

Mandatory Payroll Deduction Orders in Chapter 13 Bankruptcy Cases in the Eastern District of Kentucky

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Chapter 13 Trustee

Local Rule 3070-1(a) provides as follows:

RULE 3070-1. CHAPTER 13 – PAYMENTS

(a) Payment Method. Unless otherwise ordered by the court or agreed to by the trustee, funding of a chapter 13 plan shall be by payroll deduction. Payroll deduction shall be effectuated by order of the court. The order must be tendered by the debtor with the filing of the plan and must be in substantial conformity with Local Form 3070-1(a). No motion for payroll deduction is necessary.

KYEB LBR 3070-1(a) (eff. 12/01/2013).

Payroll Deduction Required: If the debtor's income is from employment, the debtor's attorney must submit a completed payroll deduction order ("PDO") (Local Form 3070-1(a)) at the same time the plan is filed, unless the debtor has a legitimate reason for making payments other than by payroll deduction (see below).

If joint debtors want to have a portion of the plan payment deducted from one debtor's wages and a portion deducted from the other's wages, it is permissible to submit two different payroll deduction orders, one for each debtor.

Payroll Deduction Not Required: If Schedule I shows the debtor's income is from a source other than wages from employment (e.g., social security, retirement, rental income, self-employment), a payroll deduction order is not necessary, and debtors' attorneys do not need to do anything further.

Payroll Deduction Requirement Can Be Excused: If the debtor has valid grounds for not having plan payments deducted from his/her wages, the debtor's attorney needs to get the trustee's agreement or, if the trustee will not agree, a court order to excuse compliance with the rule.

To get the trustee's agreement, the debtor's attorney can make a request in an email to the trustee's office. The attorney may email the applicable case manager or questions@ch13edky.com. Put the case number in the subject line of the email.

Examples of valid reasons not to make payments by payroll deduction might be:

- Employment is part-time and wages are inadequate to make complete plan payments;
- Employment is seasonal, or income fluctuates from week to week or month to month;
- The debtor's income is from tips;
- The debtor changes jobs frequently;
- The debtor works for a small employer who still hand-writes payroll checks.

The trustee may want to discuss the matter further with the debtor at the section 341 meeting before deciding whether to excuse compliance. The debtor needs to make plan payments to the trustee in the meantime.

If the trustee agrees that the debtor need not make payments by payroll deduction, the trustee may instead ask that payments be made via ACH/automatic bank draft.

If the trustee does not agree to excusing the debtor from the payroll deduction rule, the debtor can file a motion and ask the court for a waiver of the Local Rule.

Trustee’s Motion to Compel Compliance; Motion to Dismiss. If Schedule I shows income from wages but the debtor has not tendered a Payroll Deduction Order and has not provided anything to the trustee to justify the failure to submit the payroll deduction order, the trustee will file a motion to compel the debtor to comply with the Local Rule. If there is no compliance after an order is entered compelling the debtor to comply with the rule, the trustee will file a motion to dismiss the case.

Modified Plans; “Step Payments”. Except as explained in subsequent paragraphs, the trustee will take over the administration of payroll deduction orders after the debtor files the initial PDO. The trustee will prepare, file, and serve amended payroll deduction orders when:

- The debtor’s plan payments change before confirmation due to an amended plan;
- The debtor’s plan calls for “step payments” (example, where the plan builds in an increase in plan payments after a 401k loan is paid off);
- A modification to the plan approved by the court after confirmation results in a change in plan payments (other than “suspensions”; see below);
- The debtor gives the trustee’s office new employment information.

“Suspension” of Plan Payments. If the debtor files a motion to modify the plan to suspend plan payments for a brief period of time, the debtor is responsible for getting the employer to stop and restart payroll deductions. The trustee will NOT be responsible for getting the employer to stop and restart the plan payments. The trustee will NOT refund any monies remitted by the employer to the trustee after an order was entered suspending payments.

Periodic Lump-Sum Payments From Bonuses, Tax Refunds, Etc. If the debtor is required to submit periodic lump-sum payments from bonuses, tax refunds, etc., those payments will NOT be captured by the payroll deduction order. The debtor is responsible for making those payments to the trustee by check, money order, or online at www.tfsbillpay.com.

Payments to Catch-Up Delinquencies. If the trustee files a motion to dismiss for failure to make plan payments and the debtor is allowed 30, 60, or 90 days to become current, the “cure” or “catch-up” payment will NOT be made via payroll deduction. The debtor is responsible for making those payments to the trustee by check, money order, or online at www.tfsbillpay.com. Any payroll deduction order will apply only to regular monthly payments.

Change in Employment. When a debtor changes employment, the trustee will need to serve a PDO on the new employer. The debtor must notify the trustee of the new payroll address. When a debtor’s employer informs the trustee that the debtor is no longer employed there, the trustee will request that the debtor or the debtor’s attorney provide the trustee with updated employment information. The debtor is responsible for making plan payments by check, money order, or online at www.tfsbillpay.com until plan payments are deducted by the new employer.

Procedure on Conversion, Dismissal, or Completion: When the chapter 13 case is converted to another chapter, dismissed, or when the debtor completes the plan, the trustee will prepare, file, and serve an order vacating the payroll deduction order.

***Mandatory Payroll Deduction Orders (“PDO”):
Responsibilities of Parties***

<u>WHAT</u>	<u>DEBTOR</u>	<u>DEBTOR’S ATTORNEY</u>	<u>TRUSTEE</u>
Explain that debtor must make partial payments directly to the trustee until payment is actually deducted from debtor’s pay and that first full monthly payment is due 30 days from petition date		X	
Calculate and inform debtor how much debtor should pay weekly, bi-weekly, or semi-monthly until payment is actually deducted from debtor’s pay		X	
Make partial payments to trustee by check, money order, or online until payments are deducted from paycheck	X		
Submit PDO to court with plan if debtor is employed		X	
Serve PDO on employer			X
Send initial letter to debtor with amount to be paid weekly, bi-weekly, or twice a month and file copy with court			X
Request trustee to agree that PDO is not required		X	
File motion to excuse compliance if trustee does not agree		X	
File motion to compel debtor to submit PDO if debtor/attorney has not complied with rule or requested waiver			X
Verify correct amount is being deducted from debtor’s paycheck	X	X	
Verify payments are being remitted timely by employer to trustee	X	X	
Submit and serve PDO when plan payments change (except for payment suspensions)			X
Get employer to stop and restart payroll deductions when plan payments are suspended	X		
Notify trustee of employment changes	X		
Serve PDO on new employer			X
Make partial payments by check, money order, or online until payments are deducted from paycheck at new job	X		
Make periodic lump-sum payments (bonuses, tax refunds, etc.) by check, money order, or online, not by payroll deduction	X		
Make “catch-up” payments by check, money order, or online, not by payroll deduction, if delinquent	X		
Vacate PDO if case is dismissed, converted, discharged, or closed.			X

***Mandatory Payroll Deduction Orders (“PDO”):
Converting Monthly Payments to Weekly, Bi-Weekly, and Semi-Monthly Amounts***

Whether setting up the initial PDO or reviewing paystubs to make sure the correct amount is being deducted from the debtor’s wages, the debtor and the debtor’s attorney must be able to convert a monthly plan payment amount to weekly, bi-weekly, and semi-monthly amounts.

EXAMPLE

IF MONTHLY PLAN PAYMENTS ARE \$500.00 PER MONTH:

EXAMPLE #1: If your plan payments are \$500/month and you are paid weekly, the WEEKLY amount of your plan payment would be:

$$\begin{array}{r r r} \text{Multiply} & \$500 & \text{(monthly payment)} \\ & \times & 12 \text{ (months per year)} \\ \text{Divide by} & \underline{52} & \text{(weeks per year)} \\ = & \$115.38 & \text{Weekly} \end{array}$$

EXAMPLE #2: If your plan payments are \$500/month and you are paid every 2 weeks, the BI-WEEKLY amount of your plan payment would be:

$$\begin{array}{r r r} \text{Multiply} & \$500 & \text{(monthly payment)} \\ & \times & 12 \text{ (months per year)} \\ \text{Divide by} & \underline{26} & \text{(pay periods per year)} \\ = & \$230.77 & \text{Bi-weekly} \end{array}$$

EXAMPLE #3: If your plan payments are \$500/month and you are paid twice a month every month, the SEMI-MONTHLY amount of your plan payment would be:

$$\begin{array}{r r r} & \$500 & \text{(monthly payment)} \\ \text{Divide by} & \underline{2} & \text{(pay periods per month)} \\ = & \$250 & \text{Semi-monthly} \end{array}$$

Here is a link to an easy-to-use Excel calculator:
(<https://ch13edky.files.wordpress.com/2017/08/payment-conversion-calculator.xlsx>). All you have to do is enter the monthly plan payment amount, and it will give you the equivalent weekly, bi-weekly, and semi-monthly amounts. If the link doesn’t work, you can find it at www.ch13edky.com.

HOW TO FILL OUT
A PAYROLL DEDUCTION ORDER

Local Form 3070-1(a)

UNITED STATES BANKRUPTCY COURT [PDF Fillable Form at www.kveb.uscourts.gov](http://www.kveb.uscourts.gov)
FOR THE EASTERN DISTRICT OF KENTUCKY

INSERT DIVISION NAME DIVISION

IN RE:

INSERT DEBTOR 1 NAME
INSERT DEBTOR 2 NAME
DEBTOR(S)

CASE NO. INSERT CASE #
CHAPTER 13

ORDER DIRECTING EMPLOYER TO MAKE WAGE DEDUCTIONS
FOR REMITTANCE TO CHAPTER 13 TRUSTEE

To Employer of: INSERT DEBTOR/EMPLOYEE NAME

Employer Name and Address: INSERT EMPLOYER NAME
INSERT EMPLOYER ADDRESS

ATTN: Payroll Department

INSERT PLAN
PAYMENT
AMOUNT

Future earnings of the above-named employee are subject to the continuing supervision and control of the court for the purpose of enforcing the terms of the chapter 13 plan herein.

THEREFORE, the employer is hereby ordered to deduct the sum of _____ monthly from earnings of the employee, beginning with the next pay period following receipt of this ORDER.

The employer shall continue said deduction until further order and shall remit any monies withheld at least monthly, or more frequently if convenient, to the Chapter 13 Trustee whose address appears below. If the earnings are less than the amount ordered, the entire earnings shall be remitted. THE EMPLOYEE'S FULL NAME AND CASE NUMBER MUST APPEAR ON THE PAYMENT.

During this proceeding, the earnings of the employee shall be exempt from garnishments or attachments issued from any other court for the collection of debts contracted before or after commencement of the proceeding. The employer shall not honor any levies for the collection of state or federal taxes or make deductions for any credit unions. This order does not prohibit the employer from honoring state court orders for wage assignments for current child or spousal support.

This ORDER shall not constitute grounds for the dismissal of the employee, refusal to employ, or any disciplinary action against the employee. The employer shall not charge a processing fee, administrative fee, or other service fee, or otherwise collect a fee from earnings of the employee, without approval of the Bankruptcy Court.

It is directed that the Chapter 13 Trustee serve copies upon the employer, debtor and the attorney for the debtor.

Remit withholdings payable to:

Chapter 13 Trustee – EDKY
PO Box 1766
Memphis, TN 38101-1766
859-233-1527