



KEEPING AN EYE ON THOSE DEDUCTIONS?

SOLACE

Member of **Legal&Tax**

Salary Attachment Orders (SAOs) are commonly, but mistakenly, referred to as 'garnishee orders'.

An SAO orders an employer to make deductions from a debtor's salary or wages and pay these over to the creditor or their attorneys. This will be on a monthly basis and will take place until the debt and the legal fees are fully paid. It will reflect on your pay slip under "deductions".

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How much can be deducted from the salary or wage:

The amount to be deducted from the salary or wage must be clearly set out in the order. The judgment creditor (the person who lent out the money) is able to claim the following:

- Full amount of the money loaned, less payments already made by the employee;
- Interest on the outstanding balance; costs incurred by the judgment creditor to collect the money if so granted by the court which can include sheriff fees.

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How to determine whether an order is valid:

- A true order is an order by the court. It is served by the messenger of the court, also known as the sheriff, to the garnishee third party or employer. The sheriff will show the recipient the original order and a copy is left with the recipient. The order must contain the following:
- A case number
- Signature and official stamp from the court
- Signed by the attorney

③

Employee's rights:

An employee has the following rights:

- To dispute the validity of the order and or the amount claimed if it appears to be incorrect
- To apply to court to reduce the amount of the order when the employee is unable to meet his/her and his/her dependents maintenance costs
- To be furnished, by the creditor or his attorney, free of charge, with a statement containing particulars of payments received up to the date concerned and the balance owing



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What to do if you believe you don't owe the money at all or the amount claimed:

The Magistrate's Court Act provides that an order can be set aside if a good reason can be shown to do so.

A good reason would be:

- You have already paid the debt
- You have paid a portion of the debt and that the amount claimed is too high
- You never incurred the debt

⑤

When and how to have a judgement rescinded (set aside/cancelled):

- A consumer can apply to court to have a judgment rescinded (set aside), if it was granted in error or if the debt has been settled.
- If granted in error and or the judgment was given without you being present at court (i.e. the judgement was by default), you can apply for the rescission within 20 working days after you became aware that the judgment was taken, and you want to defend the claim if for example you never received notice of the summons or the debt was paid prior to it being granted.

If you have settled your debt and judgment was granted in the Magistrates court, you can now provide the Credit Bureaus with a letter from the creditor confirming that the debt is settled and they will have no objection to you having the judgment rescinded and removed from your credit profile.

⑥

Applying to court to have an salary attachment order reduced:

- If the creditor is unwilling to reduce an order and you cannot afford the payments, you must state what you can afford to pay each month and must give full details of your income and expenses with proof attached (for example, account statements, rent receipts, salary advice). The court will then look at this and decide if your offer is reasonable. It is in your interest to pay as much as possible as the lower the instalment is, the more you will pay in interest.

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