

Guidance Issued on How to Apply the Wage Exemption for Restraining Notices and Levies

April 4, 2017

The New York State Department of Financial Institutions (“DFS”) has issued guidance for financial institutions on how to calculate the wage exemption under New York State’s Exempt Income Protection Act (“EIPA”). This guidance is intended to clarify the wage exemption given recent changes in New York’s minimum wage amounts.

Under the EIPA, certain funds in deposit accounts are exempt from most restraining notices and levies. One exemption under the EIPA is for an amount deemed to be protected wages, with the amount of such exemption tied to the minimum wage. As a result of a recent increase in the New York State minimum wage, the amount of the wage exemption under the EIPA increased on December 31, 2016. However, because the minimum wage amount now varies based on location and, in New York City, based on the size of the employer, there has been uncertainty regarding the proper amount of the wage exemption. DFS has now issued guidance on how to apply the wage exemption based on the variable minimum wages.

As of December 31, 2016, the minimum wage in New York State varies depending generally on the location in New York State where the person is employed. As of December 31, 2016, the minimum wage in New York City is either \$11.00 (if the employer has 11 or more employees) or \$10.50 an hour (if the employer has 10 or fewer employees); the minimum wage in Nassau, Suffolk and Westchester Counties is \$10.00 an hour; and the minimum wage in all other parts of the state is \$9.70 an hour.

This variation in the amount of the minimum wage in New York State created uncertainty with respect to the proper amount of the wage exemption under the EIPA. The DFS has now provided the following guidance on how to address this issue:

- i. If, after reasonable due diligence, a banking institution obtains the most current information regarding the employment address of an account holder and, if applicable, the most current information regarding the size of an account holder’s employer located in New York City, the banking institution should calculate the amount of exempt wages based on such information.
- ii. However, if, after reasonable due diligence, a banking institution is unable to obtain the most current information, as described under (i) above, the banking institution may use the highest minimum wage in effect in the State at the time of such calculation, thereby protecting the account holder’s wages as required by law.

Please note that the DFS guidance does not specify what type of activity constitutes “reasonable due diligence” with respect to these issues.

Please note that this advisory is a general overview of the EIPA and the DFS guidance and is not intended as legal advice. The requirements of the EIPA are very detailed and must be reviewed in their totality and in connection with federal rules protecting certain funds from garnishment. If you have any questions regarding the EIPA or the exemption of depositor funds from restraint or levy, please feel free to contact Joseph D. Simon at [516-357-3710](tel:516-357-3710) or via email at jsimon@cullenanddykman.com, or Kevin Patterson at [516-296-9196](tel:516-296-9196) or via email at kpatterson@cullenanddykman.com.

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