Administrative Interpretation No. 3.403-7512

AN IRREVOCABLE AUTHORIZATION TO WITHHOLD PERSONAL EARNINGS FOR PAYMENT OF A CONSUMER LOAN IS PROHIBITED.

You have requested an interpretation of South Carolina Consumer Protection Code Section 3.403(1), S. C. Code Section 8-800.273.

Your question concerned the termination agreement signed by the employee relating to unpaid wages. If this is an attempt to create an irrevocable agreement allowing the Company to withhold an employee's earnings, it would be an attempted assignment of earnings subject to Consumer Protection Code Section 3.403(1) [S. C. Code Section 8-800.273]. The effect of the Code on assignments of earnings is to make them unenforceable by the assignee and revocable by the debtor.

The Consumer Protection Code makes it clear that whether or not earnings will be withheld is left to the discretion of the debtor. If he can revoke his authorization to deduct from the employee's earnings, it is not an attempted assignment and not prohibited by the Consumer Protection Code.

Your second question concerned whether or not a similar termination agreement between the employee and a credit union violates the Consumer Protection Code. Section 3.403(1) of the Consumer Protection Code [S. C. Code Section 8-800.273] makes no distinction between lenders who are also employers and those who are not. All lenders who make consumer loans are subject to the Consumer Protection Code and are prohibited from taking an assignment of earnings. Again, if the authorization to deduct from an employee's earnings is revocable by the employee, it is not prohibited.

By Kathleen Goodpasture Smith
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Irvin D. Parker
Administrator