

Tennessee Child Support Program

FAQs for Employers/Payers of Income

Income Withholding Order for Support (IWO)

1. What is an Income Withholding Order (IWO)?

The Income Withholding Order contains the procedures that employers and payers of income must follow to implement an Order/Notice to Withhold Income for Child Support for an employee/income recipient.

Withholding support in accordance with the Notice/Order shall have priority over any other legal process under state law against the same wages or other income for debts other than child support.

2. What is Electronic Income Withholding (e-IWO)?

In partnership with Federal Office of Child Support Enforcement (OCSE), Tennessee participates in the e-IWO program. e-IWO is a paperless method for employers/income payers and states to exchange Income Withholding Orders (IWO), notifications of employee/income recipient termination, and lump sum payments made by employers/income payers. As of December 1, 2015, 48 states, including Puerto Rico and the District of Columbia, use e-IWO and the remaining 2 states are in the development stage.

For both employers/income payers and states, e-IWO saves time, money, and resources. It also increases the speed with which IWOs are issued and implemented and the accuracy and reliability of the information being exchanged. In addition, families receive needed support payments more quickly.

Two e-IWO methods are available to employers, a System-to-System method and No Programming Options (NPO). For more information, see the e-IWO information Guide in the Employer Services section of the Tennessee Child Support Services webpage: http://www.tn.gov/humanserv/cs/cs_main.html. Information is also available at the OCSE website <http://www.acf.hhs.gov/programs/css>. Click on the EMPLOYERS link near the top of the page.

3. What legal requirements are there with an Income Withholding Order (IWO)?

Tennessee Code Annotated (T.C.A.) 36-5-501 and the State Rules of the Department of Human Services 1240-2-2-.05 contain the full legal requirements for income withholding and the procedures for complying with an Income Withholding Order (IWO). The Tennessee Code Annotated is available on the Internet at <http://www.lexisnexis.com/hottopics/tncode/>. The Rules of the Department Of Human Services are available at <http://share.tn.gov/sos/rules/1240/1240.htm>.

Some important requirements to be aware of are:

As an employer/payer of income, you are required to comply with an Income Withholding Order (IWO). An IWO or any subsequent modification is binding upon any employer, person or corporation, including successive employers, fourteen (14) days after mailing or other transmission. (T.C.A. §36-5-501(g)(1))

You are required to notify the office that issued the Income Withholding Order when the employee terminates employment, or if income payments are terminated. You are also required to provide to that office the last known address of the employee/recipient of income and the name and address of his/her new employer, or new source of income, if that is known. (T.C.A. §36-5-501(g)(2))

It is unlawful for an employer/payer of income to use income withholding as a basis for discharge or for any disciplinary action against an employee. (T.C.A. §36-5-501(i))

4. **What are the penalties if I fail to comply with an Income Withholding Order (IWO)?**

Per T.C.A. §36-5-501(p), if you fail or refuse to withhold income in accordance with the provisions of the Income Withholding Order (IWO) you are liable for any amount up to the accumulated amount that should have been withheld from the income of the employee/income recipient. In addition, you may be subject to a civil penalty to be assessed.

Per T.C.A. §36-5-501(i), it is unlawful for an employer to use the IWO as a basis for discharge or for any disciplinary action against the employee. An employer/payer of income is subject to a fine for a Class C misdemeanor if the income withholding is used as a basis to refuse to employ a person, or to discharge the employee/income recipient, or for any disciplinary action against the employee/ income recipient.

5. **What must I do when I receive an IWO?**

Whenever you receive an Order/Notice to Withhold Income for an employee/income recipient whose principal place of employment is Tennessee, you must begin withholding support from the individual's income no later than the first pay period **occurring fourteen (14) working days** after the date of the Order/Notice. You must send the payment to the State Disbursement Unit (SDU) within seven (7) working days of the date the employee/income recipient is paid. See FAQ #13 for more information about sending payments to the SDU.

6. **The Income Withholding for Support (IWO) doesn't have a judge's signature. Do I still have to comply with it?**

Yes. The Income Withholding for Support is a federally required form and must be used in all support cases in all states. The signature of a judicial officer is not required when the order is sent by a Local Child Support Agency (LCSA), which is a county or regional child support office. In Tennessee, only a court clerk and the IV-D Child Support Agency and/or its contractors have the authority to issue IWOs.

7. **If an IWO is from another state, must the payment be sent to that state?**

Yes. You must comply with Income Withholding Orders from other states. Instructions on the IWO will specify where to mail the payment. Please DO NOT send payments ordered by other states to the Tennessee State Disbursement Unit (SDU).

8. **What if the name and/or Social Security number on the IWO do not match my employee/income recipient?**

Call the Tennessee Employer Line at 800-446-0814 to find out if there is an error in the number or name, or if this could be a case of mistaken identity.

9. **How does Tennessee law define “employer”?**

Per T.C.A. § 36-5-501(k)(1), an “employer, person, corporation or institution,” who or which may be required to withhold income, includes the federal government, the State and any political subdivision thereof and any other business entity that has in its control funds due to be paid to a person who is obligated to pay child support.

10. **My employee/income recipient has a Non IV-D case. What is Non-IVD?**

A Non-IV-D case (also known as a private case) is a case that is not filed with a local child support agency but has been prepared and filed by a private attorney, paralegal, or participant on the case. Non-IV-D cases are where child support is established and maintained privately, such as following a divorce. Some Non-IV-D cases become IV-D cases when a case member applies for services in an attempt to collect outstanding, unpaid child support.

National Medical Support Notice

11. **What is the National Medical Support Notice (NMSN)?**

The National Medical Support Notice (NMSN) is a two-part notice sent to employers from a local child support agency. Its purpose is to ensure that children receive health care coverage when it's available and required as part of a child support order.

Employers and health plan administrators are required to complete and comply with the National Medical Support Notice (NMSN) form sent to the employer. (Tennessee Code Annotated (T.C.A. § 36-5-501(a)(3)(A) and (B)).

New Hire Reporting

12. **What is the New Hire law?**

Effective October 1, 1997, state and federal law require all employers to report each new and re-hired employee to the State Directory of New Hires (T.C.A § 36-5-1102-1105). Public law defines a newly hired employee as (i) an employee who has not previously been employed by the employer; (ii) or was previously employed by the employer but has been separated from such prior employment for at least 60 consecutive days. Failure to report a new employee could result in a fine of \$20 for each employee who is

not reported. Additional information regarding reporting may be found at <https://newhire-reporting.com/TN-Newhire/NewHireLaw.aspx>.

Making Payments

13. How often do I withhold income and send in payments for child support for my employee/income recipient?

Payments may be deducted from the individual's wages or other income weekly, biweekly, or monthly to coincide with his/her pay periods; or at other intervals that income is paid. Payments must be sent to the address shown on page 1 of the Income Withholding Order (IWO) within **seven (7) days** of the date the employee/obligor is paid.

14. What options does an employer/payer of income have for submitting payments to the State Disbursement Unit (SDU)?

All payments sent through the mail must be made payable to **TENNESSEE CHILD SUPPORT** and mailed to the following address:

**Tennessee Child Support
State Disbursement Unit (SDU)
P.O. Box 305200
Nashville, TN 37229**

State law (T.C.A. § 36-5-120) requires you to provide the following information along with each payment you send to the State Disbursement Unit (SDU):

- Docket number
- Employee's/obligor's name
- Court identifier
- Employee's/obligor's Social Security number
- Employee's/obligor's return address

Payments can also be submitted using the following electronic payment methods.

- **EFT/ EDI (Electronic Funds Transfer/ Electronic Data Interchange)**

With EFT/ EDI, secure electronic payments are sent from the employer/income payer to the State via the ACH (Automated Clearing House) banking network. This process uses a file from the employer/income payer that identifies the employees/income recipients and the support payments being made

EFT/EDI requires an employer/income payer to make programming changes in their system to allow them to send payment and identification information in the federally required NACHA (National Automated Clearing House Association) format. Because of the long-term financial savings, reliability, and accuracy, this method is particularly advantageous to large employers/income payers who submit support payments for numerous employees/income recipients. .

- SmartPay (Web Payments)

SmartPay web payments use the ACH (Automated Clearing House) network of financial institutions to electronically transfer support payments from an employer/income payer to the State. It allows smaller employers/income payers to securely submit child support payments without having to make programming changes in their system. Employers/income payers who use a manual payroll method can also use SmartPay.

SmartPay is ideal for smaller employers who generally withhold support payments for approximately 50 or fewer employees/income payers. It can be used to schedule either recurring or non-recurring payments. Once recurring payments are set up, it is the employer's income payer's responsibility to cancel them, if necessary.

Visit the Tennessee Child Support Payment website at <https://tn.smartchildsupport.com/> for more information about setting up EFT/ EDI or SmartPay electronic payments.

15. How much of my employee's/income recipient's income can I withhold for child support?

The amount withheld for support may not exceed fifty percent (50%) of the employee's/income recipient's net wages or other income. For the purpose of income withholding, an individual's net income is defined as the amount remaining after deductions for FICA, withholding taxes, and health insurance premiums that cover the child/ren have been made. (T.C.A. §36-5-501(a)(1)) It is the employer's responsibility to determine when the 50% level is met.

If you are unable to deduct the full amount specified in this order due to the fifty percent (50%) limitation, the payment you remit should specify the following information for each obligor:

- The amount of the individual's net income (after taxes, FICA, and health insurance premiums to cover the child/ren have been deducted).
- Whether you have received prior Income Withholding Orders that prevent you from fully complying with this order.

16. May I charge the employee/income recipient a fee for withholding and submitting child support payments on their behalf?

You may, at your discretion, charge the employee or other recipient of income an amount of up to five percent (5%), not to exceed five dollars (\$5) per month, for your costs in complying with this order.

Multiple Employees/Orders

17. May employers/payers of income combine the child support payments from more than one individual into one check?

Yes. If you are required to withhold support from more than one person, you may combine withheld amounts in a single payment. However, with the payment, you must provide a list that specifies what portion of the single payment is attributable to each individual.

Helpful Hints:

- Employers who receive a “Turn-Around Document” (TAD) from Tennessee Child Support can find the name and SSN for each individual (s) listed on the TAD, as well as the docket number(s) for their child support order(s).
- Employers can simplify the process of submitting child support payments by using electronic payment methods. Visit the Tennessee Child Support Payment website at <https://tn.smartchildsupport.com/> for more information on electronic pay options.

18. What do I do if I receive more than one Income Withholding Order (IWO) for an employee/income recipient, but the amount I can withhold from their income is not enough to pay all of the obligations?

If you receive more than one IWO for one individual, you must honor all IWOs to the extent that the total amount withheld from an employee’s/income recipient’s income does not exceed fifty percent (50%) of their income after FICA, withholding taxes, and a health insurance premium that covers the child/ren are deducted.

If the amount you can withhold is not enough to cover the total amount due for all the IWOs, you must prorate the withheld amount in order to determine how much to allocate to each obligation.

According to federal law, the withheld amount must first be used to pay the individual’s **current** support obligations (the required support obligation for the month in which the support is being collected). If any amount remains after paying all current support, you must use the remaining amount to pay arrears obligations (the required support obligation for previous months).

For detailed instructions on prorating withheld income over multiple support obligations, see FAQ #19.

19. How do I allocate the income I withhold for one of my employees/income recipients when they have more than one Income Withholding Order (IWO), but not enough income to pay the support obligations on all of the IWOs?

The amount you are permitted to withhold from an individual's income cannot exceed 50% of their net income (the amount after FICA, withholding taxes, and a health insurance premium that covers the child/ren have been deducted).

If the amount you can withhold is not enough to pay the total amount due on multiple IWOs, you must prorate the amount you can withhold in order to determine how much to allocate to each obligation. Always determine how much of the withheld income to allocate for **current support** before allocating to any arrears that are owed.

The procedures, followed by an example of the calculations, are:

1. Determine the total amount of all current child support that is ordered to be withheld by all IWOs received for the employee or recipient of income
2. Calculate the percentage that each order for current child support represents of the total amount that is ordered.
3. Using these percentages, calculate how much of the employee's available net income (after FICA, withholding taxes, and a health insurance premium which covers the child/ren are deducted) should be deducted and applied to each of the orders for current child support.
4. If all current child support obligations are met from the IWOs, and child support arrearages exist in more than one case, but there is not sufficient income to pay the full amount of all ordered child support arrearages, you shall allocate the child support arrearages following the steps in # 1 – 3, above.

Whenever you prorate an employee's income to comply with more than one IWO, you must provide the following information for each case involved with each payment:

- Docket number
- County name and state
- The full ordered amount for the case
- The date the amount is deducted from the employee's or recipient's income.
- The percentage that each current support order represents of the total ordered amounts from all IWOs for this employee or recipient of income

Example of a proration for multiple IWOs

Assume an employee's net income [after taxes, FICA, and a health insurance premium to cover the child/ren is deducted] is \$900. Because of the 50% limit, the available income for use in the income assignment is \$450 (\$900 X 50%).

The employee is ordered to pay the following amounts:

\$250.00 per month for support order A
\$200.00 per month for support order B
\$150.00 per month for support order C
\$600.00 = the total amount of all income assignments.

This total exceeds the \$450.00 income available for income withholding. Therefore, you must pay the amount of the available income that each income withholding represents as a percentage of the total of all IWOs as follows:

Order A = $\$250/\600 , or 42%, x \$450 = \$189.00

Order B = $\$200/\600 , or 33%, x \$450 = \$148.50

Order C = $\$150/\600 , or 25%, x \$450 = \$112.50

If the employee has sufficient available income to satisfy all current child support orders, but not all ordered child support arrearages, you would apply the same proration procedure as shown above to the child support arrearage payment.