U.S. Department of Labor

Wage and Hour Division
Washington, DC 20210

CCPA2019-1

September 10, 2019

Dear **Name***:

This letter responds to your request for an opinion concerning whether employers' contributions to employees' health savings accounts (HSAs) constitute earnings for wage garnishment purposes under the Consumer Credit Protection Act (CCPA). This opinion is based exclusively on the facts you have presented. You represent that you do not seek this opinion for any party that the Wage and Hour Division (WHD) is currently investigating or for use in any litigation that commenced prior to your request.

BACKGROUND

You request an opinion regarding employer HSA contributions on behalf of a firm that provides human resources services to employers on matters such as payroll, time, and attendance. Section 1201 of the Medicare Prescription Drug Improvement and Modernization Act of 2003 amended the Internal Revenue Code to allow a deduction for the amount paid to an HSA by or on behalf of an individual covered by a high-deductible health plan. 26 U.S.C. § 223. An HSA is a "trust created . . . exclusively for the purpose of paying the qualified medical expenses of the account beneficiary." *Id.* at § 223(d). The Internal Revenue Code establishes requirements for the trust and the trustee. *Id.* at § 223(d)(1). HSAs allow employees to set aside some of their pay pretax to cover future medical expenses. Employers may also contribute to an employee's account. HSAs allow rollover of unused contributions, portability of accounts, and tax-free interest among other benefits.[1] Your letter states that an HSA belongs to the employee, explaining that the employer has no further control over the account after it has been funded.

You state that you understand many employers have established HSAs for their employees and that some employers are treating contributions that they make to HSAs as earnings under the CCPA. You note that in doing so, particularly in regard to employees with higher disposable earnings, employers may ultimately be "exceeding CCPA limits in calculating wage garnishments." Due to your concern that wage garnishments are possibly being "withheld in error and in excess of CCPA limits," you request guidance on whether employer contributions to an employee's HSA qualify as earnings under the CCPA.

[1] *See* 26 U.S.C. § 223; *see also* U.S. Bureau of Labor Statistics, "Pretax Benefits: Access to Section 125 Cafeteria Benefits and Health Savings Accounts in the United States, Private Industry," *available at* https://www.bls.gov/opub/mlr/cwc/pretax-benefits-access-to-section-125-cafeteria-benefits-and-health-savings-accounts-in-the-united-states-private-industry.pdf (Mar. 28, 2007).

GENERAL LEGAL PRINCIPLES

The CCPA limits the amount of a debtor's disposable earnings that may be garnished. *See* 15 U.S.C. § 1673.[2] The CCPA defines "disposable earnings" as "that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld." 15 U.S.C. § 1672(b). "Earnings" are "compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program." 15 U.S.C. § 1672(a).

OPINION

Based on the information provided, employer contributions to HSAs are not earnings under the CCPA and are therefore not subject to the CCPA's garnishment limitations.

As an initial matter, contributions that are already in a HSA are past the point when they may be withheld by or garnished by an employer. They are similar to earnings that have been deposited into a bank account. In that regard, WHD has opined that "[t]he CCPA does not apply to an employee's bank accounts comprised of earnings already received by the employee." WHD Op. Letter CCPA2005-1NA, 2005 WL 6133123, at *2 (July 27, 2005) (citing *Long Island Trust Co. v. U.S. Postal Serv.*, 647 F.2d 336, 342 (2d Cir. 1981); *Guidry v. Sheet Metal Workers Int'l Ass'n*, 10 F.3d 700, 715 (10th Cir. 1993)); *see also* Field Operations Handbook § 16a10. The same is true of a HSA containing an employer's contributions; thus, as the CCPA does not apply to contributions already received by the account, they are not subject to the CCPA's garnishment limitations.

When a HSA contribution is still in the employer's possession and is about to be paid to the account, it could be subject to the CCPA's limits on garnishment. In order to determine whether it is, one must determine whether employers' HSA contributions constitute "earnings." As noted, the CCPA defines "earnings" as "compensation paid or payable for personal services." 15 U.S.C. § 1672(a). Accordingly, in resolving this issue "the central inquiry for WHD is *whether the employer paid the amount in question for the employee's services*." WHD Op. Letter CCPA2018-1NA at 4 (Apr. 12, 2018).[3] In determining whether certain payments are earnings under the CCPA, WHD has generally compared the nature of those payments to wages, salaries, commissions, and bonuses.[4]

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[2] The CCPA defines "garnishment" as "any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt." 15 U.S.C. § 1672(c).

[3] The CCPA gives four examples of what is meant by compensation for personal services, defining earnings as "compensation . . . whether denominated as wages, salary, commission, bonus, or otherwise." 15 U.S.C. § 1672(a). The CCPA also identifies "periodic payments pursuant to a pension or retirement program" as an example of earnings. *Id.*

[4] *See* WHD Op. Letter CCPA2018-1NA at 4-5 (Apr. 12, 2018) (comparing certain lump sum payments to wages, salaries, commissions, and bonuses in determining whether the payments are earnings under the CCPA); WHD Field Assistance Bulletin No. 2016-3 at 3-5 (Nov. 30, 2016) (comparing disability payments from employment-based disability plans to wages and salaries in determining that the payments are earnings under the CCPA).

There are two characteristics of wages, salaries, commissions, and bonuses that distinguish them from employers' contributions to HSAs. First, wages, salaries, commissions, and bonuses relate in some degree to the amount or value of an employee's services. They normally reward employees for their accomplishments, their amount or length of service, or their contributions to the enterprise. The information you provided indicates that the amounts employers contribute to employees' HSAs do not vary in proportion to the amount or value of employees' personal services. Indeed, there are restrictions on the extent to which they may do so. *See* 26 U.S.C. § 4980G; 26 U.S.C. § 125(b); 26 C.F.R. § 54.4980G-1, et seq. Our understanding is that employers annually determine the amounts of their contributions prior to the beginning of the plan year or agree to match employees' contributions up to fixed amounts. Thus, while an employer contributes to an employee's HSA because an employment relationship exists between them, it is not doing so to compensate the employee directly for the amount or value of his or her services. Second, the examples of compensation specified in the definition indicate that the CCPA "is meant to protect funds as they pass from the employer to the employee." *United States v. Laws*, 352 F. Supp. 2d 707, 713 (E.D. Va. 2004).[5] In contrast, an employer's HSA contributions are made to a trust, 26 U.S.C. § 223(d), and are not part of the employee's take-home pay. In addition, we assume that the contributions are not available to the employee before they are made to the trust account. The employee may not use the funds in the trust for anything other than qualified medical expenses without subjecting the funds to income tax and a penalty. *Id.* at § 223(f)(1), (4).

For these reasons and based on our understanding of the characteristics of HSAs, employer contributions to HSAs are not earnings as defined by the CCPA. Generally, as long as an employer does not determine its HSA contributions on the basis of the amount or value of individual employees' services and does not give employees an option of receiving cash in lieu of an employer's contribution, the employer's contributions to an HSA are not earnings under the CCPA and are not subject to the CCPA's garnishment limitations. Therefore, the employer should not include its HSA contributions when calculating the employee's disposable earnings for purposes of determining the maximum amount of an employee's pay that may be garnished under the CCPA.

We trust that this letter is responsive to your inquiry.

Sincerely,

Cheryl M Stanton

Cheryl M. Stanton
Administrator

***Note: The actual name(s) was removed to protect privacy in accordance with 5 U.S.C. § 552(b)(7).**

[5] This is consistent with the CCPA's purposes of "avoid[ing] the necessity of bankruptcy" and protecting payments that "support the wage earner and his family on a week-to-week, month-to-month basis." *Kokoszka v. Belford*, 417 U.S. 642, 651 (1974).