

# ENFORCING A SUPPORT ORDER

## Order to Seek Employment

CS 503.6

### SUPERSEDES

[New Section]

### REFERENCES

42 U.S.C. §666(a) (15); MCA § 40-5-275

### Policy

#### Seek-Work as a CSED Enforcement Tool

Montana law allows the CSED to enforce a support order by requiring the obligor to seek employment and report on the progress of that activity. If the obligor does not comply, the CSED can enforce the seek-work order through a contempt action. It is the policy of the CSED to limit the use of this enforcement tool to cases where the obligor has an incentive to comply, and where other enforcement methods have been or are likely to be unsatisfactory. Caseworkers should carefully weigh the administrative costs against the likely outcomes before initiating action under this section.

#### Conditions for Initiating Seek-Work Action

The following conditions are required for initiating action in this section:

1. The obligor owes a support debt.
2. The obligor is underemployed, and is not engaged in diligent efforts to seek suitable employment.

#### NOTE:

**“Underemployed” and “Suitable Employment” Defined.** For purposes of this section “underemployed” means not engaged in suitable employment; “suitable employment” means employment commensurate with the obligor’s qualifications and the availability of employment opportunities in the community, or in the absence of commensurate employment available within a reasonable distance from the obligor’s address, “suitable employment” means any employment that the obligor is capable of performing.

3. An enforcement action is pending (for example, income withholding, medical enforcement, license suspension, contempt action) and a hearing on the notice has been requested.
4. The obligor has the capacity to seek employment and to engage in work if employment is offered. For purposes of this section an obligor is incapacitated--and not subject to a CSED seek-work action--when he or she is receiving benefits reflecting **total** physical or mental disability (for example, certain workers’ compensation, railroad, veterans’ or social security benefits), or can show other proof of **total** disability. Incapacity may be due to illness, injury, or some other condition, and may be permanent or temporary.
5. There is a reasonable expectation of compliance with the seek-work order, and the CSED has a practical means of monitoring that compliance; also, the CSED expects to pursue further action in case of noncompliance.

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6. There is sufficient evidence to prove the points in conditions (2) and (4) above. Evidence supporting these points may include,
  - proof of previous employment with descriptions of duties
  - testimony of witnesses having direct knowledge of the obligor's current, or relevant past, capacity or ability
  - proof of educational or training qualifications
  - public records of jobs available in the obligor's community or within a reasonable distance of the obligor's address (lists obtained from a local Job Service office, for example)
  - any other information showing the obligor is now able to seek and engage in employment (for example, medical records relating to ability to work; membership records showing participation in relevant activities)

### Procedures

#### Procedures for Caseworker

1. In a case in which an enforcement hearing is requested and granted, determines whether an order to seek employment may be appropriate (see POLICY). If so, proceeds to step 2. If not, takes no further action under this section.
2. Prior to the enforcement hearing, prepares an oral motion for an order to seek employment; proposes in the motion that the obligor be directed to take the following actions:
  - 1) Seek suitable employment within a specified amount of time (to be determined by the Administrative Law Judge at the hearing), where "suitable employment" means employment commensurate with the obligor's qualifications and the availability of employment opportunities in the community, or in the absence of commensurate employment available within a reasonable distance from the obligor's address, "suitable employment" means any employment that the obligor is capable of performing.
  - 2) File a weekly report with the CSED showing at least five new attempts by the obligor to find employment.
  - 3) Include in the weekly report the name, address, and telephone number of each employer with whom the obligor sought employment, and the name of each individual the obligor contacted to inquire about or apply for employment.
  - 4) Within 3 working days after obtaining employment, notify the CSED of the name, address, and telephone number of the employer, and of the name of an individual the CSED may contact to verify employment.
  - 5) In cases where income withholding or a similar plan for payment of the support debt has **not been ordered**, or a payment plan has been ordered but the payments are **not sufficient** to reduce the debt: Make payments on the past-due amount at the rate of 1/24th of the debt amount per month, in addition to any payment due for current support; the amount for debt payment may be less than 1/24th if it is determined according to the guidelines for

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hardship adjustments to income withholding (section CS 510.5) or for license suspension payment plans (section CS 530.2).

Also includes in the oral motion a statement that the obligor has claimed inability to pay support because of unemployment or underemployment, for any option identified in step 3, a statement proposing a specific alternative to the seek-work requirement, reverting to the seek-work requirement if the obligor fails to comply with the alternative, and a statement proposing that the seek-work provisions of the order be effective for 6 months or until the obligor finds work, whichever occurs first, and proposing an effective period for any alternative requirement.

3. In preparation for the enforcement hearing, takes additional steps as follows:
  - a. Determines whether, in connection with the enforcement notice now pending, the obligor has claimed inability to pay support because of unemployment or underemployment. Evidence of this claim may be an overt statement by the obligor, an indirect statement by the obligor clearly implying the claim, or failure of the obligor to object to the claim when suggested by another person.
  - b. Determines whether other steps by the obligor, if ordered by the CSED, would be acceptable in lieu of an order to seek employment. For example, it may be desirable for the obligor to pursue training or education to improve his or her job qualifications, or to receive general training in finding and securing a job.

If an acceptable alternative to seek-work action is identified in the case, determines whether there is a reasonable probability the obligor would comply with the alternative if ordered, and the required activity could be monitored by the CSED with little difficulty. If so, defines any necessary details and includes the alternative in the motion prepared in step 2. If not, takes no further action with respect to the alternative.
  - c. Determines whether discovery on the seek-work issue will be necessary; if so, prepares an oral motion for discovery of the information needed to prove the points in step 7.
4. Attends the enforcement hearing.
  - a. If no claim of inability to pay based on employment status exists at the time of the hearing, and the obligor makes no claim at the hearing, asks a direct question to determine whether the obligor is or is not making this claim. If the obligor makes the claim, proceeds to step 4b. If not, proceeds with the enforcement hearing but takes no further action with respect to an order to seek employment.
  - b. If before or during the hearing the obligor claims inability to pay based on employment status, as described in step 3a, orally presents the motion prepared in step 2, and any motion for discovery prepared in step 3c.

#### Procedures Office of Fair Hearings (OFH)

5. Conducts the enforcement hearing according to the procedures for the specific enforcement remedy. Upon a motion by the caseworker for an order imposing a payment plan and requiring seek-work or alternative activity, takes action in step 5a, 5b, or 5c, and 5d, as appropriate.
  - a. If the obligor is agreeable to the payment plan and the seek-work or alternative requirements, and waives the right to a hearing on these issues, enters an oral order as

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proposed in the motion or as agreed during the enforcement hearing.

- b. If the obligor objects to the payment plan or to the seek-work or alternative requirements, enters an oral "show cause" order setting a date and time for a seek-work hearing on the issues in the motion (taking into account the time needed for discovery, if applicable), directing the obligor to appear and show cause why the payment plan and seek-work or alternative requirements should not be imposed, and ordering discovery if applicable.
- c. If the information presented at the enforcement hearing clearly disproves the basis for the motion, orally denies the motion.
- d. Follows the oral order entered in 5a, 5b, or 5c above with a written notice and order for a seek-work hearing; includes exhibit due dates; sends the notice and order to the seek-work hearing participants.

#### Procedures for Caseworker

6. If a discovery order is not honored, consults with the CSED staff attorney about appropriate methods of enforcement.
7. Prepares for and attends the show-cause hearing on the seek-work issue. Points to be proved at the hearing include
  - 1) The obligor is not currently engaged in diligent, bona fide efforts to seek suitable employment.
  - 2) The obligor has the capacity and ability to seek employment and to engage in work if employment is offered.
  - 3) Suitable employment is available within a reasonable distance from the obligor's address.
  - 4) If applicable, the obligor is not currently participating in a payment plan sufficient to reduce the support debt.
  - 5) If applicable, the obligor is capable of participating in training or education to improve his or her earning capacity.

(See POLICY for types of evidence that may be used to prove the above points.)

#### Procedure for OFH

8. Conducts the show-cause hearing on the payment plan and seek-work issues; enters a decision and order, and informs the participants.

#### Procedures for Caseworker

9. Upon entry of an order imposing a payment plan and seek-work or alternative requirements, sets ticklers to periodically monitor for compliance by the obligor during the effective period of the order.
  - a. If the obligor fails to comply with the seek-work requirements, consults with the CSED staff attorney and takes action under judicial civil contempt (MCA Title 40 Chapter 5 Part 6), administrative civil contempt (MCA section 40-5-226(12)), or criminal nonsupport (MCA section 45-5-621).

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- b. If the obligor fails to comply with the payment plan, consults with the CSED staff attorney and takes action under MCA section 40-5-226(12) for administrative civil contempt.
  - c. If the obligor fails to comply with any alternative requirements, consults with the CSED staff attorney to activate and implement the seek-work order; takes action in step 9a to enforce the seek-work order if necessary.
10. If the obligor complies with the order issued in step 8 but does not obtain employment within 6 months after entry of the order, monitors the case for the next enforcement proceeding, and determines at that time whether new seek-work action is appropriate.