

INCOME WITHHOLDING FOR SUPPORT – THE FORMS

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I. Income Withholding for Support Act (IWSA):

A. Background:

The genesis for January 1, 1999, provisions for mandatory withholding of income for support was the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996. §314 of the Act required states to have statutorily prescribed procedures for mandatory income withholding for support payments subject to enforcement. The law also required each state to adopt the Uniform Interstate Support Act. Based upon this all states now have adopted some form of the UIFSA (see the Gitlin Law Firm's article regarding UIFSA) and all states provide for mandatory support withholding.

This article focuss on the problems with the various Illinois withholding notices due to the fact that they have not been updated in order to follow the Federal form and then incorporate to the extent permissible what must be in the withholding notice per Illinois law.

Many requirements of the [Income Withholding for Support Act](#) can be determined by reviewing the applicable forms:

- [Uniform Order for Support;](#)
- Notice / Order to Withhold Income for Support (Income Withholding for Support Form);
- Proof of Service of Income Withholding Notice;

The Family Law Study Committee should have required the use of a uniform forms for income withholding as well as a new Uniform Order for Support. Unfortunately, this was done because work as to child support was pursuant to a separate committee.

As also discussed below, the income withholding notice must be **“in the standard format prescribed by the federal Department of Health and Human Services.”** [750 ILCS 28/20 (c)(1)]. So where can we find the standard format prescribed by the federal Department of Health and Human Services (DHHS). That "standard format" has gone through several changes in the last decade. See Form [OMB-0970-0154](#) for “Sample Form,” – Income Withholding for Support, created through the DHHS Office of Child Support Enforcement updated.

<https://acf.gov/css/training-technical-assistance/income-withholding-support-iwo-training>

The current [instructions form](#) states:

INCOME WITHHOLDING FOR SUPPORT (OMB 0970-0154 exp. 7/31/2017).

Ideally, state-wide or at least county by county our withholding forms would be comprehensively updated to be consistent with the requirements of the statute.

Any form used in Illinois must comply with this form. A key point based on this form is the requirement that unless the notice is being sent by the state or a tribal child support enforcement agency one must send along with the notice a copy of the law that allows the obligee to send the notice (in Illinois, §20(g) of the IWSA). The DHHS form is subject to updates.

Unfortunately, the form Notice to Withhold Income for Support in use in most counties in Illinois does not incorporate the current Federal law as well as the updates to Illinois law including the 2010 amendments and the 2016 amendments. For this reason, I revised the form so it is as consistent with the Federal form and the requirements of Illinois law. See the attached fillable notice/order to withhold income for support.

Illinois law does not require the notice for income withholding to be approved by the judge or by the clerk of the court to make certain that it conforms to the underlying support order. The order/notice follows the federal form in that it provides for the court's "authorization." The court could approve the form notice, i.e, enter it as an order - thus verifying that it conforms to the support order. But remember: the court does not have to "enter" a withholding order. This has not been a requirement under Illinois law since 1997. Ever since that date, it has been possible to simply serve an income withholding "notice" on the employer. Also, keep in mind the requirements of [UIFSA §502\(b\)](#). This refers to an "order." But section 502(b) of the UIFSA provides, "The employer shall treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this State." For a good article that goes to many of the same points that I have made over the years regarding income withholding notices, see:

<https://www.iicle.com/articles/article.aspx?id=44>

B. **Withholding Notices Standard Form Must Follow HHS Form:**

Illinois law mandates that every support order shall:

“Require an income withholding notice to be prepared and served immediately upon any payor of the obligor by the obligee or public office, **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 order for support shall provide that an income withholding notice is to be prepared and served only if the obligor becomes delinquent in payment the order for support; and

Contain a dollar amount to be paid until payment in full of any delinquency that accrues after entry of the order for support. The amount for payment of delinquency shall not be less than 20% 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.”

The income withholding notice per Illinois law is required to be in the *"standard format prescribed by the federal Department of Health and Human Services."* [750 ILCS 28/20 (c)(1)]. But note that despite the mandatory nature of the use of the word "shall" most forms are non-compliant. As stated in that website:

All employers must honor an income withholding order/notice for child support from any state. Out-of-state income withholding orders/notices are valid throughout the country including U.S. territories. **All states are required to use a standardized withholding form entitled Income Withholding for Support (OMB-0970-0154)**

See: www.acf.hhs.gov/programs/cse/newhire/employer/private/income_withholding.htm

www.acf.hhs.gov/programs/cse/forms/ (This contains links to the various Federal child support related forms)

www.acf.hhs.gov/programs/cse/forms/OMB-0970-0154.pdf (This contains a link to the current Federal form). But keep in mind that one should not use this Federal form, per se, because it does not incorporate the required Illinois provisions.

Nevertheless, numerous requirements in the IWSA of what must be provided in notices for income withholding are not in this standard format. Accordingly, the attached form has been revised to correspond as directly as possible to Illinois law. The IWSA contains specific requirements that would not be within the required Federal form. These additional requirements:

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

(4) Direct any payor or labor union or trade union to enroll each child as a beneficiary of a health insurance plan and withhold or cause to be withheld, if applicable any required premiums; and

(7) **in bold face type, the size of which equals the largest type on the notice**, state the duties of the payor and the fines and penalties 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 under this Section; and

(8) state the rights, remedies, and duties of the obligor under this Section; and

(9) include the Social Security number of the obligor; and

(11) 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; ***

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