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# Notice to Financial Institutions: Wage Exemption Amount for Restraining Notices and Levies to Increase in New York State on January 1, 2024

December 13, 2023

Under New York's Exempt Income Protection Act ("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 an increase in the New York State minimum wage that takes effect on January 1, 2024, the amount of the wage exemption under the EIPA will increase as of that date.

The EIPA took effect in 2009 and, among other things, requires financial institutions to exempt certain funds in deposit accounts from the reach of creditors seeking to restrain or levy on those accounts. There are two exemptions under the EIPA: (1) for wages; and (2) for the direct deposit or electronic payment of amounts "reasonably identifiable as statutorily exempt" funds during the 45-day period preceding the service of the restraining notice or levy.

Under the wage exemption, a financial institution must make a certain amount available to the depositor based on the amount of the federal or New York State minimum wage (whichever is higher). Because the New York State minimum wage will increase on January 1, 2024, the amount of the wage exemption under the EIPA will also increase as of that date. As of January 1, 2024, the minimum wage in New York City and Nassau, Suffolk and Westchester Counties will increase to $16.00 an hour, and the minimum wage in all other parts of the state will increase to $15.00 an hour.

**The corresponding wage exemptions as of January 1, 2024 are as follows: $3,840 in New York City and Nassau, Suffolk and Westchester Counties, and $3,600 in all other parts of the state.**

The New York State Department of Financial Services ("DFS") provided guidance to banking institutions in April 2017 on how to determine the applicable wage exemption given the possibility that the institution may not know where its customer is employed. The DFS guidance states that:

- If, after reasonable due diligence, a banking institution obtains the most current information regarding the employment address of an account holder…the banking institution should calculate the amount of exempt wages based on such information.

- However, if, after reasonable due diligence, a banking institution is unable to obtain the most current information, 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.

As noted above, in addition to the wage exemption, there is an exemption for statutorily exempt funds. Under this separate exemption, if there was a direct deposit or electronic payment of statutorily exempt funds in an account during the 45-day period preceding the service of the restraining notice or levy, then the institution generally must make available to the depositor up to $3,000 from the account despite the restraining notice or levy. The current amount of $3,000 was increased to that amount in April 2021 and is subject to change again in April 2024, and every three years thereafter based on changes in the consumer price index.

Please also note that federal regulations impose obligations on financial institutions in connection with the garnishment of accounts containing federal benefit payments.

This advisory is a general overview of the application of the EIPA 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 or via email at jsimon@cullenllp.com, Elizabeth A. Murphy at (516) 296-9154, or via email at emurphy@cullenllp.com, or Gabriela Morales at (516) 357-3850 or via email at gmorales@cullenllp.com.

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