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HSA Contributions are not Earnings for Purposes of Wage Garnishment

The Department of Labor's Wage and Hour Division (WHD) released Letter CCPA2019-l on September 10, 2019 (the letter). The letter determined that for purposes of the Consumer Credit Protection Act (CCPA), Health Savings Account (HSA) employer contributions do not constitute earnings.

The CCPA limits the amount of a debtor's disposable earnings that may be garnished. Whether an amount constitutes earnings turns centrally on whether the employer pays the amount for the employee's services. In the case of HSA contributions, employers do not give employees the option of receiving cash in lieu, and generally do not vary the amount in proportion to the amount or value of the employee's services. Instead, HSA contributions are typically a fixed and predetermined amount or a percentage of the employee's contributions. WHD also focused on the fact that the funds pass from the employer to a trust rather than directly to the employee, and the employee can only use the funds to pay for qualified medical expenses (without incurring taxes and penalties).

The WHD concluded that so long as the employer does not give the employee the option of receiving cash in lieu of an HSA contribution and does not determine its HSA contributions on the basis of the amount or value of the employee's work, HSA contributions are exempt from the definition of "earnings" under the CCPA and are thus not subject to the CCPA's garnishment limitations.