

Restraining Notices and Levies under New York State Law

December 4, 2013

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 upcoming increase in the New York State minimum wage, the amount of the wage exemption under the EIPA will increase from \$1,740 to \$1,920 on December 31, 2013.

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: one for wages and a separate exemption if an account received a 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. If there was such a direct deposit or electronic payment during that 45-day period, then the institution must make available to the depositor up to \$2,625 from the account despite the restraining notice or levy. (The current amount of \$2,625 is subject to change in April 2015 and every three years thereafter based on changes in the consumer price index.)

Under the separate 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 is increasing from \$7.25 to \$8.00 an hour as of December 31, 2013, the amount of the wage exemption under the EIPA is increasing from \$1,740 to \$1,920 as of that date.

Please note that this is a general overview of the EIPA, and this advisory is not intended as legal advice. The requirements of the EIPA are very detailed and must be reviewed in their totality and also 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@cullenanddykman.com, or Elizabeth A. Murphy at 516-296-9154 or via email at emurphy@cullenanddykman.com.

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