



CAMBRIDGE

PROPERTY & CASUALTY

SPECIAL REPORT

DON'T MEDDLE WITH EMPLOYEE PAYCHECKS

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If an employee negligently damages a company car, can I deduct the damages from their paycheck? NO.

I just terminated an employee for embezzling \$2,000 from my company bank account. Do I still have to pay that employee their \$2,000 in overdue wages? YES.

Our handbook says that we can fine our employees \$25 for smoking on company time. Can an employer withhold wages for a disciplinary action? NO.

One of the primary purposes of the Wages and Fringe Benefits Act is to prohibit employers from making inappropriate deductions from an employee's paycheck.

Unless the deduction is required or expressly permitted by law (child support, garnishments, FICA, income tax, etc.) or required or expressly permitted by a collective bargaining agreement (union dues), an employer cannot make any deductions from an employee's paycheck without the employee's voluntary written consent.

MCL 408.477(1)¹ provides in pertinent part as follows:

“...an employer shall not deduct from the wages of an employee, directly or indirectly, any amount...without the full, free, and

written consent of the employee, obtained without intimidation or fear of discharge for refusal to permit the deduction.”

* * *

“...a deduction for the benefit of the employer requires written consent from the employee for each wage payment subject to the deduction, and the cumulative amount of the deductions shall not reduce the gross wages paid to a rate less than minimum rate as defined in the minimum wage laws.”

An employee who believes his or her employer has violated the Act may file a written complaint with the department within 12 months after the alleged violation occurs.

The general rule is that all earned wages are required to be paid on the scheduled pay date. An employer cannot withhold wages for disciplinary action, damage, theft, or otherwise unless that employee freely consents to each individual deduction without the threat of termination.

If the employee does consent, the employer must have written consent for *each* wage payment subject to the deduction.

For example, if an employer has loaned money to an employee, that employer cannot withhold the loan payments from the employee's paycheck absent separate

¹ Provided in its entirety in Appendix A.

voluntary written consent for each check from which withholding will be made.

In *Duffy v. Gainey Transp. Services, Inc.*², the employer required all new-hire employees to sign a written consent authorizing the employer to make weekly paycheck deductions if the employee negligently caused damage to company property. An employee filed a complaint challenging the paycheck deductions for damage they had caused to the employer's trucks.

The Michigan Department of Labor, Bureau of Employment Standards, found that the written authorization was valid only with regard to the first deduction made and not with respect to subsequent deductions in light of the statute which the Department had interpreted to require separate written consent by a worker for each paycheck from which a deduction was made for benefit of employer.

The Court of Appeals agreed and held that the statute required separate written consent by the employee for each paycheck from which deduction was made. Thus, the written consent signed by the worker at the beginning of their employment authorizing weekly paycheck deductions for future damage caused by negligence did not support deductions made over a period of weeks from the worker's paychecks.

Based on the court's analysis in this case, an employer could technically require all employees to sign a written consent at the time of employment allowing for a one time future deduction from the employees paycheck immediately following the date on which the damage occurred. Still, the employee's paycheck must satisfy the minimum wage requirements set by law which means the deduction would likely have to be quite small.

Recommendations

Notwithstanding the statutory limitations on payroll deductions, we recommend that employee handbooks include a provision regarding employee liability for property damages. The handbook should clarify that employees will be held liable for damage or loss to company property caused by the employee's own negligence.

Conclusion

The Michigan Wages and Fringe Benefits Act prevents an employer from making unauthorized deductions from employee paychecks.

Unless an employee provides written consent for each payroll deduction, it is generally recommended that employers continue to make all wage payments as they come due and then pursue collection of damages through alternative means, such as the small claims court.

² 193 Mich App 221 (1992)

APPENDIX A

408.477 Deductions from wages.

- (1) Except for those deductions required or expressly permitted by law or by a collective bargaining agreement, an employer shall not deduct from the wages of an employee, directly or indirectly, any amount including an employee contribution to a separate segregated fund established by a corporation or labor organization under section 55 of the Michigan campaign finance act, Act No. 388 of the Public Acts of 1976, being section 169.255 of the Michigan Compiled Laws, without the full, free, and written consent of the employee, obtained without intimidation or fear of discharge for refusal to permit the deduction.
- (2) Except as provided in this subsection and subsection (4), a deduction for the benefit of the employer requires written consent from the employee for each wage payment subject to the deduction, and the cumulative amount of the deductions shall not reduce the gross wages paid to a rate less than minimum rate as defined in the minimum wage law of 1964, Act No. 154 of the Public Acts of 1964, being sections 408.381 to 408.398 of the Michigan Compiled Laws. A nonprofit organization shall obtain a written consent from an employee for deductions to that nonprofit organization that qualify as charitable contributions under federal law. However, this subsection does not require the nonprofit organization to obtain from an employee a separate written consent for each subsequent paycheck from which deductions that qualify as charitable contributions that benefit the employer are made. An employee at any time may rescind in writing his or her authorization to have charitable contributions deducted from his or her paycheck. As used in this subsection, “nonprofit organization” means an organization that is exempt from taxation under section 501(c)(3) of the internal revenue code.
- (3) Each deduction from the wages of an employee shall be substantiated in the records of the employer and shall be identified as pertaining to an individual employee. Prorating of deductions between 2 or more employees is not permitted.
- (4) Within 6 months after making an overpayment of wages or fringe benefits that are paid directly to an employee, an employer may deduct the overpayment from the employee's regularly scheduled wage payment without the written consent of the employee if all of the following conditions are met:
 - (a) The overpayment resulted from a mathematical miscalculation, typographical error, clerical error, or misprint in the processing of the employee's regularly scheduled wages or fringe benefits.
 - (b) The miscalculation, error, or misprint described in subdivision (a) was made by the employer, the employee, or a representative of the employer or employee.
 - (c) The employer provides the employee with a written explanation of the deduction at least 1 pay period before the wage payment affected by the deduction is made.
 - (d) The deduction is not greater than 15% of the gross wages earned in the pay period in which the deduction is made.

- (e) The deduction is made after the employer has made all deductions expressly permitted or required by law or a collective bargaining agreement, and after any employee-authorized deduction.
- (f) The deduction does not reduce the regularly scheduled gross wages otherwise due the employee to a rate that is less than the greater of either of the following:
 - (i) The minimum rate as prescribed by subsection (2).
 - (ii) The minimum rate as prescribed by the fair labor standards act of 1938, chapter 676, 52 Stat. 1060, 29 U.S.C. 201 to 216 and 217 to 219.
- (5) An employee who believes his or her employer has violated subsection (4) may file a complaint with the department within 12 months after the date of the alleged violation.
- (6) As used in this section, “employer” means an individual, sole proprietorship, partnership, association, or corporation, public or private, this state or an agency of this state, a city, county, village, township, school district, or intermediate school district, an institution of higher education, or an individual acting directly or indirectly in the interest of an employer who employs 1 or more individuals.