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Administrative Office of the Courts

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### **1603 Income Withholding Procedures**

#### **A. Authority**

Code of Federal Regulations: 45 C.F.R. § 303.100

New Jersey Statutes Annotated: N.J.S.A. 2A:17-56.8  
N.J.S.A. 2A:17-56.9  
N.J.S.A. 2A:17-56.10  
N.J.S.A. 2A:17-56.11  
N.J.S.A. 2A:17-56.13  
N.J.S.A. 2A:17-56.52

New Jersey Court Rules: R. 5:7-4A

#### **B. Overview**

An income withholding is also known as a wage attachment or a wage withholding. All court orders entered or modified must contain a provision for the current support and any arrears to be paid by the obligor's source of income (SOI) before the obligor is paid unless the order specifically provides for an alternative payment arrangement. The obligor's employer automatically deducts the required sum each pay period and sends it to the New Jersey Family Support Payment Center (NJFSPC).

#### **C. Definition of Income**

The term income means, but is not limited to, the obligor's commissions, salaries, earnings, wages, rent monies, unemployment compensation, any legal or equitable interest or entitlement owed that was required by a cause of action, suit, claim or counterclaim, insurance benefits, claims for assets of estates, trusts, federal income tax refunds, state income tax refunds, homestead rebates, state lottery prizes, casino and racetrack winnings, annuities, retirement benefits, veteran's benefits, union benefits, or other sources of money that may be defined as income.

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**D. Types of Income Withholding**

**1. Immediate Income Withholding**

- a. All court orders entered or modified on or after March 5, 1998, require that the child support amount be withheld from the obligor's income immediately upon the issuance of the order. No qualifying arrearage or additional due process is needed to initiate the withholding.

**Note:** Immediate withholding does not apply to alimony-only cases. The court, upon application, can order alimony be paid via income withholding. However, child support orders which contain spousal support provisions are subject to immediate income withholding.

- b. Every complaint, notice or pleading for the entry or modification of a court order which includes child support, shall contain a written notice to the obligor stating that the child support provision of the order, including the health coverage provision as appropriate, be enforced by an income withholding upon the current or future income due from the obligor's employer or successor employers and/or upon the unemployment compensation benefits due the obligor and against debts, income, trust funds, profits or income from any other source due the obligor in accordance with N.J.S.A. 2A:17-56.8.
- c. Additionally, all orders payable through probation must include a notice advising the obligor to keep Probation Child Support Enforcement (PCSE) informed of the obligor's address and the name and address of the obligor's current and future employers. The obligor must notify PCSE of any change of employer or address within 10 days of the

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change. Failure to provide this information shall be considered a violation of the order (N.J.S.A. 2A:17-56.13).

d. Exceptions to Immediate Withholding

Immediate income withholding is not required if the order or judgment issued by the court specifically provides for an alternative payment arrangement (N.J.S.A. 2A:17-56.8).

2. Initiated Income Withholding

- a. Initiated withholding must take place if the child support arrearage is equal to at least 14 days of child support payments N.J.S.A. 2A:17-56.9. This applies even if an alternative payment arrangement has been ordered or if the order was entered prior to October 1, 1996. New Jersey Kids Deserve Support (NJKiDS) identifies all such cases and generates the forms necessary to initiate a withholding.

**Note:** An income withholding must be initiated in all cases having the requisite arrearage even if the obligor is making payments on the arrearage.

- b. The law requires that the obligor be notified, by regular mail, simultaneously with the mailing of the notice to the employer. An obligor may only contest a withholding on the basis of mistake of fact (N.J.S.A. 2A:17-56.10).

c. Selection Criteria

NJKiDS will automatically select cases and generate the required documentation *Civil Action – Notice to Obligor of Income Withholding* (CS021) to initiate an income withholding if all of the following conditions exist:

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1. An open support order with at least one of the following debt types: child support, child support interest, spousal support, spousal support interest, cash medical support, cash medical support interest, medical support, and medical support interest;
  2. An arrearage equal to at least 14 calendar days of support payments;
  3. Income withholding type on the Court Order/SORD page is set to "N – Not Ordered" or "A – Agreement of Parties (No IW)";
  4. The case is not marked initiated income withholding exempt;
  5. The case is not marked enforcement exempt; and
  6. An income withholding or unemployment and disability activity chain is not active.
- d. Notice to Obligor of Income Withholding

The CS021 is sent by regular mail to the obligor's last known address. It states the following:

1. The withholding will be used to collect current child support, child support arrearages, and spousal support;
2. The withholding applies to current and future employers and sources of income; and
3. The withholding can only be contested on the basis of mistake of fact.

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e. Service of the Notice to Obligor of Income Withholding

1. NJKiDS generates the *Income Withholding Notice* (CS006) and the CS021 when a SOI is identified.
2. For the purposes of enforcing a support provision, the court may deem procedural due process requirements for notice and service of process to be met, upon delivery of written notice to the most recent residential or employer address filed with PCSE, for that party (N.J.S.A. 2A:17-56.13).

f. Monitoring Withholding Actions

After the CS006 is generated, NJKiDS tracks the progress of the withholding and after 10 days the IWNS becomes active. Once the status has been updated, any income withholding payments will be prorated between all withholdings in active status on IWNS. If there is only one SOI, the system will update the employment source to confirmed good. If there are multiple open SOI records, PCSE staff will receive an action alert/task to review the income withholding payment and update the appropriate SOI to confirmed good.

g. Processing Contested Withholdings

The obligor may contest an initiated withholding action within 10 days of the postmark date of the CS021. The withholding can be contested only if there has been a mistake of fact. The following are reasons why the obligor may contest the income withholding based on mistake of fact:

1. The recipient of the CS021 is not the obligor on the case;
2. There is no current support order; or

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3. The obligor does not owe an arrearage equal to at least 14 days of support payments.

If the obligor contests the withholding based on one of the reasons listed above, PCSE must conduct an administrative review within 20 days of receiving the obligor's notice of contest of the withholding. If a determination cannot be made administratively, PCSE must within 5 days of receiving the contest schedule a hearing before a Child Support Hearing Officer (CSHO). Both the obligor and the obligee must be sent a notice of the hearing.

**Note:** The income withholding is still in effect during the process of the administrative review or hearing.

If the obligor requests an administrative review, PCSE must notify the obligor of the time, date, and place of the review using either the *Notice of Administrative Review* (CS072) or the *Summons to Appear For a Hearing to Contest an Administrative Review Determination* (CS071). The CS072, which is signed by PCSE staff, should be used in counties that conduct administrative reviews within Probation. Counties that schedule reviews before a CSHO or a Family Division Judge must use the CS071, which is signed by the Chief Probation Officer.

If the obligor contests the withholding on other grounds (i.e., direct payments to the obligee), PCSE must inform the obligor in writing that the contest is rejected due to the fact that there was no mistake of fact. Payment of all arrearages after the initiation of the income withholding process is not grounds for terminating the withholding action.

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h. Post-Administrative Review Actions

1. Within 5 business days of the review, PCSE must notify the obligor in writing whether the withholding will continue. If the withholding is to continue, the notice must include all of the information that is included in the CS006.
2. To comply with this requirement, PCSE uses the *Disposition of Income Withholding Administrative Review Form*. There are two versions of the *Disposition Form*, one that advises the obligor that the withholding will continue (CS629) and the other advising the obligor that the action has been terminated (CS628).
3. The *Disposition Form* may be mailed to the obligor's home address or presented to the obligor at the end of the administrative review.
4. If withholding is to continue, the obligor has 15 days to contest the finding. The matter will be scheduled before a CSHO or judge. Notice of the right to further contest is provided on the *Disposition Form*.

E. Employment Verification

1. PCSE staff can enter a new primary employer on the Add Employment Address and Verification Status/EHIS page. When entered as "Verification Pending", NJKiDS will automatically open the income withholding chain and generate the CS006 to the employer.
2. Once a payment is received from the employer as a result of the CS006, NJKiDS will:

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- a. If there is only one active income withholding chain in NJKiDS, update the status to "Confirmed Good".
- b. If there are multiple income withholding chains, an action note "Employer Wage Payment Received – SOIs Pending Verification" will be sent to the assigned staff.

Assigned staff must research the source of payments and manually update the Update Employment Address and Verification Status/EHIS page to "Confirmed Good" and resolve the alert. This will allow for the proper generation of NMSN notices.

**Note:** The *Employment Verification Letter* (CS070) now replaces the *Employment Income Source Verification* (CS010). The CS070 will automatically be generated for all "Verification Pending" employers on cases without an obligation. The CS070 can also be manually generated by staff on the Update Employment Address and Verification Status/EHIS page and will still be used in the Triennial Review activity chain. The CS070s will be sent to the State Disbursement Unit (SDU) for scanning and uploading to NJKiDS. Notices received from employers that were generated by staff as noted above will generate an action note "Review Required for Scanned Employment Verification" to the assigned staff. Notices generated through the Triennial Review chain will generate an action note "Income Verification Response Scanned" to the RA013 worker role.

**F. General Income Withholding Requirements**

Although the two types of withholding for child support may differ, there are a number of withholding requirements and procedures that are common to both. The general requirements and procedures that are applicable to immediate and initiated withholding are provided below:



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1. Limitations on the Amount that May Be Withheld

- a. In accordance with N.J.S.A. 2A:17-56.9, the total amount that may be withheld, including any fee deducted by the employer for administering the withholding, cannot exceed the maximum amounts permitted under section 303(b) of the Federal Consumer Credit Protection Act (15 U.S.C.S. 1673(b)). The Consumer Credit Protection Act (CCPA) states the following:
  1. The Federal CCPA permits employers to deduct up to 60% of an employee's Aggregate Disposable Earnings (ADE) if the obligor is not supporting a spouse or dependent child, or 50% of the ADE if the obligor is supporting a spouse or dependent child other than for whom the support order was entered.
  2. An additional 5% can be deducted if the obligor has support arrearages that equal or exceed the amount due for 12 weeks.
- b. Employers are to be advised of the CCPA limits on the CS006. Employers are responsible for calculating the maximum amounts that can be withheld from the obligor's income.
- c. When applicable, the obligor must inform PCSE that he or she is supporting a spouse or dependent child other than those who are subject to the support order, which would limit the maximum withholding amount under the CCPA.
- d. Some states have maximum withholding limits that are less than the CCPA limits. In UIFSA cases, the withheld amount may be less than the amount requested. These cases are identified as an initiating state (the employer should follow the rules of jurisdiction where case was initiated).

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2. Sources of Income Subject to Withholding in New Jersey

- a. All earned or unearned income due the obligor is subject to income withholding.
- b. Some forms of income derived from the federal government are not subject to withholding (e.g. Supplemental Security Income, portions of disability payment from the Department of Veterans Affairs).
- c. Unemployment compensation benefits are subject to income withholding for child support in Title IV-D cases only.
- d. Income from pension plans is subject to withholding. Plans administered under the Federal Employee Retirement Income Security Act of 1974 (ERISA) and the Federal Retirement Equity Act of 1984 (REA) may require a Qualified Domestic Relations Order (QDRO) before withholding is initiated by the employer.

If the pension plan administrator does not honor the CS006, withholding should be attempted using the QDRO procedures (refer to the QDRO procedures section).

- e. Workers' Compensation is also subject to income withholding.
- f. Obligor who claim to be 1099 employees may be subject to income withholding and any objection will need to be addressed by the court.

3. Collecting Arrearages through Withholding

- a. If no arrears payment amount previously existed on OWIZ, NJKIDS will automatically generate the *Civil Action – Notice to Obligor to Establish or Increase Payment on Arrears*

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*Through Income Withholding (CS121) and update the arrears field with the payment amount 15 calendar days after the sent date if the obligor does not contest. NJKiDS will recalculate the arrears payback based on the current arrears amount for each new employer.*

- b. If the court orders an arrearage payment amount, it must be included in the total amount to be withheld. This amount will be reflected on the CS006 with the arrears payment amount when NJKiDS is updated.
- c. PCSE staff can manually request a CS121 if a payback amount already exists and there is an increase in arrearages.

**Note:** An increase in the arrears payment amount may not be appropriate if the case was recently in court and the court set an arrears payback amount. If the court-ordered payback is inappropriate for the current case conditions, PCSE staff may initiate the Arrears Payback Amount Increased (APIN) chain.

- d. The obligor may only contest the increase on the basis of mistake of fact (that the obligor is not the person cited), or that the arrearage is less than the amount due for 14 days.
- e. The contest is processed through the administrative review chain in the same manner as a contest to an income withholding.
- f. The arrearage payment schedule appearing below has been approved by the Conference of Family Division Presiding Judges and must be used when initiating an income withholding and setting an arrears payback amount. NJKiDS automatically calculates the amount based on the chart.

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<b>Child Support Arrearage Payment Schedule</b>		
Arrearages Up to	Weekly Payment	Total Paid Per year
\$500	\$20	\$1,040
\$1,000	\$25	\$1,300
\$2,500	\$30	\$1,500
\$5,000	\$35	\$1,820
\$7,500	\$40	\$2,080
\$10,000	\$45	\$2,340
More than \$10,0000	\$50	\$2,600

4. Order/Notice to the Employer for Income Withholding (CS006)
  - a. The CS006 is generated from NJKiDS either through system assigned priorities based on case information or by request.
  - b. The CS006 includes the amount(s) to be withheld, an arrears payback amount if appropriate, the CCPA withholding limitations, the responsibilities and liability of the employer, and general process information.

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5. Processing Combined Child Support and Spousal Support Orders
  - a. Spousal support provisions of support orders are enforceable through income withholding.
  - b. Alimony-only orders are not subject to automatic withholding and enforcement of these orders must be through court proceedings in accordance with R. 5:7-5(a). Income withholding can be obtained from the court proceeding initiated by the obligee or PCSE before a judge.
6. The Employer's Responsibilities Regarding Income Withholding
  - a. Income withholding is binding upon the employer and subsequent employers immediately after service of the CS006 (N.J.S.A. 2A:17-56.11 et seq.).
  - b. Employers must remit the withheld amount to the NJFSPC at the same time the obligor is paid.
  - c. Employers are not required to alter regular pay cycles to comply with income withholding.
  - d. Employers must implement withholding no later than the next pay period, immediately after the receipt of the CS006.
  - e. Income withholding shall continue until terminated by the court.
  - f. Income withholding for child support has priority over other withholdings and garnishments without regard to the dates that other income withholdings or garnishments were issued, with the exception of tax liens.

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- g. Employers may charge a processing fee not to exceed \$1.00 per payment, which shall be deducted from the obligor's income in addition to the amount of the support order.
- 7. Effect of Modification of the Child Support Award

NJKiDS will automatically generate a new CS006 when a change is made in the amount of child support, order frequency, or court-ordered arrearage payment amounts.
- 8. Transfer of Income Withholdings to Successive Employers
  - a. Once income withholding is issued, it continues in effect for the duration of the support order.
  - b. No additional due process is required when amending existing income withholding to accommodate a change in employer.
  - c. NJKiDS automatically generates a revised CS006 to a new employer when a new verified employer is entered. PCSE staff can reprint the CS006 from the View and Print Documents/NPRO page if they want to fax the document as soon as possible or need a copy.
- 9. Multiple Employers
  - a. When a secondary SOI is identified, PCSE staff will receive an action alert/task, "Review Verification Pending SOI Record". Assigned staff must review the case and advance the immediate income withholding chain appropriately. If no action is taken, NJKiDS will automatically generate the CS070 to the employer after 30 calendar days. If the employer does not respond, NJKiDS will update the employer status to "No Action Taken" after 30 calendar days and end-date the employer. If the primary income

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withholding is insufficient to cover the current support and an arrearage payment, PCSE may allow the CS006 to generate to withhold the remaining amount needed to satisfy the monthly support obligation(s) (MSO) and arrears obligation(s) from the secondary employer.

- b. After review of the information on the Employment Address and Verification Status/EHIS page, PCSE staff will confirm good the second employer on the Update Employment Address and Verification Status/EHIS page, ensuring that "no" for not primary employer is selected.
- c. If the MSO and arrears obligations are satisfied by the primary SOI, then the secondary SOI is not needed. PCSE staff can go to IWNS and change the amount of the secondary SOI withholding to \$0. If the MSO and arrears are not being satisfied from the primary SOI, PCSE staff can go to IWNS and adjust the amount of the secondary SOI to take just the amount needed to satisfy the obligation. In the event, the primary SOI ceases, NJKIDS will automatically change the status of the secondary SOI to primary and generate an income withholding for the MSO and arrears obligations.

**Note:** This procedure should also be used to correct an unnecessary double garnishment from multiple SOIs. Do not terminate the income withholding for the secondary employer as it may continue to interface into NJKIDS from various sources.

- d. Income withholding orders can be submitted to employers who participate electronically via the electronic income withholding orders (e-IWO) process. Administered by the federal child support office, state child support offices and employers can provide information regarding an obligor's employment status and income withholding orders

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electronically to the other party via this process. Verification that an employer participates in the e-IWO process can be viewed on the Other Party Information/OTHP page.

10. Unable to Identify an Income Source

There are a number of automatic interfaces that help with the location of an employer, such as the State and Federal New Hire Reporting and the Unemployment Insurance Benefits systems (UIB). If the interfaces and outreach to the obligor do not result in employer information, PCSE would have to take the necessary enforcement actions.

11. Allocating Withheld Amounts for Multiple Orders

- a. When there is more than one support order for withholding against a single obligor, the withheld amount will be allocated between all families (N.J.S.A. 2A:17-56.10(d)).
- b. The current MSO for all families must be paid before withheld amounts are allocated to pay arrearages. Withheld amounts that remain after current support is satisfied must be allocated among all families to pay arrearages. Arrears-only cases are only paid after all the current MSO amounts have been satisfied. Any excess will be placed on hold as SNFX – Futures.
- c. Withheld amounts for multiple orders are prorated by NJKiDS in accordance with the following procedures:
  1. If the withheld amount is less than required, each family's share of the collection is determined by dividing the amount of each family's support order by the total amount of all orders.



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2. If the withheld amount is more than is required, each family receives its current support and the remainder is disbursed to all cases based on the arrears payback in each order.

12. Monitoring and Enforcing Withholding Payments

- a. Once a CS006 is issued to a verified employer, NJKiDS monitors compliance and PCSE staff are notified via an action alert/task when enforcement is necessary.
- b. NJKiDS automatically generates a *Notice to Employer of Non-Compliance with Income Withholding Order* (CS025) 45 days after the CS006 has been sent.
- c. If an action alert/task is received advising PCSE staff to "Contact employer regarding payments or issue an Order to Show Cause", PCSE staff must initiate enforcement procedures against the employer. A call to the employer prior to initiating a court proceeding is advised to determine whether the employer received the CS006.
- d. If the employer continues to be non-compliant, PCSE staff should open the "Source of Income Show Cause" chain and proceed with the remedy.

13. Employer Liability

- a. If the employer fails to withhold income or pay withheld amounts as required by the CS006, they will be liable for both the accumulated amount that should have been withheld and a fine as determined by the court. The obligee may also commence legal action against the employer to recover the amount that should have been deducted, interest, and attorney's fees if the employer fails to comply with the income withholding notice (N.J.S.A. 2A:17-56.11).

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- b. The employer is subject to a fine and civil damages for firing, refusing to employ, or taking disciplinary action against an obligor due to a child support income withholding or any obligations imposed on the employer (N.J.S.A. 2A:17-56.11).

14. Terminating an Income Withholding

- a. An income withholding shall continue until terminated by a court order (N.J.S.A. 2A:17-56.10).
- b. An income withholding must be terminated if there is no longer a current support order (i.e., the court dismissed the order) and all arrearages are paid in full. NJKiDS will automatically generate the *Termination of Income Withholding Notice* (CS006) when the obligation amount is end-dated on the OWIZ page and arrears are paid in full.
- c. An obligee may not request that a withholding action be terminated. If an obligee does not want an income withholding to be issued, a motion or application must be filed with the court requesting that the order be dismissed or be amended so that it is payable directly to the obligee.
- d. If a withholding is or was previously in effect against the obligor's unemployment benefits, the automatic interface with the New Jersey Department of Labor and Workforce Development will cause its records to be updated when the obligation has been end-dated.

15. Bankruptcy and Income Withholding

- a. Chapter 7 & 11

Income-withholding for current ordered support may continue as well as collection of support from property that is not property of the debtor's estate or from assets which were

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abandoned by the trustee. Income withholding for ordered arrears repayment may continue from post-petition earnings.

b. Chapter 12 & 13

Any income withholding or unemployment insurance attachments for current support or arrears obligations may continue. However, income withholding or unemployment insurance attachments for arrears payments must be suspended if the Chapter 12 or 13 Plan includes payment of the arrears.

16. Direct and Interstate Income Withholding

Federal law and regulations provide that every state must allow direct income withholding across state lines.

The Uniform Interstate Family Support Act (UIFSA) 2008 contains direct income withholding provisions that authorize a child support agency, an attorney, either party, or any individual to mail an income withholding order, issued by any state directly to an employer in another state and that order must be implemented by the employer. Employers in New Jersey must honor the income withholding requests received from other states.

Similarly, PCSE staff can send income withholding notices directly to employers in other states without the need to go through the IV-D agency. If the direct income withholding attempts were unsuccessful, PCSE staff may prepare the required documents and register the order in the responding agency for enforcement.

17. Refund of Monies

- a. PCSE staff may be contacted by an obligor who seeks reimbursement of income withholding payments, which were disbursed during the period a closure order was pending

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entry to NJKiDS or which resulted from an order being entered with a retroactive date.

- b. PCSE staff should initially contact the obligee by telephone to explain how the account became overpaid and request the return of monies. If the obligee is uncooperative, the obligor is told to file a motion/application in the Family Division to recoup the money.

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**Income Withholding Procedures – List of Associated NJKiDS Forms**

<b>NJKiDS CS Number:</b>	<b>NJKiDS Form Title:</b>
CS021	Civil Action – Notice to Obligor of Income Withholding
CS006	Income Withholding Notice/Termination of Income Withholding Notice
CS072	Notice of Administrative Review
CS071	Summons to Appear For a Hearing to Contest an Administrative Review Determination
CS629	Disposition of Income Withholding Administrative Review – No Mistake of Fact
CS628	Disposition of Income Withholding Administrative Review – Mistake of Fact
CS070	Employment Verification Letter
CS121	Civil Action – Notice to Obligor to Establish or Increase Payment on Arrears Through Income Withholding
CS025	Notice to Employer of Non-Compliance with Income Withholding Order