice together with a proof of service on the other payor shall be filed with the Clerk of the Circuit Court.

d) Income Withholding After Accrual of Delinquency

1) The Department shall prepare and serve an income withholding notice within two business days after the date the obligor accrues a delinquency if the payor's address is known on that date, or, if the address is unknown on that date, within two business days after locating the payor's address. If the payor's address is unknown on the date the obligor accrues a delinquency, and the Department receives the payor's address from the Illinois Directory of New Hires, the Department shall serve an income withholding notice on the payor within two business days after the date information regarding the obligor and payor is entered into the Illinois Directory of New Hires.

2) An income withholding notice prepared by the Department under subsection (d)(1) shall:

A) contain the information required under subsection (b)(2); and

B) contain the total amount of the delinquency as of the date of the notice; and

C) direct the payor to withhold the dollar amount required to be withheld periodically under the order for support for payment of the delinquency; and

D) be served on the payor and the obligor in the manner provided in subsection (c)(2).

3) The obligor may contest withholding commenced under this subsection (d) by filing a petition to contest withholding with the Clerk of the Circuit Court within 20 days after service of a copy of the income withholding notice on the obligor. However, as required by law, the grounds for the petition to contest withholding shall be limited to:

A) a dispute concerning the existence or amount of the delinquency; or

B) the identity of the obligor.

4) The accrual of a delinquency as a condition for service of an income withholding notice, under the exception to immediate withholding referred to in subsection (b)(1)(A), shall apply only to the initial service of an income withholding notice on a payor of the obligor.

e) Initiated Withholding

1) Notwithstanding any other provision of this Section, if the court has not required that income withholding take effect immediately, the Department, pursuant to this subsection (e), may initiate withholding regardless of whether a delinquency has accrued, by preparing and serving an income withholding notice on the payor that contains the information required under subsection (b)(2) and states that the parties' written agreement providing an alternative arrangement to immediate withholding under subsection (b)(1)(A) no longer ensures payment of support, and the reason or reasons why it does not.

2) The income withholding notice and the obligor's copy of the income withholding notice shall be served as provided in subsection (c)(2).

3) The obligor may contest withholding commenced under this subsection (e) by filing a petition to contest withholding with the Clerk of the Circuit Court within 20 days after service of a copy of the income withholding notice on the obligor. However, as required by law, the grounds for the petition to contest withholding shall be limited to a dispute concerning the conditions in subsections (e)(3)(A) and (B) (it shall not be grounds for filing a petition that the obligor has made all payments due by the date of the petition):

A) whether the parties' written agreement providing an alternative arrangement to immediate withholding under subsection (b)(1)(A) continues to ensure payment of support; or

B) the identity of the obligor.

f) Petitions to Modify, Suspend or Terminate an Order for Withholding

1) At any time the Department, through its legal representative, may petition the court to:

A) modify, suspend or terminate the income withholding notice because of a modification, suspension or termination of the underlying order for support;

B) modify the amount of income to be withheld to reflect payment in full or in part of the delinquency or arrearage by income withholding or otherwise; or

C) suspend the income withholding notice because of inability to deliver income withheld to the obligee due to the obligee's failure to provide a mailing address or other means of delivery.

2) The Department shall serve on the payor, in the manner provided for service of income withholding notices in subsection (c)(2), a copy of any order entered pursuant to this subsection (f) that affects the duties of the payor.

3) The Department may serve a notice on the payor to:

A) cease withholding of income for payment of current support for a child when the support obligation for that child has automatically ceased under the order for support through emancipation or otherwise; or

B) cease withholding of income for payment of delinquency or arrearage when the delinquency or arrearage has been paid in full.

4) The notice provided for under subsection (f)(3) shall be served on the payor in the manner provided for service of income withholding notices in subsection (c)(2), and a copy shall be provided to the obligor and the obligee.

g) Additional Duties

The Department shall provide notice to the payor and Clerk of the Circuit Court of any other support payment made, including but not limited to:

1) an offset under federal or State law; or

2) partial payment of the delinquency or arrearage or both.

h) Alternative Procedures for Service of an Income Withholding Notice

1) The procedures of this subsection (h) shall be used by the Department in any matter to serve an income withholding notice on a payor if:

A) For any reason the most recent order for support entered does not contain the income withholding provisions stated in subsection (b), irrespective of whether a separate order for withholding was entered prior to July 1, 1997; and

B) The obligor has accrued a delinquency after entry of the most recent order for support.

2) The Department shall prepare and serve the income withholding notice in accordance with the provisions of subsection (d), except that the notice shall contain a periodic amount for payment of the delinquency equal to 20 percent of the total of the current support amount and the amount to be paid periodically for payment of any arrearage stated in the most recent order for support.

3) If the obligor requests in writing that income withholding become effective prior to the obligor accruing a delinquency under the most recent order for support, the Department shall prepare and serve an income withholding notice on the payor as provided in subsections (b) and (c). In addition to filing proofs of service of the income withholding notice on the payor and the obligor, the Department shall file a copy of the obligor's written request for income withholding with the Clerk of the Circuit Court.

i) Notice to Payor

Whenever the Department serves an income withholding notice on a payor, notice of the following shall be included in or with the income withholding notice:

1) that the payor must begin deducting no later than the next payment of income that is payable or creditable to the obligor that occurs 14 days following the date the income withholding notice was mailed, sent by facsimile or other electronic means, or placed for personal delivery to or service on the payor;

2) that the payor must pay the amount withheld to the State Disbursement Unit within seven business days after the date the amount would (but for the duty to withhold income) have been paid or credited to the obligor;

3) that if the payor knowingly fails to withhold the amount designated in the income withholding notice or to pay any amounts withheld to the State Disbursement Unit within seven business days after the date the amount would have been paid or credited to the obligor, the payor is subject to a penalty of $100 for each day that the amount designated in the income withholding notice (whether or not withheld by the payor) is not paid to the State Disbursement Unit after the period of seven business days has expired;

4) that the payor may combine all amounts withheld for the benefit of an obligee or public office into a single payment and transmit the payment with a listing of obligors from whom withholding has been effected;

5) that for each deduction the payor must provide the State Disbursement Unit at the time of transmittal, with the date the amount would (but for the duty to withhold income) have been paid or credited to the obligor;

6) that for withholding of income, the payor is entitled to a fee not to exceed $5 per month to be taken from the income to be paid to the obligor;

7) that the amount actually withheld for support, the child's health insurance premium and payor withholding fee shall not exceed the maximum amount permitted under the federal Consumer Credit Protection Act (15 USC 1601). Income available for withholding shall be applied first to the current support obligation, then to any premium required for employer, labor union, or trade union-related health insurance coverage ordered under the order for support, and then to payment required on past-due support obligations. If there is insufficient available income remaining to pay the full amount of the required health insurance premium after withholding of income for the current support obligation, then the remaining available income shall be applied to payments required on past-due support obligations;

8) require that whenever the obligor is no longer receiving income from the payor, the payor must return a copy of the income withholding notice to the Department and provide the obligor's last known address and the name and address of the obligor's new payor, if known;

9) that withholding of income under the income withholding notice must be made without regard to any prior or subsequent garnishments, attachments, wage assignments, or any other claims of creditors;

10) that the income withholding notice is binding upon the payor until service of an order of the court or a notice from the Department or Clerk of the Circuit Court;

11) that the payor is subject to a fine of up to $200 for discharging, disciplining or otherwise penalizing an obligor because of the duty to withhold income;

12) that if the payor willfully fails to withhold or pay over income pursuant to a properly served income withholding notice that the payor is liable for the total amount that the payor willfully failed to withhold or pay over;

13) that if the payor has been served with more than one income withholding notice pertaining to the same obligor, the payor shall allocate income available on a proportionate share basis, giving priority to current support payments; and

14) that a payor who complies with an income withholding notice that is regular on its face is not subject to civil liability with respect to any individual, any agency, or any creditor of the obligor for conduct in compliance with the notice.

j) Notice to Obligor

When the Department serves a copy of the income withholding notice on the obligor as required under this Section, notice of the following shall be included in or with the obligor's copy of the income withholding notice:

1) that income withholding has commenced;

2) the information provided to the payor under subsection (i);

3) the procedures and the permissible grounds for contesting withholding commenced under subsection (d), (e) or (h), as applicable;

4) that at any time the obligor may petition the court to:

A) modify, suspend or terminate the income withholding notice because of a modification, suspension or termination of the underlying order for support; or

B) modify the amount of income to be withheld to reflect payment in full or in part of the delinquency or arrearage by income withholding or otherwise; or

C) suspend the income withholding notice because of inability to deliver income withheld to the obligee due to the obligee's failure to provide a mailing address or other means of delivery; or

D) correct a term contained in an income withholding notice to conform to that stated in the underlying order for support for:

i) the amount of current support;

ii) the amount of the arrearage;

iii) the periodic amount for payment of the arrearage; or

iv) the periodic amount for payment of the delinquency;

5) that the obligor is required by law to notify the obligee, the Department, and the Clerk of the Circuit Court of any new address or payor within seven days after the change; and

6) that where a payor willfully discharges, disciplines, refuses to hire or otherwise penalizes an obligor because of the duty to withhold income, the obligor may file a complaint with the court against the payor, and that the court may order employment or reinstatement of or restitution to the obligor, or may impose a fine upon the payor not to exceed $200.

k) Penalties

In cases where a payor willfully fails to withhold or pay over income, pursuant to a properly served income withholding notice, or otherwise fails to comply with any income withholding duties imposed by law, the Department, through its legal representatives, may request that the court:

1) enter judgment against the payor, or an officer or employee of the payor, as provided by law, and direct the enforcement thereof for the total amount that the payor willfully failed to withhold or pay over;

2) impose a penalty or fine upon the payor or invoke any other remedy allowed by law.

l) Administrative Fines Imposed by the Department

1) The administrative fines provided for under Section 50.5 of the Income Withholding for Support Act [750 ILCS 28] (Withholding Act) are in addition to any existing fines or penalties against a payor of income provided for in that Act and do not affect who would be entitled to receive those existing fines and penalties. In addition to any fines or penalties provided for in the Withholding Act, when a payor of income willfully fails, after receiving two reminders from the Department to withhold or pay over income pursuant to a properly served income withholding notice or otherwise fails to comply with any duties imposed by the Withholding Act, the Department shall, upon a finding of willful failure to comply, impose a fine upon the payor of income not to exceed $1,000 per payroll period. The fine will be payable to the Department and may be used to defray the costs incurred by the Department in the collection of the past-due support and penalties provided for by the Withholding Act. The Department shall place the fines collected into a special fund created to implement the purposes of Section 50.5 of the Withholding Act and the fines shall be utilized for the purposes provided for in that Section. After deducting the costs incurred by the Department in the collection of the past-due support and penalties provided for in the Withholding Act, the reminder of the fines collected under Section 50.5 shall be distributed proportionally to the counties based on their IV-D population. The counties shall use these funds to assist low income families in defraying the costs associated with seeking parenting time.

2) The Department may collect the fine through administrative liens and levies on the real and personal property of the payor of income as provided in Sections 10-25 and 10-25.5 of the Public Aid Code.

3) The payor of income may contest the fine as provided in Sections 10-25 and 10-25.5 of the Public Aid Code.

4) The Department will implement this subsection (l) by January 1, 2019.

m) Intergovernmental Income Withholding

Within the timeframes specified in subsections (c)(1) and (d)(1), and pursuant to the provisions of the Uniform Interstate Family Support Act [750 ILCS 22], the Department shall engage income withholding in cases in which the obligor is receiving income from a payor located in another jurisdiction.

n) Use of National Medical Support Notice to Enforce Health Insurance Coverage

1) When an order for support is being enforced by the Department under this Section, any requirement for health insurance coverage to be provided through an employer, including withholding of premiums from the income of the obligor, shall be enforced through use of a National Medical Support Notice.

2) A National Medical Support Notice shall be served on the employer in the manner and under the circumstances provided for serving an income withholding notice under this Section, except that an order for support that conditions service of an income withholding notice on the obligor becoming delinquent in paying the order for support shall not prevent immediate service of a National Medical Support Notice by the Department. The Department may serve a National Medical Support Notice on an employer in conjunction with service of an income withholding notice. Service of an income withholding notice is not a condition for service of a National Medical Support Notice, however.

3) At the time of service of a National Medical Support Notice on the employer, the Department shall serve a copy of the Notice on the obligor by ordinary mail addressed to the obligor's last known address. The Department shall file a copy of the National Medical Support Notice, together with proofs of service on the employer and the obligor, with the clerk of the circuit court.

4) Within 20 business days after the date of a National Medical Support Notice, an employer served with the Notice shall transfer the severable notice to plan administrator to the appropriate group health plan providing any health insurance coverage for which the child is eligible. As required in the part of the National Medical Support Notice directed to the employer, the employer shall withhold any employee premium necessary for coverage of the child and shall send any amount withheld directly to the plan. The employer shall commence the withholding no later than the next payment of income that occurs 14 days after the date the National Medical Support Notice was mailed, sent by facsimile or other electronic means, or placed for personal delivery to or service on the employer. Notwithstanding the requirement to withhold premiums from the obligor's income, if the plan administrator informs the employer that the child is enrolled in an option under the plan for which the employer has determined that the obligor's premium exceeds the amount that may be withheld from the obligor's income due to the withholding limitation or prioritization contained in Section 35 of the Income Withholding for Support Act, the employer shall complete the appropriate item in the part of the National Medical Support Notice directed to the employer according to the instructions in the Notice and shall return that part to the Department.

5) If one of the following circumstances exists, an employer served with a National Medical Support Notice shall complete the part of the Notice directed to the employer in accordance with the instructions in the Notice and shall return that part to the Department within 20 business days after the date of the Notice:

A) The employer does not maintain or contribute to plans providing dependent or family health insurance coverage.

B) The obligor is among a class of employees that is not eligible for family health insurance coverage under any group health plan maintained by the employer or to which the employer contributes.

C) Health insurance coverage is not available because the obligor is no longer employed by the employer.

6) The administrator of a health insurance plan to whom an employer has transferred the severable notice to plan administrator part of a National Medical Support Notice shall complete that part with the health insurance coverage information required under the instructions in the Notice and shall return that part to the Department within 40 business days after the date of the Notice.

7) The obligor may contest withholding under this Section based only on a mistake of fact and may contest withholding by filing a petition with the clerk of the circuit court within 20 days after service of a copy of the National Medical Support Notice on the obligor. The obligor must serve a copy of the petition on the Department at the address stated in the National Medical Support Notice. The National Medical Support Notice, including the requirement to withhold any required premium, shall continue to be binding on the employer until the employer is served with a court order resolving the contest or until notified by the Department.

8) Whenever the obligor is no longer receiving income from the employer, the employer shall return a copy of the National Medical Support Notice to the Department and shall provide information for the purpose of enforcing health insurance coverage under this Section.

9) The Department shall promptly notify the employer when there is no longer a current order for health insurance coverage in effect that the Department is responsible for enforcing.

10) Unless stated otherwise in this Section, all of the provisions of this Section relating to income withholding for support shall pertain to income withholding for health insurance coverage under a National Medical Support Notice, including but not limited to, the duties of the employer and obligor, and the penalties contained in Section 35 and Section 50 of the Income Withholding for Support Act. In addition, an employer who willfully fails to transfer the severable notice to plan administrator part of a National Medical Support Notice to the appropriate group health plan providing health insurance coverage for which a child is eligible, within 20 business days after the date of the Notice, is liable for the full amount of medical expenses incurred by or on behalf of the child which would have been paid or reimbursed by the health insurance coverage had the severable notice to plan administrator part of the Notice been timely transferred to the group health insurance plan. This penalty may be collected in a civil action that may be brought against the employer in favor of the obligee or the Department.

11) When the administrator of a health insurance plan returns the severable notice to plan administrator portion of a National Medical Support Notice to the Department indicating that there is more than one option available for coverage of the child under the plan, the Department, within 20 days after the date the portion is returned, shall consult with the obligee, select from the available options, and inform the plan administrator of the option selected.

o) Refund of Improperly Withheld Amounts

The Department shall promptly refund to the obligor amounts found to have been improperly withheld from the obligor's income.

(Source: Amended at 41 Ill. Reg. 3338, effective March 7, 2017)