



## Deductions from Employees' Wages: New Regulations | Clarify the Do's and Don'ts

By Jillian Barron

Employers often find it necessary, and in some cases desirable, to deduct certain sums from their employees' paychecks, including not only medical insurance and retirement fund payments, but also cash advances, the cost of lost or damaged property, and wage overpayments. As of January 1, 2006, new state regulations define when such deductions are permitted. While consistent with previously existing statutes, the new regulations provide more detailed guidance and include examples as to the deductions that may be made in three different contexts: during employment, at the time of separation, and when the employer has paid an employee too much. The regulations also distinguish between situations in which deductions may reduce an employee's wages below the state minimum wage, and those where they may not. In all cases, deductions must be identified and recorded in the employer's payroll records for the employee. The new regulations are summarized below.

### During Ongoing Employment (WAC 296-126-028)

An employer may deduct any portion of an employee's wages and reduce them below the state minimum wage for the following reasons:

- The deduction is required under state or federal law.
- For medical, surgical, or hospital care or service paid for by the employer. Note: required workers' compensation payments may not be charged to an employee.
- To satisfy a court order, judgment, wage attachment, trustee process, bankruptcy proceeding, or payroll deduction notice for child support payments.
- If the employee expressly authorizes the deduction *in writing and in advance* for a lawful purpose for the employee's benefit. These deductions could be for things such as repayment of a loan or credit issued by the employer, direct payment to a creditor of the employee, or employee benefits such as health insurance and retirement plan contributions.

The employer may not derive a financial profit or benefit from such deductions. The regulations provide examples of deductions that may *not* be made during employment, including deductions based on acceptance of a bad check or credit card, a shortage from the cash register, or loss of or damage to employer property, even when the employee is at fault.

### At the Time of Separation (WAC 296-126-025)

An employer may deduct any portion of an employee's final wages and reduce them below the state minimum wage for the following reasons:

- The first three categories of deductions permitted during ongoing employment, listed above.
- If the employee authorizes the deduction *orally or in writing in advance* for: (1) pension, medical, dental, or other benefit plans; or (2) payment to a creditor or third party for the benefit of the employee. The creditor or third party can be the employer.

An employer also may make deductions from an employee's final paycheck for the following reasons, but *may not* reduce the employee's final gross wages below the state minimum wage, and may make the deductions *only when these incidents have occurred in the final pay period*:

- Acceptance of a bad check or credit card, if the employee did so in violation of procedures previously made known to the employee.
- A cash shortage from a cash register, drawer, or depository, if the employee had sole access to the cash and participated in the cash accounting at the beginning and end of the employee's shift.
- A cash shortage, failure of a customer to pay, or breakage or loss of equipment, if it was caused by a dishonest or willful act of the employee.
- Deductions for alleged theft are permissible only if it can be shown that the employee's intent was to deprive, and the employer filed a police report.

### **Deductions For Overpayments (WAC 296-126-030)**

When an employer pays an employee more than the agreed-upon wage or for more than the number of hours actually worked, the employer may recoup the overpayment through deductions from later paychecks that reduce the employee's gross wages below the state minimum wage. However, there are several conditions on this right: (1) the overpayment must have been inadvertent and infrequent; (2) a deduction may not be based on the *quality* of an employee's work; (3) the employer must detect the overpayment and implement a collection plan with the employee *within 90 days* of the *initial* overpayment (*i.e.*, if the overpayments continue over a period of time, the 90 days would begin at the time of the *first* one); and (4) the employer must provide the employee with documentation of the overpayment, and advance notice of the manner in which it will be recouped (*e.g.*, one or more deductions).

### **Options and Suggestions**

The limitations on an employer's right to make deductions from an employee's paychecks do not affect the employer's right to attempt to collect the debt from and, if necessary, to sue the employee or former employee. *See* RCW 49.48.010; WAC 296-126-030. Thus, to the extent an employer is unable to collect the full amount owed by an employee through wage deductions, the employer may still demand payment and initiate legal action to collect the money. Clearly, however, it will be more convenient and reliable to make deductions directly from an employee's paycheck, when permissible, than to wait until a later time to attempt to collect the money owed. Given the greater difficulty of proving oral agreements, and the requirement of written agreement for a number of specific deductions, employers will be best protected by requiring employees in all cases to authorize deductions *in writing in advance*, including for such potential circumstances as loss of or damage to employer property.

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