

## **Salary Withholding Program Review** *Frequently Asked Questions*

### **What is the Salary Withholding Program?**

Section 200.2-a of the State Finance Law (Chapter 947 of the Laws of 1990) provides for the withholding of one tenth (typically five days) of an employee's salary in each of the first five payroll periods, beginning with the date of an employee's initial appointment to a position covered under the program. Payment for the withheld salary is made at the time of separation from service or at the time of appointment to a position not covered under the Salary Withholding Program, whichever is sooner (Chapter 702 of the Laws of 1991).

### **Are all State employees included in this program?**

No. Approximately 150,000 State employees are covered by the program. A listing of the affected bargaining units is included with a Payroll Bulletin on this topic. Also, some employees are not required to have salary withheld under the statute; this includes employees who were active or became active during the original implementation of the salary withholding program in 1991, and did not work, did not charge leave credits, or were on leave without pay for the entire pre-defined week:

Institution Lag	February 28, 1991-March 6, 1991
Institution Current	March 14, 1991-March 20, 1991
Administration Lag	March 7, 1991-March 13, 1991
Administration Current	March 21, 1991-March 27, 1991

### **Why wasn't the employee's salary previously withheld?**

Simply stated, the agency that hired the employee did not implement the withholding program, and the Bureau of State Payroll Services did not catch the mistake.

Agencies are responsible for determining an employee's employment status and starting the salary withholding process. The salary withholding is to begin at the time of an employee's initial appointment to a bargaining unit covered by the legislation. But sometimes, the salary withholding is affected by a change in bargaining unit, a return from leave, a return to the payroll following a break in service, or movement from one agency to another. There are several employment conditions that affect an employee's participation in the withholding program. This level of complexity increases the chance of errors.

### **How was this situation detected?**

This situation was identified as a potential problem in 2002 as part of the Bureau of State Payroll Services' ongoing program of internal controls and quality assurance. An analysis of the data revealed that approximately 2500 employees who are covered under the salary withholding legislation might not have had salary withheld. In some cases, employee withholding was not implemented, and must now be initiated.

This is one of many cases where OSC data analyses have resulted in payroll corrections. A detailed review of employment records in 2001, for example, resulted in more than \$1.5 million in positive salary adjustments benefiting more than 700 State employees. When payroll errors are identified, we have an obligation to correct them as soon as possible. Once the Salary Withholding Program situation was identified, the Bureau started to develop plans to correct the situation.

**Who has been advised of this Salary Withholding review?**

OSC has discussed this review with the Governor's Office of Employee Relations, and GOER has provided information to the affected unions. Additionally, this issue has been discussed with agency representatives at meetings of the New York State Payroll Users Group, and detailed implementation instructions are provided in a Payroll Bulletin. Our mutual goal is to ensure that all agencies comply with this legislation and that the implementation is handled fairly and equitably for all employees in the affected bargaining units.

**What is the next step?**

The agency payroll offices will complete a detailed review of employment records to identify salaried employees currently working in their agencies who should have had salary withheld under the program. The actual number of employees who should have had salary withheld under the program will be determined when the agencies review the records.

**How will the affected employees be notified?**

Agencies will provide a written notice (based on a draft provided by OSC) to each affected employee at least three weeks in advance of the first withholding. The notice will include the amount to be withheld from each paycheck, the number of payroll periods the withholding will be in effect, and the total amount to be withheld. This will ensure that affected employees are given appropriate and sufficient notice that they are subject to the salary withholding program. The amount of salary to be withheld will be calculated using the salary rate, the employee's part-time percentage, and employee's status in effect on the last day of each of the initial five (5) pay periods at the time the withholding should have occurred.

**Does this problem continue today?**

No. Procedures are in place to ensure an employee's salary is properly withheld upon appointment. We are currently resolving errors that occurred many years ago. To assist agencies, OSC has developed a query to identify annual salaried employees eligible for the program. Also, OSC will monitor compliance with the Salary Withholding Program.

**Can agencies exclude employees from the program?**

No. The OSC Division of Legal Services has confirmed that salary withholding should be initiated for all salaried employees who should have had salary withheld at the time of their appointment in an eligible bargaining unit.

**Can the salary withholding be waived in cases of financial hardship?**

No. OSC has confirmed that there are no provisions for "financial hardship" in the statute. The method of implementation is applied in the same manner for all affected employees.

**Is there a time requirement?**

Yes. The following timeframes are included in the Payroll Bulletin:

- Agencies will review employment records, starting in February 2003.
- Upon completion of their reviews, Agencies will notify affected employees three weeks in advance of salary withholding, but no later than March 27, 2003.
- Salary withholding will begin as soon as possible, but no later than April 23, 2003 for Administrative payrolls and May 1, 2003 for Institutional payrolls.