

AMERICAN PAYROLL ASSOCIATION

March 12, 2021

The Honorable Steve Yeager
Chair, Judiciary Committee
Nevada Assembly
Steve.yeager@asm.state.nv.us

The Honorable Rochelle T. Nguyen
Vice Chair, Judiciary Committee
Nevada Assembly
Rochelle.nguyen@asm.state.nv.us

Re: Recommendations on A.B. 37, An Act Relating to Supporting Children

Dear Assemblyman Yeager and Assemblywoman Nguyen:

The American Payroll Association (APA)¹ appreciates the revision of Nevada law relating to enforcement of obligations for support of children found in A.B. 37 and offers recommendations for your consideration. The APA's recommendations relate to model legislation developed by the Lump Sum Collaborative Workgroup, consisting of representatives from state child support enforcement agencies and payroll professionals with technical assistance from the federal Office of Child Support Enforcement (OCSE).²

Change the Definition of "Lump Sum Payment"

The APA recommends a different approach to the Section 5 definition of "lump sum payment." The definition should be based upon the definition provided by the U.S. Department of Labor (DOL)³ and included in the model legislation on lump sum payments:

"Lump-Sum Payment" includes, but is not limited to, discretionary and non-discretionary bonuses, commissions, performance bonuses, merit increases, safety awards, signing bonuses, moving and relocation incentive payments, holiday pay, termination pay, and severance pay. Lump-sum payment also includes workers' compensation, insurance settlements, and personal injury settlements paid as

¹ The APA is a nonprofit professional association serving the interests of about 20,000 payroll professionals in the United States. APA's primary mission is to educate payroll professionals about the best practices associated with paying America's workers while complying with all applicable federal, state, and local laws. APA's Government Relations Task Force (GRTF) works with legislative and executive branches of government to help employers understand their legal obligations, with significant emphasis on minimizing the administrative burden on government, employers, and individual workers. APA members play a vital role in the child support program because 75% of collections comes from income withholding,

² The lump sum model legislation can be found at <https://www.americanpayroll.org/docs/default-source/government-relations/19m04-lump-sum-payments.pdf>.

³ The DOL information can be found in an opinion letter: https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/2018_04_12_1NA_CPPA.pdf.

replacement for wages owed. Lump-sum payment means income other than a periodic recurring payment of earnings on regular paydays and does not include reimbursement for expenses.

The DOL opinion letter outlines an approach to determining which lump sum payments are subject to the Consumer Credit Protection Act (CCPA) limitations on withholding for child support.

More Broadly Recognize Electronic Capabilities

The APA recommends that Nevada not prescribe a separate reporting form and allow for use of a national, standardized, electronic reporting process. In Section 7, Subsection 2(a), the form that an income payer must use to report a lump sum payment is prescribed by the Nevada Division of Welfare and Supportive Services (DWSS). At this time, the U.S. Department of Health and Human Services' Office of Child Support Enforcement is enhancing its Child Support Portal to allow for electronic communication between state child support enforcement agencies and employers.

The APA recommends a restructuring of Section 12 because, as written, the provisions are confusing as to whether a notice to withhold income must be sent by first class mail or can be sent electronically, although the intent appears to allow for both delivery methods. Subsection 1 requires delivery by first class mail and Subsection 3 indicates that electronic delivery is permitted. However, the reason for the notice found in Subsections 1(a) and 1(b) as well as the requirement in Subsection 2 to send a second notice appear to only apply to delivery by first class mail. The content of the notice found in Subsections 3(a) through 3(g) appear to only apply to electronic delivery of notices.

Change the Income Payer Notice Provisions

The APA recommends the approach found in the model act, which allows income payers to determine the disposable earnings portion of the lump sum payment amount and release 50% immediately to the obligor. In Section 7, Subsection 2(b), the income payer would be required to notify the DWSS 10 days before intending to release the lump sum payment to the obligor. The problem for payroll departments that manage child support withholding is that they rarely know in advance that an employee obligor will receive a lump sum payment. To hold the full amount of the payment can defeat the purpose of an employer's decision to provide a lump sum payment and can create compliance risks for employers under wage and hour laws.

By releasing 50% immediately, the remaining 50% can then be held by the income payer for 15 calendar days from the date the income payer reports the lump sum payment. This approach ensures compliance with the CCPA, recognizes employer processes, sets

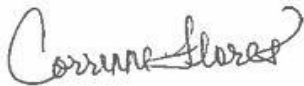
reasonable response times for state agencies, and provides employees with a portion of their pay.

Fix Inconsistent Provisions Between NRS Withholding Limits and Income Payer Holding of Obligors Lump Sum Payments Pending DWSS Determination

The APA recommends that the withholding limit for lump sum payments and income payer holding requirements be consistent. Section 10, Subsection 2, recognizes the CCPA limits as set forth in NRS 31.295. These limits range from 50% to 65%, which is less than the Section 7 requirement for income payers to hold 100% pending a DWSS determination on arrears owed. For lump sum payments, the APA prefers a withholding limit of 50% as described in the model legislation.

To discuss the APA's recommendations further, please contact Alice Jacobsohn at 202-669-4001 or ajacobsohn@americanpayroll.org.

Sincerely,



Corrinne Flores
Chair, GRTF Subcommittee on Child Support



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