

# PERSONNEL NOTEBOOK

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## DEDUCTING MONEY FROM PAY

One of your newer employees, who has been talked to more than once about his carelessness, has just broken a \$600 piece of equipment. You have decided to set an example by deducting the replacement cost from his paycheck. Can you do that? If so, how would you go about it? There are many answers to these questions.

### **FEDERAL VS. STATE**

Let's start by recognizing that federal laws on this subject are not very restrictive on the company. However some state laws are. For example, in Virginia companies may not, *as a condition of employment*, require employees to sign an agreement allowing deductions for such things as breakage and shortages.

### **EXEMPT VS. NONEXEMPT**

Almost all the laws are focused on the nonexempt employee. So let's first list the allowable deductions that apply to both exempts and nonexempts.

- Deductions for payroll, wage and withholding taxes.
- Deductions initiated by legal process (such as garnishments)
- Deductions with a signed agreement.

- Deductions for wage assignments. (Employee requests the company to pay debts to a third party through payroll deductions).

Other than the above, exempt employees should never have deductions from their paychecks without a prior agreement with the company. That agreement should be in writing.

For both exempts and non-exempts, the general rule is whatever deductions you make may not reduce the paycheck to be lower than minimum wage. The amount the employee finally receives (before taxes), when divided by the total number of hours worked, must not be less than the minimum wage, currently \$5.15 per hour. However, there are some exceptions.

### **I. DEDUCTIONS THAT MAY REDUCE WAGES BELOW MINIMUM WAGE**

The company may deduct the "reasonable cost" of providing the following items even if the deductions drop the employee's check to less than minimum wage.

### **Meals and Lodging**

The reasonable cost or fair value of meals, living quarters, or similar facilities is considered to be part of the minimum wage. "Fair value" is not retail value; it may not include any profit to the company or its associates. The employee must know of these deductions and he/she must be in agreement. The facilities must be for the benefit of the employee and in no way for the benefit of the company. For example, if the company gives the employee money for dinner because he is required to work late, deducting that money may not bring the take-home pay below minimum wage.

### **Transportation Provided by the Company**

This may be considered part of the minimum wage, but only if the travel time is not time worked and is not to the benefit of the company.

### **Fuel and Merchandise**

Fuel for residential heating, cooking, and general merchandise provided by company stores are considered part of the minimum wage as long as they are reasonably considered room and board.

### **Tuition Costs**

Tuition furnished by a college to its students may be credited against minimum wages.

### **Deductions That Benefit the Employee**

Deductions for such items as life insurance, health insurance, pension, and welfare plans are considered to be a benefit to the employee.

These deductions may cut into the minimum wage if the employee freely agrees and if the company gains no benefit or profit from the deductions.

## **II. DEDUCTIONS THAT MAY NOT REDUCE WAGES BELOW THE MINIMUM WAGE**

The following items may be deducted from pay, but they may not reduce the resulting paycheck to less than the minimum wage.

### **Shortages**

Companies have a limited right to recover cash shortages from cashiers and other employees who handle money. However, this should be spelled out in a written agreement between the company and the employee.

Note: In the case of theft by the employee (as opposed to a mistake), it is usually possible to deduct the full amount even if it reduces the pay below minimum wage.

### **Damages**

Companies may deduct for damages to company property caused by employees.

### **Personal Use of Company Car**

Companies may deduct these costs, but only if the company does not benefit from such use.

### **Uniforms**

Employers may deduct the cost of providing and maintaining employee uniforms if the uniforms are required by law, custom, or the company. This must be for the actual uniform and not for just a selected type of street clothing.

Note: In some companies the employee (before he begins work) may be required to pay in advance, post a bond, or make security deposits for uniforms. If the amount of that advance brings the first paycheck below minimum wage, that amount must be reimbursed to the employee on the first payday in order to bring the paycheck at least up to the minimum wage.

### **Tools**

Companies may deduct the cost of providing the "tools of the trade" and other materials necessary for carrying out the company's business.

### **III. HOW TO CALCULATE PERMITTED DEDUCTIONS**

It may be apparent that you could alleviate this problem merely by having the employee work overtime, thereby producing a paycheck large enough to exceed the minimum wage after deductions. However, the regulations do not allow the company to use overtime in this calculation.

In weeks when the employee works overtime, the amount you may deduct must still be calculated on a 40-hour workweek. For example:

40-Hour Week. If the employee works only 40 hours that week, he must have earned at least the current minimum wage of \$5.15 per hour for a total of \$206. If his actual wage is \$6.15 per hour, his earnings will total \$246. You may deduct the \$40 difference.

50-Hour Week. Even though that employee may work more than 40 hours, the total amount you may deduct is still \$40. He must receive all the extra pay including the time and one half (1 ½ X) overtime pay without deductions.

### **IV. VOLUNTARY ASSIGNMENT OF WAGES**

An employee may request that you make deductions from his earnings and pay them to a third party. You, the company, may do so if the following requirements are met:

- The payment is made directly to a third party.
- The company receives no benefit from the transaction.
- Nothing in the transaction is meant to evade the law.

Examples of voluntary assignments that are acceptable include:

- Union dues under a check-off system

- Savings bond purchases
- Insurance premiums
- Voluntary contributions to a charity
- Voluntary payments made to a creditor to repay the employee's debts. (Most states allow this as long as the company derives no benefit from the transaction).

Note: To deduct union dues the company should have a written agreement with the union stating the process. Employees who elect not to join the union may still be required to pay for benefits they may have received from the union presence. However, such nonunion employees cannot be required to pay for nonrepresentational activities such as contributions to political causes.

### **INVOLUNTARY ASSIGNMENT OF WAGES**

Also called a garnishment, involuntary assignment of wages requires a company to deduct certain amounts from an employee's wages in order to repay the employee's debts.

The company will be notified of such a garnishment through official court papers. Those papers may come from the Internal Revenue Service (IRS), a federal or state agency or court, or even from an individual creditor. These may be for family support, delinquent taxes, student loans, or consumer debt.

Never ignore a wage garnishment! In most cases, you have become an agent of the court and are required to represent its interests. Failure to do so could make you liable for the employee's debt. However, you may also be allowed to deduct an administrative processing fee for the company.

Garnishments are often complex and differences in federal and state laws may create even more complexity. Companies may want to consult an attorney before deciding how to proceed.

Beware, many bill collectors and collection agencies send official looking documents attempting to get deductions from an employee's pay. If you are so fooled, you may be in violation of laws regarding deductions in addition to being liable for the employee's losses.

In cases of involuntary assignment of wages, the company should:

- Answer the order quickly.
- Calculate the exemptions and deductions.
- Do not hold back more money than federal and state laws allow.
- Keep a log of all orders you are currently honoring and the actions you have taken. Review them often.
- Assure that you are using the current minimum wage.

## **V. WHAT IF THE EMPLOYEE OWES THE COMPANY MONEY?**

The company's rights in such cases are similar to the rights of any other creditor. If the employee owes \$300 to a local tire store, the tire store owner must establish proof of the indebtedness and seek collection services or legal action in order to collect. The company is in the same situation. It has no additional rights due just because they have better access to the individual or his money. The company must still establish indebtedness and seek collection solutions. However, this can be accomplished by a written agreement.

You should have a written agreement particularly if this is a loan, purchase, or payroll advance. Such an agreement

would allow you to collect according to the terms to which you have agreed.

In other circumstances, you may have some success by cashing the employee's check for him and asking for the money directly. You may inform the employee of his opportunity to avoid legal action. However, you may not inflict "duress" such as threatening bodily harm or refusing to let him go home.

When an employee destroys company property or fails to return it after termination, your ability to recover your loss through payroll deductions is extremely limited. First, be sure that deductions you make without a written agreement do not lower the employee's pay to less than minimum wage.

And check your state's laws on this before you proceed.

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