

1 **MODEL LEGISLATION ON MANAGING LUMP-SUM**

2 **PAYMENTS FOR CHILD SUPPORT**

3 **Lump-Sum Collaborative Workgroup Document**

4 **Final**

5 **EXPLANATORY NOTE**

6 This model act is designed to address lump-sum payments for child support
7 through withholding by income payers (i.e., employers) in cases enforced under Title
8 IV-D of the Social Security Act. Lump-sum reporting requirements in other, privately-
9 enforced, child support or lump-sum payments outside the employee or independent
10 contractor relationship (i.e., lottery ticket winnings or bank accounts) are outside the
11 scope of this model act.

12 This model act is intended to promote compliance with the Consumer Credit
13 Protection Act (CCPA) under 15 U.S.C. § 1672(a) and (b), particularly as interpreted by
14 the U.S. Department of Labor in Opinion Letter CCPA2018-1NA (April 12, 2018).

15 **SECTION 1. SHORT TITLE**

16 This act shall be cited as [_____].

17 **SECTION 2. PREAMBLE**

18 The legislature finds the following:

19 (1) The Lump-Sum Collaborative Workgroup – a group consisting of
20 representatives from state child support enforcement agencies and payroll professionals
21 from the American Payroll Association, prepared this model act, with technical
22 assistance from the Employer Services Team of the federal Office of Child Support
23 Enforcement.

24 (2) The Lump Sum Collaborative Workgroup recognizes the importance of child
25 support for families with children and the critical role income payers play as the primary
26 source of income for many parents who owe child support.

27 (3) States that have adopted a program for withholding and collection of
28 lump-sum payments for child support arrears have seen increases in funds going to
29 children and for necessary state child support management resources.

30 (4) States with programs have differing requirements regarding the management
31 of lump-sum payments for child support arrearages, which makes communicating
32 among states and income payers less efficient.

33 (5) Income payers face a risk of liability for failing to timely pay employees their
34 earned income by holding a lump-sum payment pending a state response on whether
35 arrears for child support are owed and withholding is required.

36 (6) Income payers face a risk of liability if a lump-sum payment is released to an
37 employee before receiving a state response about arrears for child support and
38 withholding, even if the income payer is complying with state wage and hour laws.

39 **SECTION 3. DEFINITIONS**

40 As used in this act:

41 (1) "Child support agency" means an agency or political subdivision of this state
42 that is authorized under the laws of this state to seek enforcement of support orders or
43 laws relating to the duty of support under Title IV-D of the Social Security Act;

44 (2) "Disposable Earnings" means that part of the earnings of any obligor
45 remaining after the deduction from those earnings of any amounts required by law to be
46 withheld.

47 (3) "Earnings" means compensation paid or payable for personal services,
48 whether denominated as wages, salary, commission, bonus, or otherwise.

49 (4) "Income Withholding Order" means an order or other legal process issued by
50 a child support agency to an obligor's employer or income payer, as defined by [insert
51 cite], to withhold support from the income of the obligor.

52 (5) "Lump-Sum Payment" includes, but is not limited to, discretionary and
53 non-discretionary bonuses, commissions, performance bonuses, merit increases, safety
54 awards, signing bonuses, moving and relocation incentive payments, holiday pay,
55 termination pay, and severance pay. Lump-sum payment also includes workers'
56 compensation, insurance settlements, and personal injury settlements paid as
57 replacement for wages owed. Lump-sum payment means income other than a periodic
58 recurring payment of earnings on regular paydays and does not include reimbursement
59 for expenses.

60 (6) "Obligor" means an individual who owes a duty of child support under a
61 support order issued or enforced under the laws of this state.

62 **Comment**

63 The definitions in this section are intended to cover a broad variety of lump-sum
64 payments that are potentially available for collection of child support as "extra money" in
65 addition to wages or other periodic earnings, yet ensure that the amount withheld from
66 disposable earnings is consistent with CCPA limits.

67 **SECTION 4. REPORTING OF LUMP SUMS**

68 An income payer who has been served with an income withholding order for an
69 obligor by a child support agency that includes a provision for payment toward child

70 support arrears shall notify the child support agency before making any lump-sum
71 payment of more than \$150 to the obligor. An income payer may report a lump-sum
72 payment of a smaller amount or an amount yet to be determined. The notice must be in
73 a format acceptable to the child support agency.

74 **Comment**

75 The requirements in this model act apply equally to large, multi-state, income
76 payers with sophisticated computer systems and small income payers who report and
77 remit payments on an individual basis. To manage the demands on income payers with
78 widely different internal procedures and in recognition that lump-sum reporting is
79 primarily intended as a supplement to an income withholding order to collect child
80 support arrears, an income payer is not required to report lump sums unless the child
81 support agency is already attempting to use an income withholding order to the income
82 payer to collect an amount from recurring wage payments for those arrears. If the
83 income withholding order does not direct the income payer to withhold for arrears, an
84 income payer is safe to assume no arrears are owed and is not required to report any
85 lump sums payable to the obligor.

86 The \$150 threshold for reporting lump sums is patterned after the threshold for
87 using the federal offset program to collect arrears from federal income tax refunds in
88 cases where the arrears are assigned to the government. The amount was discussed
89 extensively by participants in the workgroup and is a reasonable approach to create
90 standardization among states.

91 If an income payer does not yet know the amount of an upcoming lump-sum
92 payment, or if an income payer does business in more than one jurisdiction with

93 different reporting thresholds, the income payer is protected under the act if it chooses
94 to report lump sums of an unknown amount or an amount lower than the threshold
95 adopted by the state. If it is easier for an income payer, all lump-sum payments can be
96 reported under the act regardless of the amount.

97 **SECTION 5. RETENTION OF PORTION OF LUMP SUM**

98 (1) An income payer who reports a lump-sum payment under this act shall
99 determine the amount of the lump-sum payment which consists of disposable earnings
100 and may disburse 50% of that amount to the obligor.

101 (2) The income payer must withhold and remit to the child support agency the
102 amount needed to comply with the Income withholding order.

103 (3) Notwithstanding any other provision of state law, unless otherwise agreed to
104 by the income payer and the child support agency, the income payer may not disburse
105 the remaining amount of the lump-sum payment before the earlier of:

106 (a) The 15th calendar day after the date on which the income payer
107 reports the lump-sum payment or

108 (b) The date on which the income payer receives authorization from the
109 child support agency to make all or a portion of the lump-sum payment.

110 **Comment**

111 This section establishes a priority for the income payer to satisfy any existing
112 income withholding order out of a lump-sum payment.

113 An income payer is in the position to know whether the lump-sum payment
114 constitutes disposable earnings for CCPA purposes. Although a withholding limit in
115 excess of 50% may apply in certain cases, an income payer will generally not be in a

116 position to know whether the case facts warrant such excess withholding. Accordingly,
117 for simplicity, and to ensure compliance with the CCPA, 50% of the portion of a lump
118 sum that constitutes disposable earnings must be disbursed as scheduled by the
119 income payer.

120 This section ensures that the income payer will wait to make a lump-sum
121 payment to an obligor for 14 calendar days, except for the amount required to be paid to
122 the obligor immediately to ensure CCPA compliance, in order to give the child support
123 agency an opportunity to review the case and determine whether some or all of the
124 retained portion of a lump-sum payment should be collected for child support.

125 This section places an affirmative responsibility on the child support agency to
126 respond to an income payer report of a lump-sum payment within 14 calendar days. An
127 agency response sooner than 14 calendar days would be better. However, for the
128 benefit of closure in the event the child support agency does not respond, an income
129 payer is free to disburse the remainder of the lump-sum payment to the obligor if the
130 income payer has not heard from the child support agency after 14 calendar days.

131 In some jurisdictions, the child support agency and an income payer may form an
132 understanding that a lack of response by the child support agency within 14 calendar
133 days is tacit authorization for the income payer to disburse the remaining portion of the
134 lump-sum payment to the obligor.

135 **SECTION 6. RESPONSE TO LUMP-SUM NOTICE**

136 Upon receipt of notice of a lump-sum payment under this section, the child
137 support agency shall respond to the income payer within 14 calendar days after
138 receiving the income payer's report of a lump-sum payment by providing:

139 (1) A written release indicating that some or all of the portion of the lump-sum
140 payment retained by the income payer may be disbursed to the obligor or

141 (2) An amended or supplemental income withholding order or other written
142 demand specifying the amount of the lump-sum payment to be remitted to the child
143 support agency on behalf of the obligor.

144 **Comment**

145 This section, in conjunction with the preceding section, requires a child support
146 agency to respond to an income payer's report of a lump sum either by authorizing
147 release of some or all of the funds or by taking steps to compel the income payer to pay
148 to the child support agency the amount that the income payer has retained from a
149 lump-sum payment. Collection from a lump sum by a child support agency under this
150 act is taken administratively rather than requiring judicial authorization.

151 **SECTION 7. COLLECTION OF LUMP SUM**

152 Any written demand under this act must be provided to the obligor and the
153 income payer in the same manner as an income withholding order, is binding on the
154 income payer in the same manner as an income withholding order, and can be
155 appealed in the same manner as an income withholding order.

156 **Comment**

157 For simplicity, withholding from a lump-sum payment is governed by the same
158 state laws that are applicable to income withholding orders.

159 **SECTION 8. IMMUNITY FROM LIABILITY**

160 An income payer who reports, withholds, or remits a lump-sum payment under
161 this section is immune from liability.

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Comment

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An income payer who is required by state law to report lump-sum payments and

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obey any subsequent direction from the child support agency deserves to be protected

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from liability for acts taken to comply with state law.

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SECTION 9. CHOICE OF LAW

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The duties of an income payer under this act are governed by the laws of the

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state of the obligor's principal place of employment.

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Comment

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For multi-state income payers, this section clarifies which state laws the income

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payer must honor regarding the reporting, withholding, and remitting of lump-sum

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payments, including state laws regarding proration of collections among multiple

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families who are owed support by the same obligor.