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Obligations of an employer upon receiving a National Medical Support Notice under Federal and Michigan Law

Issue

What are the obligations of an employer, who also serves as the plan administrator for its group health insurance plan, when that employer receives a National Medical Support Notice ("NMSN") issued by a child support enforcement agency.

Discussion

29 U.S.C § 1169 defines a Qualified Medical Child Support Order (QMCSO) as "a medical child support order which creates or recognizes the existence of an alternate recipient's right to, or assigns to an alternate recipient the right to, receive benefits for which a participant or beneficiary is eligible under a group health plan." Moreover, 29 USC 1169(a) requires all employers and plan administrators who offer dependent coverage to make health care coverage available to children of employees who are eligible and qualify for such coverage pursuant to a medical child support order. Courts generally require every employer group health plan to honor a properly prepared QMCSO that requires a plan participant to provide coverage for a dependent child. *O'Neil v. Wal-Mart Corp.*, 502 F. Supp. 2d 318, 320 (N.D.N.Y 2007).

42 USC § 666 requires certain procedures to be implemented by states in order to improve the effectiveness of child support enforcement. The section, which is discussed below, includes provisions which empower the employer to withhold form a noncustodial parent's income amounts that are payable as child support. See also 42 USC § 654(20)(A)

("A State plan for child and spousal support must. . . provide, to the extent required by section 466 [42 USCS § 666], that the State (A) shall have in effect all of the laws to improve child support enforcement effectiveness which are referred to in that section, and (B) shall implement the procedures which are prescribed in or pursuant to such laws).

DUTIES OF EMPLOYER- FEDERAL LAW

According to 42 USC § 666 (b)(6)(A), the employer of any noncustodial parent to whom notice has been given:

> "must be required to withhold from such noncustodial parent's income the amount specified by such notice (which may include a fee, established by the State, to be paid to the employer unless waived by such employer) and pay such amount (after deducting and retaining any portion thereof which represents the fee so established) to the State disbursement unit within 7 business days after the date the amount would have been paid or credited to the employee." The employer shall withhold funds as directed in the notice. However, when an employer receives an income withholding order issued by another State, the employer shall "apply the income withholding law of the State of the obligor's principal place of employment in determining
> (I) the employer's fee for processing an income withholding order;
> (II) the maximum amount permitted to be withheld from the obligor's income;
> (III) the time periods within which the employer must implement the income withholding order and forward the child support payment;
> (IV) the priorities for withholding and allocating income withheld for multiple child support obligees; and
> (V) any withholding terms or conditions not specified in the order."

42 USC § 666 (b)(6)(C) sets forth sanctions to an employer who fails to withhold from parents for whom notice has been given. Accordingly, the employer will be held liable to the State for any amount which such employer fails to withhold from income due to the employee following receipt of proper notice. However, the employer shall not vary the normal pay and disbursement cycles in order to comply with the notice requirements. *Id.* Further, 42 USC § 666 (b)(6)(D) states that provision must be made for the imposition of a fine against any employer who:

> (i) discharges from employment, refuses to employ, or takes disciplinary action against any noncustodial parent subject to income withholding required by this subsection because of the existence of such withholding and the

obligations or additional obligations which it imposes upon the employer; or

(ii) fails to withhold support from income or to pay such amounts to the State disbursement unit in accordance with this subsection.

DUTIES OF EMPLOYER- MICHIGAN LAW

MCL § 552.626a sets forth the duties of an employer that is notified of an order for dependant health care coverage. MCL § 552.626a (1) states as follows:

(1) If a parent is eligible for health care coverage through an employer doing business in the state, within 20 business days after the date of an order or notice of an order for dependent health care coverage, the employer shall notify its insurer or plan administrator and take other action as required to enroll that parent's child in its health care coverage plan or plans, without regard to any enrollment period restrictions, when all of the following exist:

(a) The parent is required by a court or administrative order to provide health care coverage for the parent's child.

(b) The child is eligible for coverage under the plan. A child cannot be denied enrollment or coverage on the grounds that the child was born out of wedlock, is not claimed as a dependent on the parent's federal income tax return, does not reside with the parent or in the insurer's service area, or is eligible for or receiving medical assistance.

(c) The employee applies for coverage for the child or, if the employee fails to apply, the friend of the court or child's other parent through the friend of the court applies for coverage for the child. Application by the friend of the court shall be in the form of the order for dependent health care coverage or a notice of the order for dependent health care coverage.

(2) If coverage is available through the parent's employer, the employer shall withhold from the employee's income the employee's share, if any, of premiums for dependent health care coverage not to exceed the amount allowed under section 8 and pay that amount to the insurer or plan administrator.

(3) An employer shall not disenroll or eliminate health care coverage of a child eligible for coverage and enrolled under subsection (1) unless the employer is provided with satisfactory written evidence that 1 of the following applies:

(a) The court or administrative order requiring health care coverage is no longer in effect.

(b) The child is or will be enrolled in comparable health care coverage that takes effect not later than the effective date of the disenrollment from the existing plan.

(c) The employer has eliminated dependent health care coverage for all of its employees or members.

Furthermore, MCL § 552.626b(2) states that "[A]n order or notice of an order for dependent health care coverage served on an employer shall direct the employer to withhold from the employee's income the employee's share, if any, of premiums for dependent health care coverage and pay that amount to the insurer or plan administrator." The section further adds that "[t]he order or notice shall also direct that the amount withheld for support, fees, and health care premiums shall not exceed the amount allowed under…15 U.S.C. 1673." 15 U.S.C. 1673 provides for the restriction of garnishment. 15 USC § 1673(b)(2) reads as follows:

> The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed--
>
> (A) where such individual is supporting his spouse or dependent child (other than a spouse or child with respect to whose support such order is used), 50 per centum of such individual's disposable earnings for that week; and
>
> (B) where such individual is not supporting such a spouse or dependent child described in clause (A), 60 per centum of such individual's disposable earnings for that week;
>
> except that, with respect to the disposable earnings of any individual for any workweek, the 50 per centum specified in clause (A) shall be deemed to be 55 per centum and the 60 per centum specified in clause (B) shall be deemed to be 65 per centum, if and to the extent that such earnings are subject to garnishment to enforce a support order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek.

DUTIES OF PLAN ADMINISTRATOR- FEDERAL LAW

29 USC § 1169 (a)(5)(A), which specifies the duties of the plan administrator to issue timely notifications and to make determinations regarding an order for dependent coverage, states in pertinent part:

> (i) the plan administrator shall promptly notify the participant and each alternate recipient of the receipt of such order and the plan's procedures for determining whether medical child support orders are qualified medical child support orders, and
>
> (ii) within a reasonable period after receipt of such order, the plan administrator shall determine whether such order is a qualified medical child support order and notify the participant and each alternate recipient of such determination.

Further, according to 29 USC § 1169 (a)(5)(C), when a the National Medical Support Notice is issued in the case of a child of a participant under a group health plan who is a noncustodial parent of the child, the plan administrator shall within 40 business days after the date of the Notice, take steps to enroll the child in the plan by:

> (I) notify the State agency issuing the Notice with respect to such child whether coverage of the child is available under the terms of the plan and, if so, whether such child is covered under the plan and either the effective date of the coverage or, if necessary, any steps to be taken by the custodial parent (or by the official of a State or political subdivision thereof substituted for the name of such child pursuant to paragraph (3)(A)) to effectuate the coverage; and
>
> (II) provide to the custodial parent (or such substituted official) a description of the coverage available and any forms or documents necessary to effectuate such coverage.

DUTIES OF PLAN ADMINISTRATOR - MICHIGAN LAW

MCL § 550.1807 sets forth the duties of a plan administrator in the event of an employee being ordered to provide dependent coverage. The section reads as follows:

> (1) If a parent is eligible for dependent coverage through a plan, the plan administrator shall:
>
> (a) Permit the parent to enroll, under the dependent coverage, a child who is otherwise eligible for coverage without regard to any enrollment season restrictions.
>
> (b) If the parent is enrolled but fails to make application to obtain coverage for the child, enroll the child under dependent coverage upon application by the friend of the court or by the child's other parent through the friend of the court.
>
> (c) Not eliminate the child's coverage unless premiums have not been paid as required by the plan or the plan administrator is provided with satisfactory written evidence of either of the following:
>
> (i) The court or administrative order is no longer in effect.
>
> (ii) The child is or will be enrolled in comparable health coverage through another plan, insurer, health care corporation, or health maintenance organization that will take effect not later than the effective date of the cancellation of the existing coverage.
>
> (2) If a child has health coverage through the plan of a noncustodial parent, that plan administrator shall do all of the following:
>
> (a) Provide the custodial parent with information necessary for the child to obtain benefits through that coverage.
>
> (b) Permit the custodial parent or, with the custodial parent's approval, the provider to submit a claim for covered services without the noncustodial parent's approval.
>
> (c) Make payment on claims submitted under subdivision (b) directly to the

custodial parent or medical provider.

(3) This section applies only if a parent is required by a court or administrative order to provide health coverage for a child and the plan is notified of that court or administrative order.

Further, MCL § 550.1805, prohibiting denial of dependent coverage to children on certain grounds, states:

A plan that offers dependent coverage shall not deny enrollment to a covered individual's child on any of the following grounds:

(a) The child was born out of wedlock.

(b) The child is not claimed as a dependent on the covered individual's federal income tax return.

(c) The child does not reside with the covered individual or in the plan's service area.