



South African Payroll Association

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SAPA urges swift action on new garnishee bill

The South African Payroll Association (SAPA) says that the proposed amendments to the Magistrates' Court Act 32 of 1944, aimed at curbing unconstitutional practices relating to garnishee orders, are to be welcomed. The Association has urged Parliament to press ahead with tabling the bill now that the local government elections are complete.

"The new bill is by and large an excellent piece of legislation that corrects some of the glaring faults in the existing law, which have greatly prejudiced large numbers of vulnerable workers," says Nicolette Nicholson, director at SAPA. "Because the current Magistrates Act sets no cap on garnishee orders, and the Basic Conditions of Employment Act cap personal deductions only, employees can find themselves with no pay to take home, clearly something that is not sustainable either for the individual or the company."

Proposed Amendments

In terms of the proposed amendments, says Nicholson, a maximum of 25 percent of a person's salary will be able to be garnished—it's not clear yet whether of gross or nett salary.

Under the new bill, garnishee orders will have to be filed in the court whose jurisdiction covers the area where the debtor resides. Whereas the present law allows garnishee orders to be issued by any magistrate's court, making it easy for companies to approach courts anywhere in the country that are known to grant orders easily—or, indeed, where they may have a corrupt relationship with a specific court official.

The new bill also tightens up on the issuing process to force magistrates to investigate thoroughly the debtor's financial position in order to ensure orders are just and equitable.

Furthermore, the new bill gives employers the responsibility of ensuring that salary deductions are made timeously (or risk becoming liable for any interest on arrears), and of stopping deductions when the amount stipulated in the judgement is paid in full.

"These are all very good moves to protect employees," says Nicholson. "However, one concern is the extra burden this places on payroll departments. My advice would be for companies with large workforces to engage the services of a reputable third-party service provider to manage the garnishee orders."

The proposed amendments have been approved by Cabinet and are now due to be considered by the Portfolio Committee on Justice and Correctional Services, although the date has not yet been set. In the meantime, says Nicholson, irrespective of the law, employees need to take responsibility for their own actions.

Take responsibility

However, the onus still falls on consumers to take responsibility for their spending. “Every citizen is responsible for conducting his or her financial affairs responsibly—that’s the bottom line,” says Nicholson. “If one lives above one’s means, then there will be consequences.

In particular, employees must avoid relying on their variable income to fund their lifestyles—bonuses, overtime and the like are not part of the salary package and will vary in line with company performance. For example, many people find themselves receiving a garnishee order because they are relying on a bonus to pay for something, and then the bonus doesn’t materialise.”

If employees run into trouble, she concludes, they should definitely turn to their employers for help. Although there is no legal obligation to provide financial or debt counselling, many companies do so, or would be prepared to refer an employee to someone who could help.

In addition, most of the big retirement funds offer financial wellbeing services.

“Help is definitely available—look for it,” she advises. “A problem with debt compounds quickly, so the earlier one begins with a solution, the better.”

Photo caption: Nicolette Nicholson, director at SAPA advises against living beyond one’s means

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MEDIA CONTACT: Idéle Prinsloo, 082 573 9219, idele@thatpoint.co.za,
www.atthatpoint.co.za

For more information on SAPA please visit:

Website: <http://www.sapayroll.co.za/>

Twitter: [@SAPayroll](https://twitter.com/SAPayroll)

LinkedIn: [The South African Payroll Association](https://www.linkedin.com/company/the-south-african-payroll-association)