CCPA-61

December 21, 1972

This is in reply to your letter of June 22, 1972, concerning an interpretation of Title III of the Consumer Credit Protection Act. You ask how long an employer's liability might continue under the provisions of the Act which restrict discharge from employment because of garnishment.

The statement of facts enclosed with your letter indicated that garnishment writs were received with respect to the employee in question both before and after July 1, 1970, which is the effective date of Title III of the Act. As you know, the garnishments which were fully executed before July 1, 1970, may not be taken into account in applying the Act's restrictions on discharge from employment. This is fully explained in the enclosed copy of opinion letter WH-83.

After July 1, 1970, the employer received two garnishment writs from "creditor C" and the employee in question was discharged in mid-August 1970, a few days after the second of these writs was received. In response to our question, you verbally advised Mr. Solomon Sugarman of my staff that both garnishment writs from "creditor C" were for the same debt.

Section 304(a) of the Act provides that: "No employer may discharge any employee by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness". It is clear under the above facts that section 304(a) of the Act was violated by the employer of the employee in question.

The facts you give are not adequate to determine whether the violation of section 304(a) was willful. Section 304(b) provides penalties in the form of a fine and/or imprisonment in the case of willful violations of section 304(a). For the purpose of this reply in the absence of any facts pertinent to section 304(b), our discussion is limited solely to the treatment of these facts under section 304(a).

Title III of the Consumer Credit Protection Act does not prescribe any time limit during which an improperly discharged employee or the Department must file a complaint pursuant to section 304. The relief sought in a particular case which is instituted solely under section 304(a) is elimination of the adverse effects of the unlawful action and redress of the employee's rights by such means as attaining restoration to the same employment held before wrongful discharge and restitution of the wages lost as a result of an illegal discharge.

Such relief is equitable in nature. In an equitable action the neglect or omission to assert a right is taken in conjunction with the lapse of time and other circumstances in weighing whether there has been not mere delay, but delay that is prejudicial or that works a disadvantage to another. If one knows his rights and takes no steps to enforce them until the condition of the other party has, in good faith, become so changed that he cannot be restored to his former state, such delay operates as an estoppel against the assertion of the right. These are considerations in applying the general rule that he who seeks the aid of equity must show that he has used reasonable diligence in asserting his rights and demanding their protection, and unreasonable delay in seeking the aid of a court of equity will generally prove a bar to the exercise of the jurisdiction.

We do not perceive any prejudicial or unreasonable delay in this case which has yet worked a disadvantage on the employer. Nor is there any indication whether the employee knew his rights under Title III of the Act, which became effective only shortly before his wrongful discharge. Therefore, in reply to your first and third questions, we would currently consider the employer liable for the violation and for the injury to the employee under the terms of section 304(a) and we would not consider the employer's liability to be in any way mitigated by the employee's failure to file a complaint. How long the employer's liability would continue would ultimately be determined under the criteria given in the preceding paragraph.

In response to your second and fourth questions, which concern the means of remedying the situations, the employer would have several alternatives. He could raise the matter with this Department and in this case we would be inclined to limit our activity to seeking redress only under section 304(a) of the Act. Also, the employer could attempt on his own to work out a settlement with the employee. Although public rights enforceable as such are created by Title III, section 304 gives individual employees a right to protection from discharge in violation of its terms which the Department of Labor considers may be privately enforced. However, a private settlement must be reached in good faith and not in derogation of the employee's rights. Such a settlement if made in good faith, would include at least a bona fide offer of reinstatement, including all the benefits to which the employee would have been entitled had the employment not been wrongfully severed and restoration of all the wages lost between the illegal termination and the date of settlement, less any earnings the employee may have accrued during such period. Also, all references in company records to the employee's discharge should be expunged.

Sincerely,

Ben P. Robertson
Acting Administrator
Wage and Hour Division