6-32/000.00 Preferred Labor Claims

• 6-32/100.00 Preferred Labor Claims

Any miner, mechanic, salesman, servant, clerk, laborer or other person who has performed work or rendered personal services for the defendant within 90 days prior to the levy of any attachment or execution, not founded upon a claim for labor, may claim a preference of not exceeding $900. (CCP 1206)

A labor claimant requesting priority is the beneficiary of a special statutory privilege which must be strictly followed and have no superior rights to those of the plaintiff except that of first recourse to the moneys realized after deduction of costs incurred by the attaching creditor. (Legg and Shaw v. Worthington, 157 C 488)

The right to priority of labor claims is purely statutory and may not be extended to claims other than those specified in CCP 1206. (Steele v. International Air Race, 50 CA 2d 176)

• 6-32/200.00 Assertion of Claim

In order to claim priority, the claimant must file a verified statement of the claim therefor with the officer executing the writ, file a copy thereof with the court which issued the writ, and give copies thereof, containing his or her address, to the plaintiff and the defendant, or any attorney, clerk or agent representing them, or mail copies to them by registered (or certified mail pursuant to CCP 11) at their last known address, return of which by the post office undelivered shall be deemed a sufficient service if no better address is available. The claim may be filed at any time before the proceeds of the levy are paid out. (CCP 1206(a))

• 6-32/300.00 Duties of Levying Officer and Garnishee

Unless the officer has actual notice that a specific claim has been finally disallowed, the levying officer must include the amount of all preferred labor claims which have been filed and of which the officer has notice, including those endorsed by the clerk of the court on a writ of execution, in the total figure of the amount due under the writ. When the levying officer receives notice of a claim after service of a garnishment, the officer should mail a notice to the garnishee amending the amount due to include the claim and requesting immediate payment in the amount of such claim. (CCP 1206(b))

• • 6-32/310.00 Retention of Sufficient Assets and Proceeds

Until priority of the claim is finally established, the officer shall retain in possession so much of the proceeds of the writ as may be necessary to satisfy the claim, including the claimant's cost of suit. (CCP 1206(e))

No release shall be issued at the request of the attaching creditor until:

a. All labor claims are paid in full or released; or
b. The levying officer has mailed notices of the request of the attaching creditor to release to each of the labor claimants or their attorneys, notifying them that the property will be released unless they bring actions of their own and levy on the property within five days of the mailing, and the five days have expired.

The five-day period is extended if service is by mail (CCP 1013):

- 5 days if within the state
- 10 days if outside of California
- 20 days if outside of the United States

If such senior attaching plaintiff or judgment creditor requests a release of his or her original attachment or execution, and the preferred labor claims filed under same are not released, the officer who levied the writ must first mail notices of such request to release to each of the labor claimants who have filed claims, or their attorneys, which notices must specify that unless the claimants bring attachment actions of their own and levy on the money or property in question within five days from the date thereof the money or property will be released from the attachment or execution; provided, however, that such officer may instead collect sufficient money on the basis of the original writ to pay off the preferred labor claims in full and then release the attachment or execution, but in no case shall the officer release the attachment or execution without first taking care of the labor claims until the five-day period has expired, unless the officer's costs, keeper's fees or storage charge, have not been immediately taken care of by some of the parties involved. (CCP 1208)

• 6-32/400.00 Duty of Garnishee

The amount due on preferred labor claims that have not been finally disallowed by the court shall be considered a part of the sum due under any writ of attachment or execution in augmentation of the amount thereof and it shall be the duty of any person, firm, association or corporation on whom a writ of attachment or execution is levied to immediately pay to the levying officer the amount of such preferred labor claims, out of any money belonging to the defendant in the action, before paying the principal sum called for in the writ.

In any case it shall be lawful for a garnishee to pay over to the officer levying the writ any money held by the garnishee and the officer's receipt for the money shall be sufficient quittance.

(CCP 1208)

• 6-32/500.00 Dispute of Labor Claim

• • 6-32/510.00 Filing of Dispute

Within five days after receiving a copy of the labor claim, either the plaintiff or the defendant in the action may file with the levying officer a sworn statement disputing any part of such claim. (CCP 1207) If the party disputing the claim serves a copy of the sworn statement on the claimant, or the claimant's attorney or assignee, either personally or by mail, the claimant may petition for a hearing on the claim. The claim to priority is barred if the claimant does not petition for a hearing within 10 days of personal service or deposit in the mail, as evidenced by the registry receipt, of the sworn statement denying the claim. The petition must be filed with the court having jurisdiction of the action on which the writ is based, or, if more than one attachment or execution is involved, the court having jurisdiction over the senior attachment or execution. (CCP 1206(c))

• • 6-32/520.00 Hearing on Claim

The hearing shall be held within 20 days from the claimant's filing of the petition, unless continued by the court for good cause. The claimant shall give at least 10 days notice to all interested parties, but the levying officer is not required to be given notice. The hearing shall be for the purpose of determining the claim for priority. (CCP 1206(c)) There shall be no cost for filing or hearing the petition. An order determining a claim of priority may be appealed in the manner provided for appeals from judgments of the court where the proceeding is had. (CCP 1206(d))

• 6-32/600.00 Determination of Priority

• • 6-32/610.00 Allowance of Labor Claim

A claim for priority is established:

1. If not disputed by the parties to the action within five days after receiving a copy of the claim (CCP 1206(c)) or
2. After the order allowing the claim becomes final. (CCP 1206(e); Driver v. International Air Race, 54 CA 2d 614) Unless appeal is waived, the order does not become final until expiration of the time to appeal or final judgment on appeal.

• • 6-32/620.00 Disallowance of Priority

A labor claim for priority is barred on:

1. Failure to petition for a hearing within the 10-day period (CCP 1206(c)) or
2. The order disallowing the claim becomes final (CCP 1206(e))

• 6-32/700.00 Payment of Established Labor Liens

• • 6-32/710.00 Time and Amount of Payment

The Sheriff must pay a preferred labor claim from proceeds of the writ in his possession immediately upon establishment of such labor claim, whether upon expiration of the time to dispute the claim or when a court order allowing the claim becomes final. If any claim is allowed by the court, the claimant's costs of suit must be included in such payment. The payments are required whether the proceeds are collected from a writ of execution or writ of attachment. (CCP 1206(e))

In all cases, the Sheriff must first deduct the costs incurred in the action by the attaching creditor before paying labor claims. (CCP 1208; Legg and Shaw v. Worthington, 157 CA 488) Such costs include not only the costs of the levy, but also other costs in the action such as the fees of the clerk of the court.

Internal Revenue tax liens have priority over preferred labor claims where there has been no bankruptcy. (United States v. Labor Law Enforcement, 201 F.2d 857) The Bankruptcy Act governs where the debtor has gone into bankruptcy. (In re Knox-Powell-Stockton, 100 F .2d 979 – cite not available)

• • 6-32/720.00 Apportioning Between Labor Claimants

The method of distribution when the proceeds of the levy are less than the amount of the claims is as follows (CCP 1208):

1. Claims exceed the proceeds received after levy, whether undisputed, or disputed but judgment was established - among claimants in proportion to the amount of their claim after costs to plaintiff (or judgment creditor) have been satisfied.
2. Sufficient funds established but not received by the levying officer - any claimants, or their assignees, have the right to proceed directly against the money or other property levied on in individual or joint actions by themselves or their assignees against the debtor. Such action will set the levy aside in order for the claimants to get their own writs. Any funds collected thereof shall be shared with any other claimants in 1.

• • 6-32/730.00 Request for Release of Writ of Attachment or Execution

If the plaintiff or judgment creditor requests a release of his or her attachment or execution, preferred labor claims received are not released. The levying officer may:

1. continue collecting under the writ attachment or execution until all preferred labor claims are satisfied

and the release the levy, or

2. The levying officer must mail notices of the request of the attaching creditor to release to each of the labor claimants or their attorneys, notifying them that the property will be released unless they bring actions of their own and levy on the property within five days of the mailing. Once the five days has expired, the levy may be released.

The five-day period is extended if service is by mail (CCP 1013):

- 5 days if within the state
- 10 days if outside of California
- 20 days if outside of the United States

The levy may also be released if at any time the levying officer's costs, keeper fees, or storage fees have not been immediately taken care of by some of the parties involved. (CCP 1208)

• • 6-32/740.00 Claims are filed through the California Labor Commissioner

Many claims are filed through the State of California Department of Labor Relations which lists the claims of numerous laborers in one claim. Payment of all claims filed by that division should be made by one county warrant payable to the division at the address given on the claim, and it will distribute the proceeds of such warrant among the claimants it represents.

• • 6-32/750.00 Separate Suit by Labor Claimant

If the creditor's levy is insufficient to pay all preferred labor claims upon expiration of the time for their dispute, any labor claimant may file a separate action of his own and levy upon the property being held under the creditor's levy. In that event the claimant's levy takes priority over the prior attachment. However, any money collected by the new levy shall be shared in by the other established labor claimants in proportion to the amount of their respective claims, deducting only the costs in the action brought by the said labor claimant, or his assignee, and the costs in the original action brought by the senior attaching plaintiff or judgment creditor. (CCP 1208)