



Wage Exemption Amount for Restraining Notices and Levies under New York State Law

December 8, 2016

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 on December 31, 2016.

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 is increasing as of December 31, 2016, the amount of the wage exemption under the EIPA is also increasing as of that date.

Under legislation signed into law earlier this year, the minimum wage in New York State will now vary 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 will either be \$11.00 or \$10.50 an hour depending on the size of the employer; the minimum wage in Nassau, Suffolk and Westchester Counties will be \$10.00 an hour; and the minimum wage in all other parts of the state will be \$9.70 an hour.

This variation in the amount of the minimum wage in New York State creates uncertainty with respect to the proper amount of the wage exemption under the EIPA. It will be difficult for an institution to apply different exemption amounts based on the different minimum wages, given that the institution may not know in which county the judgment debtor (the institution's customer) is employed or whether such person is actually employed within the state. If an institution cannot determine where the judgment creditor is employed, the institution could consider basing the wage exemption on either the highest or lowest minimum wage in the state. If the exemption is based on the highest minimum wage applicable in the state (\$11.00 for large employers in New York City), the resulting wage exemption will be \$2,640.00. If the exemption is based on the lowest minimum wage applicable in the state (\$9.70), the resulting wage exemption will be \$2,328.00.

It is our understanding that the New York State Department of Financial Services (“DFS”) is aware of this issue and there is a possibility of DFS issuing guidance to financial institutions on how to handle the wage exemption, and/or seeking a statutory amendment to resolve the issue. We will continue to monitor this issue and report on any further developments.

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 \$2,750 from the account despite the restraining notice or levy. The current amount of \$2,750 was increased in April 2015 and is not subject to change again until April 2018, and every three years thereafter based on changes in the consumer price index.

Please note that 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@cullenanddykman.com, Kevin Patterson at 516-296-9196 or via email at kpatterson@cullenanddykman.com, or Adam Barazani at 516-357-3767 or via email at abarazani@cullenanddykman.com.

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