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Tribal Child Support: Similar But Not the Same

When we think of multistate issues, we naturally think of the 50 states, perhaps adding the District of Columbia and, considering the nature of our business, Puerto Rico, Guam, the U.S. Virgin Islands, and the Northern Marianna Islands.

For child support purposes, however, we must also acknowledge the 43 American Indian and Alaska Native tribes that operate federally funded child support enforcement programs under Section IV, Part D of the Social Security Act. These tribal agencies, along with their state counterparts, are commonly called "IV-D agencies," and they have the same authority that the state agencies have. Employers are under the same obligation to honor income withholding orders and requests for verification of employment from tribal IV-D agencies as they are from state IV-D agencies. The federal Office of Child Support Enforcement (OCSE) says that 11 more tribal programs are in development.

Overall, the federal government recognizes 560 American Indian and Alaska Native tribes in the United States. There are 51 tribal organizations, each comprising several tribes, and there are 275 tribal courts. Each of these courts may also issue child support orders, and they may do so outside of the IV-D system.

The most recent information from OCSE says that nearly one in three American Indian children live with one parent, which is consistent with the national average for all children in the United States. However, according to the National Center for Children in Poverty, 63% of all American Indian children live in low-income families, which is three times the national average (http://nccp.org/publications/pub_1049.html). Child support enforcement is recognized as a leading program keeping families above the poverty line.

Standardization

OCSE has done much to promote standardization in child support, and having tribes operate as IV-D agencies benefits employers by expanding that standardized business practice. For example, the tribal agencies use the same income withholding order that state agencies and courts use.

Tribes are not subject to the Uniform Interstate Family Support Act (UIFSA), which standardizes enforcement practices between states and allows employers to easily understand their obligations to withhold and remit funds. However, tribes and states are both subject to the Full Faith and Credit for Child Support Orders Act, which requires each to honor child support orders issued by the other. Tribes and states are bound by many of the same federal laws governing child support, including the withholding limits imposed by the Consumer Credit Protection Act (CCPA).

In 2010, with regard to the IV-D system, OCSE officially stopped referring to "interstate" cases in favor of the term "intergovernmental," which encompasses tribal orders and international child support orders (www.acf.hhs.gov/programs/cse/pol/AT/2010/at-10-06.htm).

Another significant difference between orders issued by states and those issued by tribes is that tribes are exempt from the requirement to direct payments to a State Disbursement Unit (SDU), which then distributes the money to custodial parents. Tribal IV-D agencies may direct payments directly to a custodial parent, to a tribal court, the tribe's accounting office, or perhaps the tribal IV-D agency. Some tribes have entered into intergovernmental service agreements with states for collecting child support, in which case the payments would go to an SDU. The bottom line is that employers must follow the order and send the payment wherever the tribal order directs it. This is especially significant given the rules requiring employers to reject orders that do not direct payment to an SDU.

Tribal law

Indian tribes are sovereign nations with their own laws pertaining to income withholding, many of which are similar to the state laws payroll professionals comply with every day. The Cherokee Code, for example, limits withholding to 40% of disposable income for a single order. For multiple orders, the limit is 45% if the individual is supporting another family and 50% if not (www.narf.org/nill/Codes/ebcicode/110child.pdf). While these are below the limits imposed by the CCPA, they are identical to those imposed by the state of North Carolina, for example.

Employers would be hard pressed to keep track of tribal laws, since the payroll guides published by APA and others do not cover tribal law, and payroll service providers do not code for these laws in their payroll programs.

Employers not located on tribal land are spared that obligation. Although tribes are not subject to UIFSA, tribal orders may be treated much the same as interstate child support orders. In other words, a tribal order itself determines the duration and the amount of the payments,

the person or agency designated to receive the payments, and medical support. The laws of the state in which the employee works determine whether the employer may charge an administrative fee, the maximum amount that may be deducted from pay, the time periods in which the employer must implement the order, and any withholding terms not specified in the order. ■

Employers to Reject and Return Certain Child Support Withholding Orders

The federal *Income Withholding for Support Order/Notice* (IWO), which is to be used by any person or agency issuing a child support withholding order, is emphatic in its requirement that employers reject and return certain orders: "Under certain circumstances you *must* reject this IWO and return it to the sender" (emphasis added).

The APA has learned in conversations with payroll and child support professionals that this requirement is not likely to be enforced. No penalties apply for failure to return an order. See www.americanpayroll.org/members/Forms-Pubs/#non for the IWO and instructions.

The latest version of the IWO provides six instances in which employers are to reject an order and return it to the sender:

1. If the IWO instructs the employer to send a payment anywhere other than a State Disbursement Unit (SDU, e.g., custodial party, court, or attorney), the order is to be returned. Two exceptions apply, for which employers must obey the payment instructions on the order. First, the rule does not apply to child support obligations that were established before January 1994 for IWOs issued by a court, attorney, or private individual. Second, it does not apply to orders issued by a tribal child support enforcement agency.

2. If the IWO does not contain all information necessary for the employer to comply with the withholding, it is to be rejected and returned.

3. If the form is altered or contains invalid information, it is to be rejected and returned.

4. If the amount to withhold is not a dollar amount (e.g., a percentage of disposable income), it is to be rejected and returned.

5. If the sender has not used the OMB-approved form for the IWO (effective May 31, 2012), it is to be rejected and returned.

6. If a copy of the underlying order is required and not included, it is to be rejected and returned. States and tribes are not required to provide copies of the underlying orders; however, an order issued by an attorney or private individual/entity must include a copy of the underlying order that authorizes income withholding.

Child support professionals would rather have no orders returned so that child support payments are not delayed. So long as an employer can obey an order, they would prefer that the employer do so to the best of its ability. Some payroll professionals continue to soldier on with incomplete notices, not wanting to delay payments. Certain payroll service providers also will not reject orders, considering it a service to their clients.

On the other hand, many payroll professionals have long believed that state agencies, courts, and attorneys will continue to issue incomplete or erroneous IWOs unless employers have the ability to reject them. The language requiring orders to be returned was added to accommodate the employer community, and APA was pleased to see the changes put into effect. In 2010, when these changes were being proposed for the IWO, OCSE referred to it as a "tough love" strategy.

Two deadlines were imposed. The first, in May 2011, applied to the requirement that any order not directing payment to the SDU be returned. The second deadline, May 31, 2012, applied to the requirement that any order not issued on the standardized IWO be rejected and returned. Although these appear to be deadlines imposed upon employers, in effect they are deadlines for the issuers of IWOs: by those dates, they should have expected to start seeing their orders returned.

In May 2011, OCSE issued Action Transmittal 11-05 (www.acf.hhs.gov/programs/cse/pol/AT/2011/at-11-05.htm) detailing the conditions under which orders are to be rejected and also providing instructions for employers that have already processed orders with payments going somewhere other than to an SDU. If an employer is already withholding and remitting, it is instructed to contact the state child support enforcement agency and request a revised order. Until the revised order is issued, the employer is instructed to continue to make payments to the non-SDU address. ■

Commuter Benefits Parity Derailed for Now

Legislation that would have restored parity between employer-provided parking and mass transit benefits was not included in the Moving Ahead for Progress in the 21st Century Act (MAP-21) that the President signed into law on July 6 (see "Inside Washington" for June). This means employers will not have to adjust their qualified transportation fringe benefit programs yet, unless new legislation is introduced later this year.

MAP-21, which generally provides federal highway safety and construction funding, required a lawmaker vote by June 30 to avoid exhaustion of highway transportation funding. Senator Charles Schumer (D-New York) proposed to include a provision to make the employer-provided parking and mass transit benefits equal. At the same time, members of the House were debating their own version of the bill, which did not include Schumer's parity provision.

On June 29, the House and Senate reconciled their competing versions of the bill. Once reconciled, the approved final bill (H.R. 4348) did not include the transit parity provision.

Reinstating parity among qualified transportation fringe benefits may not be dead yet, however, since such a provision is included in a bill extending a number of tax breaks for businesses and individuals that was approved by the Senate Finance Committee in a rare bipartisan show of support last month (see PAYROLL CURRENTLY, Issue No. 8, Vol. 20). ■