

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

Beverly M. Burden  
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 [documents@ch13edky.com](mailto:documents@ch13edky.com) (along with the 341 documents), or [questions@ch13edky.com](mailto:questions@ch13edky.com).

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 or money order.

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 or money order. 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 or money order 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***

<b><u>WHAT</u></b>	<b><u>DEBTOR</u></b>	<b><u>TRUSTEE</u></b>
Submit PDO with plan if debtor is employed	X	
Request trustee to agree that PDO is not required	X (attorney)	
File motion to compel debtor to submit PDO		X
File motion to excuse compliance if trustee does not agree	X (attorney)	
Send initial letter to debtor with amount to be paid weekly, bi-weekly, or twice a month		X
Make partial payments by check or money order to trustee until payments are deducted from paycheck	X	
Serve PDO on employer		X
Submit and serve PDO when plan payments change		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 or money order until payments are deducted from paycheck at new job	X	
Make periodic lump-sum payments (bonuses, tax refunds, etc.) by check or money order, not by payroll deduction	X	
Make “catch-up” payments by check or money order, not by payroll deduction, if delinquent	X	
Verify correct amount is being deducted from debtor’s paycheck	X	
Verify payments are being remitted timely by employer to trustee	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:

Multiply	\$500	(monthly payment)
x	12	(months per year)
Divide by	52	(weeks per year)
=	\$115.38	Weekly

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:

Multiply	\$500	(monthly payment)
x	12	(months per year)
Divide by	26	(pay periods per year)
=	\$230.77	Bi-weekly

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:

	\$500	(monthly payment)
Divide by	2	(pay periods per month)
=	\$250	Semi-monthly