

CCPA-9

June 5, 1970

This is in reply to your letter of February 27, 1970, concerning the application of Title III, Restriction on Garnishment, of the Consumer Credit Protection Act to employees of your State classified service. For easy reference, your questions are repeated before our responses to them.

1. Title III of the Truth in Lending Act is silent with regard to limitations on time and number of separate garnishment actions resulting from a single debt. We interpret this to mean that regardless of the number of separate garnishment proceedings and regardless of the period of time subsequent to incurring this debt, a state department is prohibited from discharging an employee because of garnishment actions resulting from the indebtedness?

We concur in your interpretation that the term "one indebtedness" refers to a single debt. Section 304 of the title prohibits an employer from discharging an employee because his earnings have been subject to garnishment for "any one indebtedness".

In this connection, it should be noted that the enclosed letter dated June 12, 1969, states that the term "one indebtedness" means a single garnishment proceeding. The statement was in response to a question as to whether or not the term "one indebtedness" refers to a debt to one creditor or to one garnishment proceeding in which one or more creditors participate. It should be added that section 304 affords identical protection in States which permit the garnishment of future wages and those which do not. Thus, in a State which does not permit the garnishment of future wages, there is a prohibition against discharge of an employee even though many separate garnishment proceedings may be instituted, so long as they are for the same indebtedness.

2. If the aforementioned interpretation is correct, can the employee incur another debt with the same creditor or extend the original debt or cause himself to become indebted by a greater amount at some later date and still retain the same protection from discharge if additional garnishment actions are initiated by the creditor?

We are reluctant to attempt a categorical response to your question since it is not entirely clear how section 304 applies to "open accounts" or "running accounts". However, the practical difficulties of interpretation have been substantially reduced by the Supreme Court's decision in Sniadach v. Family Finance Corp. of Bay View, 37 U.S. Law Week 4520 (June 1969), holding that a wage garnishment under Wisconsin law without opportunity to be heard before trial of the main suit violated the due process requirements of the Constitution, even though the Court noted that the summary procedure involved might well meet the requirements of due process in "extraordinary situations". See also: McCallop v. Carberry, BNA Daily Lab. Rep. No.28, D-1 (2-10-70), wherein the Supreme Court of California found that State's prejudgment wage garnishment law did not afford a procedural due process under the rationale of Sniadach.

Where garnishment is sought in execution of a judgment it seems reasonable to conclude that the term "one indebtedness" used in section 304 has reference to the judgment itself, which may

represent an adjudication of one or more claims of a single creditor or possible claims of different creditors.

This result would appear to follow whether the term "indebtedness" is construed synonymously with the word "debt" or as a state of being in debt for sums which may be owing either singly or collectively. See generally 20A Words and Phrases, p. 477 for some judicial constructions of the term "indebtedness" in varying contexts.

3. Title III is silent with regard to suspension actions which might be brought about by an employer in an effort to persuade an employee to take responsible action with regard to meeting his obligation to a creditor. Would suspension of an employee without pay for recurring garnishment proceedings initiated as the result of a single indebtedness be interpreted as a violation of the Act?

Whether the prohibitions of section 304 apply to suspensions from employment would be dependent upon the particular circumstances involved. The legislative history of the provision indicates that it was intended as a protection against "firing". If suspension is for an indefinite period or of such length that the employee's return to duty is unlikely, it may well be considered tantamount to "firing" and thus within the term "discharge" under section 304.

4. Title III clearly specifies that no employer may discharge an employee by reason of his earnings being subject to garnishment for a single indebtedness. We interpret this to mean that discharge actions would be initiated against an employee provided more than one creditor sought to collect through garnishment proceedings. For our interpretation to be correct must the employee be indebted to more than one creditor at the same time or could that situation be one of a series of non-overlapping debts with subsequent garnishment actions brought about by separate creditors?

Please see our response to question 2.

Sincerely,

Robert D. Moran
Administrator