

Demystifying the Wage Account



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Don't put your earnings at risk! Your future income may be one of your biggest assets. So how do you ensure that your salary is not exposed to a greedy creditor? Wage accounts provide a great way to move income from your P.A. to your exempt assets without fear of attachment (if done properly) during the move.

Wage Protection

Despite Florida's hostile medical malpractice environment, Florida law is quite liberal in its allowance of exempt assets from creditor's claims (not including alimony or child support). Florida Statute Section 222.11 provides that the wages of a "head of a family" (used interchangeable with "head of household") shall not be subject to attachment or garnishment. The state has

also extended this exemption to any bank account maintained by the debtor where the funds can be directly linked to and identified as wages.

For purposes of this exemption, the "head of family" is considered any person who provides more than one-half of the support for a child or other dependent. After satisfying a support test, a person will qualify as a "head of a family" regardless of whether married, divorced, never married, legally separated, widowed, or otherwise living alone. In other words, the dependent is not required to live with the person seeking to qualify as a head of a family, and a payer supporting an ex-spouse also qualifies as the "head of family". Unfortunately, young physicians that have no dependents will not be able to utilize this strategy.

"Wages" are synonymous with any salary or income reported on form W-2 (including regular paychecks, bonuses, and commissions). "Wages" does not include business distributions or income reported on a 1099 or K1. Also, the law allows the wages of an

independent contractor to qualify for the wage exemption if the independent contractor renders personal services.

Wage Account Defined

A “Wage Account” is simply a personal checking account, owned by the “head of family” (in most cases, the Physician) and earmarked to receive wages earned by the “head of family”. The “Wage Account” designation should be identified in the account title and/or the physical checks. While the law allows deposit accounts to be held at “any financial institution”, it is unclear as to what type of financial institution qualifies. So, we recommend that you keep the account at a commercial bank and not a brokerage and/or cash management account.

In order to qualify for the wage exemption, it is recommended that the family breadwinner deposit only his or her earnings into a separate bank account. The only account owner is the head of family (main breadwinner). The non-physician spouse may be given check-writing privileges, but should not be listed as a co-owner of the account.

A wage account is not a business account and has no connection to the P.A. (or business) accounts. A wage account is not a savings account or intended to be used as a savings vehicle, as will be further explained.

Wages in this account must NOT be commingled with any non-wage (or non-W2) income! The courts have denied the exemption for wages, which might otherwise have qualified, when the wages were commingled with interest payments, capital gains, and other funds. Furthermore, the wage account should not be used for the non-head of household spouse’s income; use a separate checking account for this and other income.

Operating a Wage Account

You can use the wage account just as you would a normal checking account. Deposit your paycheck into the account and pay any necessary expenses from the account (i.e. mortgage payment, car note, utilities, family vacations, food, etc). The critical function of this account is how you utilize disposable income, once all household expenses have been paid.

The disposable earnings of a Florida resident who is the “head of family” are generally exempt from such person’s creditors for six months after the earnings are deposited into a financial institution. The Wage Account is merely a distribution channel for transferring protected disposable earnings into other protected accounts (retirement accounts, homestead, annuities, life insurance, limited partnerships, limited liability companies, etc).

As stated earlier, the wage account is not a savings account. It is recommended that proceeds in the account be swept into other protected accounts every 2-3 months.

Covering All Bases

In order to avoid a potential “fraudulent transfer”, your assets should flow only to and from exempt accounts. Such a transfer is defined as “moving from a non exempt to an exempt account with the intent of hindering, delaying, or defrauding creditors”. It is important, however, to note that if an individual desires to take advantage of Florida’s exemptions, he or she must properly structure his or her financial affairs within a reasonable amount of time *before* incurring a liability.

Sole proprietors beware! You will not qualify for a wage account since your income is considered a business profit and not wages. The best way to ensure that your wages are not challenged is to incorporate your business or establish a P.A., implement a carefully drafted employment agreement, and execute a salary agreement with your P.A. (even if you are the sole owner). If your income changes as you grow your practice, your salary agreement should be updated to reflect your additional earnings.

Closing

Incorporating the use of a wage account into your asset protection strategy is one of the easiest and cheapest ways to build your financial foundation. It is imperative to your financial health to remember that no asset protection strategy should be executed at the expense of a sound, comprehensive financial plan.

Asset protection should be carefully coordinated with your investment planning, retirement planning and estate planning. After all, the ultimate goal is not just to protect your assets, but to also preserve and grow your total net worth.

Sources: "Asset Protection News," Donlevy-Rosen & Rosen P.A.; Holland & Knight LLP.