

DEDUCTIONS FROM WAGES

By Karen Sutherland

In 2006, the Washington State regulations regarding what deductions can be made from employee paychecks changed. The changes are set forth in separate regulations for deductions during ongoing employment (WAC 296-126-028) and deductions from final wages (WAC 296-126-025). The following explanations are adapted from the regulations:

1. Deductions during ongoing employment. Wage deductions that reduce an employee's pay below minimum wage can be made during ongoing employment only if (a) Required by state or federal law; or (b) For medical, surgical, or hospital care or service; or (c) To satisfy a court order, judgment, wage attachment, trustee process, bankruptcy proceeding, or payroll deduction notice for child support payments.

An employer may deduct wages when the employee expressly authorizes the deduction in writing and in advance for a lawful purpose for the benefit of the employee. These deductions may reduce the employee's gross wages below the state minimum wage.

Example 1. Employee purchase of goods or services: An employee who works for a tire store and wants to buy tires from the store can enter into a written agreement in advance with the employer to buy the tires through a payroll deduction. However, the employer must sell the tires to the employee for the same price or less than it would sell the tires to the customer.

Example 2. Employee loan: An employee who worked for a hardware store asked the employer for a loan. It was acceptable for the employer to loan the employee money and charge reasonable interest. An agreement with the terms of repaying the loan and interest through payroll deductions was made in writing and in advance between the employer and employee.

Example 3. Employee benefits: Deductions have been specifically agreed upon orally or in writing in advance by the employee and employer for monthly pension, medical, dental, or other benefit plans.

Example 4. Creditor or third party: An agreement with a creditor or third party to withhold \$400 from the final paycheck for an automobile loan to be paid directly to the employee's bank by the employer. The creditor or third party can be the employer of the employee.

Neither the employer nor any person acting in the interest of the employer can derive any financial profit or benefit from any of the deductions under this regulation.

For the purposes of this regulation, reasonable interest charged by the employer for a loan or credit extended to the employee is not considered to be of financial benefit to the employer. Note: Employers are advised to check with the United States Department of Labor, Wage and Hour Division and the Internal Revenue Service regarding application of federal laws on charging interest.

The employer must identify and record all wage deductions openly and clearly in employee payroll records. Additionally, RCW 49.48.100 requires written consent of a spouse for an assignment of wages to be earned in the future, which was interpreted in 1968 AGO No. 20 as applying to an agreement between a retail store and its employees to make purchases and charge the same to their personal accounts.

The following are examples of situations when deductions are not allowed from the employee's wages during an on-going employment relationship:

Example 1. Customer's bad check or credit card: The amount of a customer's check that is returned for nonsufficient funds when an employee accepts a check in violation of established policies, or if an employee accepts a customer's bad credit card in violation of established policies.

Example 2. Shortage from cash register: The amount of a till shortage even when an employee participates in cash accounting at the beginning and end of their shift, has sole access to the cash register, and is short at the end of the shift.

Example 3. Customer walks out without paying: An unpaid bill when a customer leaves the restaurant without paying even when an employee is not watching their customers at a restaurant and ignores the fact the customers are finished dining and are ready for their check.

Example 4. Damage or loss: The cost for replacing broken glasses when the employee drops a tray of glasses when unloading the dishwasher.

2. Deductions from an Employee's Final Paycheck. Deductions from final paychecks are allowed if: (a) Required by state or federal law; or (b) For medical, surgical, or hospital care or service, with certain exceptions; or (c) To satisfy a court order, judgment, wage attachment, trustee process, bankruptcy proceeding, or payroll deduction notice for child support payments.

The following deductions must be specifically agreed upon orally or in writing by the employee or employer and may reduce the employee's final gross wages below the state minimum wage that is in effect at the time the work is performed, if the deduction is for any of the following:

For pension, medical, dental, or other benefit plans when such agreements have been specifically agreed upon orally or in writing in advance by the employee and employer.

Example 1. Insurance premium: An employee and employer may have entered into an oral or written agreement in advance for deductions for monthly medical premiums.

Example 2. Retirement plan: The employee chose a 401K pension plan and agreed orally or in writing to a payroll deduction for the specified amount to participate in that plan.

For a payment to a creditor or third party if the employee authorizes it orally or in writing in advance to pay a sum for the benefit of the employee. The creditor or third party can be the employer of the employee.

Example 1. Assignment to third party: An employee may request orally or in writing for the employer to withhold four hundred dollars from the final paycheck for an automobile loan to be paid directly to the employee's financial institution by the employer.

Example 2. Employee loan: The employer loaned the employee three hundred dollars and charged reasonable interest. A written agreement with the terms of repaying the loan at fifty dollars per pay period through payroll deductions was made in writing and in advance between the employer and employee. The agreement also contained a provision that if the employee left the employer's employment for any reason, any balance due on the loan could be withheld from the final paycheck. Note: Employers are advised to check with the United States Department of Labor, Wage and Hour Division and the Internal Revenue Service regarding application of federal laws on charging interest.

An employer can deduct wages from an employee's final paycheck for the reasons in (a), (b), (c), and (d) of this subsection (set forth below), but only when these incidents have occurred in the final pay period. An employer may not deduct wages from the final paycheck for incidents that occurred in previous pay periods under (a) through (d) of this subsection. None of the deductions contained in this subsection may reduce the employee's final gross wages below the state minimum wage that is in effect at the time the work is performed.

- (a) For acceptance of a bad check or credit card, if it can be shown that the employee accepted the check or credit card in violation of procedures previously made known to the employee by the employer; or
- (b) For any cash shortage from a cash register, drawer or portable depository provided for that purpose, if it can be shown that the employee has sole access to the cash and has participated in the cash accounting at the beginning of the employee's shift and again at the end of said shift; or
- (c) For any cash shortage, walkout (failure of customer to pay), breakage, or loss of equipment, if it can be shown that the shortage, walkout, breakage or loss was caused by a dishonest or willful act of the employee; or
- (d) Deductions taken due to alleged employee theft are permissible only if it can be shown that the employee's intent was to deprive and that the employer filed a police report.

It is the employer's responsibility to prove the existence of any agreement. Therefore, the department (L&I) recommends that all agreements, policies, and procedures be in writing and signed by the affected employees. Also, the employer must identify and record all wage deductions openly and clearly in employee payroll records.

The following are examples of situations when deductions are allowed from a final paycheck:

Example 1. Employee purchase of employer's goods or services: An employee at a tire store purchased tires from the store and entered into a written agreement with the employer to deduct an agreed amount each pay period until the debt was paid in full, and the agreement further specified that any remaining balance due at the time of termination could be withheld from the final paycheck. This type of deduction may reduce the employee's wage below the state minimum wage.

Example 2. Advance or draw on wages. An employee may obtain an advance or draw on wages, and the employer may deduct the advance or draw from the employee's final paycheck. The employer must record the advance or draw in the employee's payroll records. This type of deduction may reduce the employee's wage below the state minimum wage.

Example 3. Cost of uniforms: An employee and employer may agree orally or in writing that the employer may deduct the cost of uniforms provided by the employer if the uniforms are not returned by the employee at the time of termination. This type of deduction cannot reduce the employee's wage below the state minimum wage.

Example 4. Cash shortages: In a grocery store, the employees and employer agreed orally or in writing that the employer could deduct wages for cash shortages that occurred in the final pay period if the employees had sole access to their cash registers during their shifts and participated in the employer's cash accounting procedures before and after their shifts.

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