

AMERICAN PAYROLL ASSOCIATION

May 24, 2022

Mr. David Kilgore
Director, California Department of Child Support Services
P.O. Box 419064
Rancho Cordova, CA 95741-9064
david.kilgore@dcss.ca.gov

Re: Management of Lump-Sum Payments for Child Support

Dear Director Kilgore:

The American Payroll Association (APA)¹ appreciates partnering with state child support agencies, like the California Department of Child Support Services (DCSS), to address issues of mutual concern. Because employers play a critical role in ensuring that child support goes to children and families, the APA is reaching out to you with an offer of assistance and recommendations regarding DCSS's current practices on lump-sum reporting and processing. In fact, DCSS's Manager of the Centralized Enforcement Branch Rick Bermudez approached APA in March with an interest in improving California's approach to lump-sum payments for child support.

You are likely aware that through the National Council of Child Support Directors' Child Support Employer Collaboration Workgroup, "Model Legislation on Managing Lump-Sum Payments for Child Support" was created to offer best practices and efficiencies for the lump-sum process. This model legislation addresses consistency related to employer reporting, state response times, and more, based on state and employer feedback. While identified as model legislation, in those states where existing child support statutes include in the definition of income the term "lump-sum payments" or equivalent language, such as "bonuses" and "commissions," the model may be used as a basis for regulations.

¹The APA is a nonprofit association representing more than 20,000 payroll professionals throughout the United States. Some APA members work for payroll service providers who, in turn, process the payrolls for another 1.5 million employers, representing an aggregate total of one-third of the private-sector workforce. APA's primary mission is to educate its members and the payroll industry regarding best practices associated with paying America's workers while complying with applicable federal, state, and local laws. In addition, the APA's Government Relations Task Force works with the legislative and executive branches of government to find ways to help employers satisfy their legal obligations, while minimizing the administrative burden on government, employers, and individual workers.

ENCOURAGED PROCESS ENGAGEMENT VERSUS REGULATIONS

The APA offers to assist the DCSS to create regulations on effective and efficient processes and procedures for lump-sum payments.

California's child support law, like many states, includes basic language on bonuses and commissions, but does not specifically identify "lump-sum" payments. If DCSS finds that the state child support law does not offer jurisdiction to create a lump-sum payment program, then the current "desired practices" identified on the DCSS website should be removed and, together, we can work on proposed legislation. The U.S. Department of Labor's Opinion Letter (CCPA2018-1NA) regarding lump-sum payments and garnishment limits under the Consumer Credit Protection Act can be used to justify state legislation, among other reasons.

The problem for payroll professionals is that desired practices create uncertainty for employers on whether requirements are in place. In turn, this approach creates a fairness concern for employees when one employer follows the practices, and another does not. Without mandatory requirements, employers that follow the practices can be challenged by employees even when arrears are owed and payable.

Conversely, if DCSS finds that California law authorizes it to create and implement a lump-sum payment program for child support, then regulations should be issued with clearly identified critical elements.

MISSING ELEMENTS IN CALIFORNIA'S LUMP-SUM PROSESS

The APA is concerned about missing elements in California's lump-sum process, as identified on the DCSS website. These elements relate to notification requirements and state response time.

Employer Notification Requirements

The process identified on the DCSS's website refers to employer reporting of employee lump-sum payments "prior to payout." This term is vague on exactly when an employer should report and what information to report. For example, the procedures do not show whether an employer should report all employees who may receive a bonus, only those employees that are already paying child support, and/or only those employees paying child support with IWOs in which arrears are identified.

In addition, the instructions on the methods of notification can indicate different requirements. For example, information placed on the OCSE Child Support Portal may be different than the information an employer provides by calling the DCSS. These methods also create different records should an employee challenge an employer or the state.

The APA supports DCSS's electronic approach to manage the reporting of lump-sum payments. With the OCSE Communication Center, employers can now provide states with notice of lump-sum payments in one location.

State Response Time

The APA recommends that California establish a set response time from the date of notification by employers of lump-sum payments. According to the DCSS's website and OCSE's Lump-Sum Matrix, California has not yet established a set timeframe to respond to employers following notice of a lump-sum payment. California indicates that employers should hold an employee's lump-sum payment, "No longer than 7 business days after the payment is withheld." This appears to say that an employer should hold employees' pay for 7 business days from the payout date, not the reporting or notice date.

With this step, employers can run afoul of California's wage and hour laws. For example, employers are not allowed to hold employees' pay. While child support is an exception to these labor laws, during the 7-day holding period, a child support order is not in place and may never materialize. This is particularly problematic for employers when the lump-sum payment process is not required by law.

In addition, employers cannot create an automated and streamlined process within their systems without an established timeframe based upon the reporting date. This significantly increases employers' administrative costs, especially for larger employers.

The model legislation specifies that the child support agency should respond to an employer within 14 days from notification of the lump-sum payment. A defined timeframe from notification to state agencies allows employers to report early, receive information on withholding, release some or all of the lump-sum to employees in a timely manner, and distribute withholding amounts faster to state disbursement units.

Thank you for considering APA's recommendations and offer of support. You can reach APA through Corrinne Flores at corrinne.flores@adp.com or 909-971-5858 and Alice Jacobsohn, Esq., at ajacobsohn@americanpayroll.org or 202-669-4001.

Sincerely,



Corrinne Flores
Chair, GRTF Child Support Subcommittee



Alice P. Jacobsohn, Esq.
Director, Government Relations