

(f) *You may request that your employer withhold more.* If you request in writing that your employer withhold more than the amount determined under paragraphs (d) or (e) of this section, we will order your employer to withhold the amount that you request.

§ 422.440 What are your employer's responsibilities under an administrative wage garnishment order?

(a) *When withholding must begin.* Your employer must withhold the appropriate amount from your disposable pay on each payday beginning on the first payday after receiving the garnishment order issued under this section. If the first payday is within 10 days after your employer receives the order, then your employer must begin withholding on the first or second payday after your employer receives the order. Withholding must continue until we notify your employer to stop withholding.

(b) *Payment of amounts withheld.* Your employer must promptly pay to us all amounts withheld under this section.

(c) *Other assignments or allotments of pay.* Your employer cannot honor an assignment or allotment of your pay to the extent that it would interfere with or prevent withholding under this section, unless the assignment or allotment is made under a family support judgement or order.

(d) *Effect of withholding on employer pay and disbursement cycles.* Your employer will not be required to vary its normal pay and disbursement cycles in order to comply with the garnishment order.

(e) *When withholding ends.* When we have fully recovered the amounts you owe, including interest, penalties, and administrative costs that we charge you as allowed by law, we will tell your employer to stop withholding from your disposable pay. As an added precaution, we will review our debtors' accounts at least annually to ensure that withholding has been terminated for accounts paid in full.

(f) *Certain actions by an employer against you are prohibited.* Federal law prohibits an employer from using a garnishment order issued under this section as the basis for discharging you from employment, refusing to employ you, or taking disciplinary action against you. If your employer violates this prohibition, you may file a civil action against your employer in a Federal or State court of competent jurisdiction.

§ 422.445 May we bring a civil action against your employer for failure to comply with our administrative wage garnishment order?

(a) We may bring a civil action against your employer for any amount that the employer fails to withhold from your disposable pay in accordance with § 422.435(d), (e) and (f). Your employer may also be liable for attorney fees, costs of the lawsuit and (in the court's discretion) punitive damages.

(b) We will not file a civil action against your employer before we terminate collection action against you, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period. For purposes of this section, "terminate collection action" means that we have terminated collection action in accordance with the Federal Claims Collection Standards (31 CFR 903.3) or other applicable standards. In any event, we will consider that collection action has been terminated if we have not received any payments to satisfy the debt for a period of one year.

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DEPARTMENT OF JUSTICE

28 CFR Part 15

[CIV 102F; AG Order No. 2697-2003]

RIN 1105-AA62

Certification and Decertification in Connection With Certain Suits Based Upon Acts or Omissions of Federal Employees and Other Persons

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: In cases where employees of the Federal government are sued for money damages based on alleged torts, if the Attorney General certifies that the employees (and certain non-employees) were acting within the scope of their employment at the time, the suit would be deemed an action against the United States under the Federal Tort Claims Act. This final rule conforms Department regulations to the provisions of the Federal Employees Liability Reform and Tort Compensation Act which expanded the tort protections for Federal employees (and certain non-employees) by finalizing a proposed rule the Department published on this subject on October 22, 2002.

DATES: This final rule is effective January 22, 2004.

FOR FURTHER INFORMATION CONTACT: Phyllis J. Pyles, Director, Torts Branch,

Civil Division, U.S. Department of Justice, P.O. Box 888, Benjamin Franklin Station, Washington, DC 20044.

SUPPLEMENTARY INFORMATION: The Department published a proposed rule on this subject on October 22, 2002, at 67 FR 64844. No comments were received before the comment period closed on December 23, 2002, and, accordingly, the Department is finalizing the proposed rule without change.

Background

In 1961 Congress passed the Federal Drivers Act, 75 Stat. 539, which immunized Federal employees from liability for money damages based on torts involving the operation of motor vehicles within the scope of their employment. In the event that a Federal employee was sued in such a case, the statute authorized the Attorney General to issue a certification that the employee was acting within the scope of his or her employment at the time of the incident out of which the suit arose, and the suit thereafter would be deemed a tort action against the United States pursuant to the Federal Tort Claims Act, 28 U.S.C. 1346(b), 2671-2680.

In ensuing years, a number of similar certification statutes were enacted to protect medical and legal personnel employed by certain Federal agencies from tort liability for professional malpractice arising within the scope of their employment. *E.g.*, 10 U.S.C. 1054 (Department of Defense legal personnel); 10 U.S.C. 1089 (Department of Defense medical personnel); 22 U.S.C. 2509(j) (Peace Corps medical personnel); 22 U.S.C. 2702 (Department of State medical personnel); 38 U.S.C. 7316 (Department of Veterans Affairs medical personnel); 42 U.S.C. 233 (Public Health Service medical personnel); 42 U.S.C. 2458a (National Aeronautics and Space Administration medical personnel).

Most recently, the Federal Employees Liability Reform and Tort Compensation Act, 28 U.S.C. 2679(b)-(e), became law. This certification statute, which replaced the less comprehensive Federal Drivers Act, extended immunity from liability for money damages to Federal employees for all common law torts committed within the scope of their employment.

A number of certification statutes also have been enacted to protect certain non-employees from tort liability arising out of certain Federal programs. As part of the National Swine Flu Immunization Program of 1976, 90 Stat. 1113, Congress authorized the Attorney General to issue certifications in suits brought against