ALABAMA DEPARTMENT OF HUMAN RESOURCES CHILD SUPPORT ENFORCEMENT DIVISION ADMINISTRATIVE CODE

CHAPTER 660-3-16 INCOME WITHHOLDING

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660-3-16-.01 Definitions.

(1) As used in this Chapter, the following terms shall have the following meaning:

(a) "Income" - Wages, salary, tips, commissions, bonuses, unemployment compensation, workers' compensation, disability payments, payments pursuant to a pension or retirement program and interest, and any and all money due or payable to a person, the entitlement to which is based upon remuneration for employment, past or present, after the deduction of those amounts required to be withheld by law. Income shall also include any other continuous or periodic income from whatever source whether earned or unearned except as expressly limited by law.

(b) "Employer" - Any person, business, corporation, partnership, company, firm, or unit of municipal, county, state, or federal government.

(c) "Court" - Any juvenile or family court division of the circuit or district court in the county where the mother of the child resides or is found, in the county where the father resides or is found, or in the county where the child resides or is found and, in the case of a petition seeking a divorce,

or legal separation, a petition seeking a modification of support previously ordered under a divorce decree or a petition seeking a contempt citation for failure to pay support previously ordered under a divorce decree, the circuit court or the domestic relations division of the circuit court. In cases involving the enforcement of another state's order of support within this state, court may mean the courts of the county where the employer is located or is found, and may also mean the court or agency of another state or jurisdiction outside the State of Alabama whose functions include the issuance and enforcement of support order.

(d) "Clerk of the Court" - Any circuit court clerk, district court clerk, or juvenile court clerk, or their employees, with responsibility for docketing or otherwise carrying out the court's clerical duties in regard to domestic relations matters, support and nonsupport cases, including the receipt and disbursement of support payments.

(e) "Obligor" - Any person ordered by the court to make periodic payments for the benefit and support of another person or minor child.

(f) "Obligee" - Any person for whom support benefits are ordered by the court and shall specifically include the Department of Human Resources when any person has assigned their rights to support payments to the department under any provision of law or when the department is otherwise representing the obligee. Obligee may also include an agency or department of this or another state or jurisdiction to which a person has assigned his or her rights to support.

(g) "Department" - The Department of Human Resources of Alabama, including the County Departments of Human Resources.

(h) "Support or Support Order" - Any order, decree or judgment for support of a child (or in the case of an order being enforced pursuant to the requirements of Title IV-D of the Social Security Act, a spouse or former spouse) issued by a court of this state or a court or agency of another state or jurisdiction, whether interlocutory or final, including orders issued for any of the following purposes:

1. Current support of a minor child.

2. Current medical support, which included the cost of medical support or unreimbursed medical expenses.

3. Arrearage that has accrued due to unpaid child or medical support during the child's minority, including enforcement post-majority of arrearages accrued during minority and interest that has accrued or continues to accrue on that arrearage.

4. Spousal Support when such spousal support is collected by the Department of Human Resources or the department's designee pursuant to the requirements of Title IV-D of the Social Security Act.

(i) "State Title IV-D Agency" - The state agency designated to administer the statewide child support program authorized under Title IV-D of the Social Security Act.

(j) Income Withholding Order or Notice – An order or notice in the standardized format prescribed under Title IV-D of the Social Security Act, as amended, that requires an employer to deduct a portion of an employee's income for the payment of support.

Author: Janice Grubbs
Statutory Authority: Code of Ala. 1975, §§30-3-60, 30-3-191; 42 U.S.C. 666(b) and (c).
History: **New Rule:** Filed June 5, 2001; effective July 10, 2001.
Amended: Filed August 6, 2009; effective September 10, 2009.

660-3-16-.02 Basis For Income Withholding.

(1) Income withholding refers to the act of ordering an obligor's employer to withhold a portion of the obligor's income to apply to his/her child support obligation(s). Income withholding has been authorized in Alabama since 1984. In 1989, Alabama income withholding statutes were updated to require, effective November 1, 1990, immediate income withholding in all orders entered or modified in Alabama. Effective May 4, 1994, Alabama law provided for the termination of income withholding under certain circumstances without a hearing upon filing an affidavit by the obligor.

(2) Income Withholding is authorized as a means of collecting child support and spousal support (when collected in conjunction with child support).

(3) Employers are required to comply with income withholding orders or to show reason why they cannot comply.

(4) The State IV-D Agency has the authority to order that income withholding be implemented.

(5) This State IV-D Agency has the authority to increase the amount of monthly support payments to include amounts for arrears for the purpose of securing overdue support.

Author: Janice Grubbs
Statutory Authority: Code of Ala. 1975, §§30-3-60 through 30-3-71, 30-3-197(a)(5) and (7), 30-3A-501 through 30-3A-506; 45 CFR 303.100; 42 U.S.C. 666(b) and (c).
History: **New Rule:** Filed June 5, 2001; effective July 10, 2001.

660-3-16-.03 Criteria For Issuing An Income Withholding Order.

(1) The obligor's child support payments are not deducted from his income until an income withholding order (IWO) is obtained and issued. Most support orders, depending on the time period in which they were entered, contain an IWO.

(2) An IWO is issued by serving notice on the obligor's employer.

(3) If the support order does not contain an IWO, legal action must be taken to enter an IWO before income withholding can be initiated.

(4) Support orders entered before 1984 do not contain income withholding orders. When a legal action is taken on a case with a pre-1984 support order, action should be taken at the same time to obtain an IWO. Upon entry of the income withholding order, it will be issued immediately unless:

(a) The court finds there is good cause to preclude the issuance of an IWO, and the court indicates its findings in writing as to why the implementation would not be in the best interest of the child; or

(b) The parties enter into a written agreement that provides an alternative arrangement.

(5) In the event that the court finds that the IWO should not be implemented immediately, the IWO may be issued when one of the following occurs:

(a) The employment of the obligor is verified and the noncustodial parent becomes delinquent in his/her support obligation in a dollar amount equal to one month's obligation;

(b) The court orders it;

(c) The noncustodial parent requests it; or

(d) The obligee files an affidavit with the Clerk of the Court requesting an IWO and stating the basis for the request.

(6) Support Orders entered between 1984 and November 1990 already contain an income withholding order. For a support order entered during this period, an income withholding order is issued when:

(a) Employment of the obligor is verified and the noncustodial parent becomes delinquent in his/her support obligation in a dollar amount equal to one month's obligation;

(b) The court orders it;

(c) The obligor requests it; or

(d) The custodial parent files an affidavit with the Clerk of the Court requesting an IWO and stating the basis for the request.

Author: Janice Grubbs
Statutory Authority: Code of Ala. 1975, §§30-3-60 through 30-3-71, 30-3-197(a)(5) and (7), 30-3A-501 through 30-3A-506; 45 CFR 303.100; 42 U.S.C. 666(b) and (c).
History: **New Rule:** Filed June 5, 2001; effective July 10, 2001.

660-3-16-.04 Withholding Limits And Costs.

(1) The maximum amount that can be deducted from an obligor's disposable income for child support obligation is:

(a) 50 percent if the obligor supports a second family and is behind 12 weeks or less in his/her child support obligation;

(b) 55 percent if the obligor supports a second family and is more than 12 weeks behind in his/her child support obligation;

(c) 60 percent if the obligor does not support a second family and is behind 12 weeks or less in his/her child support obligation; or

(d) 65 percent if the obligor does not support a second family and is more than 12 weeks behind in his/her child support obligation.

(2) If the obligor has more than one income withholding order against his/her income, current support must be satisfied for all orders before any money is applied to arrearages. If the employer is unable to satisfy all the income withholding orders against an obligor because to do so would violate the applicable withholding limit:

(a) The employer must notify the court that they are unable to comply; and

(b) All orders should be brought before the court for review to ensure that all children receive child support.

(3) In IV-D child support cases if the noncustodial parent is ordered to pay current child support and medical support and his/her income is not sufficient to cover both obligations, current child support must be withheld first.

Author: Janice Grubbs

Statutory Authority: Code of Ala. 1975, §§30-3-60 through 30-3-71, 30-3-197(a)(5) and (7), 30-3A-501 through 30-3A-506; 45 CFR 303.100; 42 U.S.C. 666(b) and (c).
History: New Rule: Filed June 5, 2001; effective July 10, 2001.
Amended: Filed August 6, 2009; effective September 10, 2009.

660-3-16-.05 Administrative Implementation Of An Income Withholding Order.

(1) When a support order contains an income withholding provision and the case meets criteria for income withholding, the state IV-D agency may directly order the obligor's employer to implement income withholding by issuing an Administrative Order/Notice to Withhold Income For Child Support. This action may be taken on both interstate and intrastate cases provided that there is no court action pending on the case.

(2) The employer must respond by:

(a) Sending the withholding to the appropriate collection agent designated on the document;

(b) Notifying the appropriate collection agent if the obligor changes employment, or if benefits that constitute income for the obligor are terminated;

(c) Providing a copy of the Order/Notice to Withhold Income for Child Support to the noncustodial parent;

(d) Complying with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

1. The employer's fee for processing an income withholding order;

2. The maximum amount permitted to be withheld from the obligor's income; and

3. The time within which the employer must implement the withholding order and forward the child support payment.

Author: Janice Grubbs
Statutory Authority: Code of Ala. 1975, §§30-3-60 through 30-3-71, 30-3-197(a)(5) and (7), 30-3A-501 through 30-3A-506; 45 CFR 303.100; 42 U.S.C. 666(b) and (c).
History: New Rule: Filed June 5, 2001; effective July 10, 2001.
Amended: Filed August 6, 2009; effective September 10, 2009.

660-3-16-.06 Administratively Adding An Amount Toward Arrears.

(1) In a situation where a child support arrearage exists and the order does not address an amount toward that arrearage, the State IV-D agency has the authority to increase the amount of monthly support payments for the purpose of collecting past-due support provided that there is no court action pending on the case.

(2) The procedure in which an amount is ordered toward the arrears may be done at the same time the Administrative Order/Notice to Withhold Income For Child Support is issued directly to the employer.

(3) The amount added toward the arrearage should be twenty-five percent of the current support amount.

(4) In arrearage cases only where current is no longer due, the amount toward the arrears should be the amount that was previously ordered toward current.

Author: Janice Grubbs
Statutory Authority: Code of Ala. 1975, §§30-3-60 through 30-3-71, 30-3-197(a)(5) and (7), 30-3A-501 through 30-3A-506; 45 CFR 303.100; 42 U.S.C. 666(b) and (c).
History: New Rule: Filed June 5, 2001; effective July 10, 2001.
Amended: Filed August 6, 2009; effective September 10, 2009.

660-3-16-.07 Adjusting An Income Withholding Order.

Sometimes it will be necessary to adjust the amount being withheld from the obligor's income. For example:

(1) If the withholding order is for current support plus a periodic payment on an arrearage, when the arrearage is paid off, the withholding amount will need to be reduced;

(2) If the child support order is modified, the income withholding order will need to be adjusted;

(3) An IWO is adjusted by obtaining a new income withholding order from the court.

(4) When an amount has been added toward the arrears by issuing an administrative Order/Notice to Withhold Income for Child Support, the IWO may be amended by sending an amended administrative Order/Notice to Withhold Income for Child Support to the employer.

Author: Janice Grubbs

Statutory Authority: Code of Ala. 1975, §§30-3-60 through 30-3-71, 30-3-197(a)(5) and (7), 30-3A-501 through 30-3A-506; 45 CFR 303.100; 42 U.S.C. 666(b) and (c).
History: New Rule: Filed June 5, 2001; effective July 10, 2001.

660-3-16-.08 Terminating An Income Withholding Order.

(1) The following are circumstances when an income withholding order may be terminated:

(a) Current support is due, but all arrearages have been paid;

(b) Current support is no longer due and all arrearages have been paid;

(c) The collection agent is unable to deliver payments to the obligee for three consecutive months because the obligee has failed to update his/her address information.

(2) When current support remains due but the arrearage is paid, the obligor can file a petition to terminate the income withholding order. The court may issue an Order of Termination Upon Payment of Arrears, terminating the IWO. The court grants the obligor this opportunity once. However, if subsequent arrears accrue and an IWO is issued, it will remain in effect for the duration of the child support obligation.

(3) When all children subject to the order reach age 19, current support is no longer due and all arrears have been paid, the obligor can file an affidavit with the clerk of the court. The affidavit cannot be used in cases where the obligor alleges that a child is emancipated due to marriage or joining the military. The age of majority will depend on the age used in the court with the original order, if it is an interstate case.

(4) The obligor may file a court action seeking the termination of the income withholding, or this action may be taken by the Department.

(5) When the IWO was implemented administratively by issuing the Order/Notice to Withhold Income for Child Support, the IWO may be terminated by sending the same document to the employer.
Author: Janice Grubbs
Statutory Authority: Code of Ala. 1975, §§30-3-60 through 30-3-71, 30-3-197(a)(5) and (7), 30-3A-501 through 30-3A-506; 45 CFR 303.100; 42 U.S.C. 666(b) and (c).
History: New Rule: Filed June 5, 2001; effective July 10, 2001.

660-3-16-.09 Right To Contest The Administrative Income Withholding Order.

(1) The obligor has a right to an administrative desk review of the action taken to implement the income withholding order administratively. The request for a review must be in writing within 15 days of the date appearing on the administrative Order/ Notice to Withhold Income for Child Support. The Obligor Notice of Right to Administrative Review instructs the obligor that he must submit his request in writing within that timeframe. Reasons for contesting the administrative review:

(a) The amount of past-due support is incorrect;

(b) The obligor does not owe past-due support; or

(c) The amount of current support set forth in the administrative Order/Notice to Withhold Income for Child Support is not the same as the current support in the underlying order of support.

(2) The Department of Human Resources will conduct a desk review within thirty days of the request for an administrative review.

(3) The Department of Human Resources will send the obligor a Notice of the Decision Regarding Administrative Review which explains the outcome of the review.

Author: Janice Grubbs

Statutory Authority: Code of Ala. 1975, §§30-3-60 through 30-3-71, 30-3-197(a)(5) and (7), 30-3A-501 through 30-3A-506; 45 CFR 303.100; 42 U.S.C. 666(b) and (c).

History: New Rule: Filed June 5, 2001; effective July 10, 2001.

660-3-16-A **Appendix A: Forms (Repealed 6/30/18).**

State of Alabama
Child Support Enforcement Division

Appendix A
FORMS

Author: The Department of Human Resources
Statutory Authority: Code of Ala. 1975, §§
History: Repealed: Filed May 16, 2018; effective June30, 2018.