

VIRGINIA ACTS OF ASSEMBLY -- 2022 SESSION

CHAPTER 447

An Act to amend and reenact § 20-79.3 of the Code of Virginia, relating to support order; income withholding order; employer fees.

[H 808]

Approved April 11, 2022

Be it enacted by the General Assembly of Virginia:

1. That § 20-79.3 of the Code of Virginia is amended and reenacted as follows:

§ 20-79.3. Information required in income deduction order.

A. For the purposes of this section, the terms "employee," "employer," "income," and "independent contractor" shall have the same meanings ascribed to them in § 63.2-1900.

B. Orders for withholding from the income of an employee or independent contractor shall state and include the following:

1. The name and correct social security number of the obligor and the name and correct address of the payee;

2. That the employer shall withhold and pay out of the disposable income as defined in § 63.2-100, a single monetary amount or the maximum amount permitted under § 34-29, whichever is less, for each regular pay period of the obligor and such payment may be by check. If the employee is an independent contractor, then the order shall state that the employer shall withhold and pay out of the obligor's income a single monetary amount or the maximum amount permitted under § 34-29, whichever is less, for each instance of compensation of the obligor, once the aggregate amount of remuneration reaches \$600 or more in a calendar year, and such payment may be by check;

3. That the income deduction shall begin with the next regular pay period of the obligor following service of the order on the employer, and payment shall be made at regular intervals consistent with the pay periods of the obligor, or, if the obligor is an independent contractor, the order shall begin with the next instance of compensation of the obligor, and payment shall be made at each instance of compensation of the obligor;

4. A statement of the maximum percentage under § 34-29 that may be withheld from the obligor's disposable income;

5. That, to the extent required by the provisions for health care coverage contained in the order, the employer shall (i) enroll the employee, the employee's spouse or former spouse, and the employee's dependent children listed in the order as covered persons in a group health insurance plan or other similar plan providing health care services or coverage offered by the employer, without regard to enrollment season restrictions, if the subject spouse, former spouse, or children are eligible for such coverage under the employer's enrollment provisions and (ii) deduct any required premiums from the employee's income to pay for the insurance. If more than one plan is offered by the employer, the spouse, former spouse, or children shall be enrolled prospectively in the insurance plan in which the employee is enrolled or, if the employee is not enrolled, in the least costly plan otherwise available. The employer shall also enroll the children of an employee in the appropriate health coverage plan upon application by the children's other parent or legal guardian or upon application by the Department of Medical Assistance Services. In each case that is being enforced by the Department of Social Services, the employer shall respond to such orders by advising the Department in which plan the children are enrolled or if the children are ineligible for any plan through the employer. The order to the employer shall specify either support withholdings or insurance premium deductions as having priority for the duration of the order in the event the maximum total deduction permitted at any time by § 34-29 is insufficient to fully cover both; the employer shall consider and direct insurance premium deductions and support withholdings the same for purposes of § 34-29. The employer shall not be held liable for any medical expenses incurred on behalf of the spouse, former spouse, or dependent children because of the employer's failure to enroll the spouse, former spouse, or dependent children in a health care plan after being directed to do so by a court or the Department. The employer shall not be obligated to subsequently make or change such enrollment if the group health insurance plan or other factors change after the spouse's, former spouse's, or child's eligibility or ineligibility for coverage is initially determined in response to the order for withholding. However, the employer shall not disenroll such children unless the employer (i) is provided satisfactory written evidence that such court or administrative order is no longer in effect, (ii) is provided satisfactory written evidence that the children are or will be enrolled in a comparable health coverage plan that will take effect not later than the effective date of such disenrollment, or (iii) has eliminated family health coverage for all of its employees. A one-time fee of no more than \$5 may be charged by the employer to the employee for the administration of this requirement;

6. That a fee of *up to a maximum of* \$5 for each reply or remittance on account of the obligor may be charged by the employer and withheld from the obligor's income in addition to the support amount to be withheld; however, child support withholding amounts collected from unemployment insurance benefits shall not be subject to this fee;

7. That the order is binding upon the employer and obligor and withholding is to continue until further notice by order of the court or the Department is served, or the obligor is no longer employed, whichever occurs first;

8. That the order shall have priority over any other types of liens created by state law against such income, except that if there is more than one court or administrative order for withholding for support against an obligor, the employer shall prorate among the orders based upon the current amounts due pursuant to more than one judicial or administrative order or a combination thereof, with any remaining amounts prorated among the accrued arrearages, if any, to the extent that the amounts withheld, when combined, do not exceed the maximum limits imposed under § 34-29 as specified in the order being honored;

9. That the obligor's rights are protected pursuant to § 63.2-1944 and that no employer shall discharge any employee, take disciplinary action against an employee, or terminate a contract with or refuse to employ a person by reason of the fact that his income has been made subject to a deduction pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2 or § 20-79.1 or 20-79.2 and an employer who discharges or takes disciplinary action against an employee or terminates a contract with or refuses to employ any person because of an order for withholding under these sections shall be liable for a civil fine of not more than \$1,000;

10. The address to which the withholding is to be sent at the Department of Social Services and the case number, if available;

11. That the employer shall be liable for payments that he fails to withhold or mail as specified in the order;

12. That employers shall remit payments on each regular pay date of the obligor, or instance of compensation if the obligor is an independent contractor, or, if electronic funds transfer is used, within four days of the pay date, directly to the Division of Child Support Enforcement for disbursement. All employers with at least 100 employees and all payroll processing firms with at least 50 clients shall remit payments by electronic funds transfer;

13. That the employer shall be deemed to have complied with the order by (i) mailing on each regular pay date of the obligor, or instance of compensation if the obligor is an independent contractor, to the Department, by first-class mail, any amount required to be deducted or (ii) submitting such amounts by electronic funds transfer transmitted within four days of the obligor's regular pay date or instance of compensation;

14. That the employer and obligor shall notify the Department promptly when the obligor terminates employment and shall provide the last known address of the obligor and name and address of the new employer, if known;

15. That amounts withheld from multiple employees identified as such by (i) amount, (ii) name, (iii) social security number, (iv) case number if provided in the order, and (v) date payment was withheld from obligor's income may be combined into a single payment when payable to the same payee;

16. No order or directive shall require employers of 10,000 or more employees to make payments other than by combined single payment to the Department's central office in Richmond, without the employer's express written consent, unless the order is from a support enforcement agency outside the Commonwealth;

17. Payment pursuant to an order issued under this section shall serve as full acquittance of the employer under any contract of employment;

18. Notice that any employer who fails to timely withhold payments pursuant to this section shall be liable for any amount not timely withheld;

19. That the employer shall provide to the employee or independent contractor a copy of the withholding order and the notice to the employee sent by the court.

C. If the employer receives an order that (i) does not contain the obligor's correct social security number, (ii) does not specify a single monetary amount to be withheld per regular pay period interval of the obligor, unless the obligor is an independent contractor or the order is for lump sum withholding, (iii) does not state the maximum percentage that may be withheld pursuant to § 34-29, (iv) contains information that is in conflict with the employer's current payroll records, or (v) orders payment to an entity other than to the Department of Social Services or the Department's designee, the employer may deposit in the mail or otherwise file a reply to that effect within five business days from service of such order. The order shall be void from transmission or filing of such reply unless the court or the Department, as applicable, finds that the reply is materially false. In addition, an employer of 10,000 or more persons may also file a reply, with like effect, if payment is ordered other than by combined single payment in the case of withholdings from multiple employees to the Department's central office in Richmond, without the employer's express written consent, unless the order is from a support enforcement agency outside the Commonwealth.