

Publications

Labor and Employment Alert: Federal Garnishments of Retirement Benefits

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In 1990, Congress enacted the Federal Debt Collection and Procedures Act. One feature of that law allows a federal court to issue a “writ of continuing garnishment” to access a convicted participant’s retirement plan benefits to satisfy a restitution order entered as part of the participant’s criminal sentencing. Despite the fact that this law change occurred more than 27 years ago, we have noticed a sudden uptick in the number of employers who are receiving these garnishment orders and who have been surprised to find that ERISA does not preempt them.

There are a few important nuances to note:

- This exception to ERISA’s normal preemption rules only applies to garnishment orders issued in connection with Federal CRIMINAL restitution awards. The plan must still refuse to honor most garnishment orders issued in connection with a Federal CIVIL restitution or damages award and state law claims.
- The garnishment order requires the plan to place a distribution hold on the affected participant’s plan account. Depending on your plan terms, the district attorney may be able to elect early payment on behalf of the participant.

If you get a garnishment order, it is important that you consider whether it could apply to retirement plan benefits, so that you respond appropriately. Contact your Vorys benefits attorney if you would like more information.