



Deductions from Pay

Who, What, Why . . .

Who does it apply to: Every employer without exception. Under the Texas Payday Act and the federal Fair Labor Standards Act, there are requirements and limitations about what can be deducted from an employee's pay.

What types of allowable deductions are there: Charges in the following categories may be deducted under the right circumstances:

- *Meals and Lodging:* The "reasonable cost" of food and shelter provided by employers may be deducted from pay if it is primarily for the employee's benefit. If the employer provides the food or lodging for its business purposes (think apartment complex manager), the value cannot be deducted from the employee's wages. Essentially the "reasonable cost" of these items is the cost to the employer – with no profit. There are many rules and regulations regarding the deductibility of these items. Check with your lawyer before making deductions of this type.
- *Voluntary Wage Assignments:* Employers are authorized to deduct from an employee's wages and take them below minimum wage for payments made to programs such as the employer's health, dental, disability, and life insurance plans.
- *Loans:* Employers can make deductions to an employee's pay taking the employee's wages below minimum wage for loans made to the employee. Employers should be careful, however, because any administrative fees or interest on the loan may not be charged against the minimum wage portion of the employee's wages. Employers should document any loan just like a private promissory note to protect against employees who quit, default, or try to avoid the debt so that they can seek recovery through the courts.
- *Pay Advances:* If an employee is allowed to take vacation before that vacation time has technically accrued, and that employee quits, the employer may deduct the paid but unaccrued vacation money from the employee's final pay. In doing so, the employer must have written authorization from

the employee. In another circumstance, employers may advance an employee insurance premiums for unpaid leave periods where the employee would otherwise be responsible for the premiums. Employers must be careful making this type of advance, however. Offering it to only certain employees might generate a discrimination claim.

- *Uniform Costs and Cleaning:* The cost of and cleaning charges for certain clothing required for work may be deducted from an employee's wages and reduce them below minimum wage so long as the deduction is approved in writing by the employee. Clothes meeting this requirement must be provided solely as a convenience to the employee and suitable for off-duty use. If the clothes have a company logo, are of a distinctive style such as a tuxedo, a specific type of jacket, or a security uniform, the cost may still be deducted (with written consent), but may not cut into the employee's minimum wage.
- *Payroll Taxes:* FICA (Social Security and Medicare) and income tax withholding are permissible deductions which may bring an employee's wages below minimum wage.
- *Union Dues:* Union dues may be deducted from an employee's pay even if the deduction reduces the employee's pay below minimum wage. Employers must have a written authorization for deduction of union dues.
- *Garnishments and Wage Attachments:* Employers are required to follow appropriate garnishments and statutory wage deductions for bankruptcy garnishments (no limit on deduction amount), court-ordered child support or spousal maintenance (employer may add \$10 administrative fee per month for child support and \$5 for spousal), IRS tax levies (subject to IRS deduction limitations), and guaranteed student loans (employer may add up to \$10 administrative fee per month).

- *Theft:* Employers may deduct losses from employee theft or misappropriation of company resources and take the employee's pay below minimum wage in doing so.

What about tips: Most employers don't think of the difference between paying minimum wage and the allowed \$2.13 for tipped employees as a "deduction" from pay but the federal government sees it as a deduction from minimum or overtime wages – even though it is referred to as a "tip credit." Tips are a topic all their own, and will be discussed in a future EH piece.

Common Situations:

My register came up short: Bob's Bowling Balls has a policy that all employees are responsible for shortages on their register at the end of each shift. Bob believes that employees who come up short must have stolen the money and this is the best way to keep them honest. Bob's view may be logical, but it isn't totally legal. If Bob has solid evidence that an employee stole money, he can take those losses from the employee in the form of wage deductions – even reducing the employee's pay below minimum wage, but the deduction must still be authorized by the employee to be valid under the Texas Payday Act. Bob may follow his policy for register shortages without evidence so long as it is authorized in advance by the employee and does not take them below minimum wage.

Guilt by garnishment: Suzy Straightlace's employee Tim has had a run of bad luck. Despite working two jobs he still cannot cover all the costs of his financial obligations and the medical treatment for his special needs child. Tim has defaulted on his student loans and is behind on his taxes so he recently suffered an IRS levy. Suzy decides that Tim must be let go because her customers would freak out if they realized Tim, an accountant,

was handling their money but could not handle his own. Has Suzy strayed off the straight and narrow? Yes. Employers are not permitted to consider the fact that an employee's wages are being garnished in termination or disciplinary decisions.

Payday loan deduction: Tom simply cannot live within his means. This month he takes out a payday loan and makes a "voluntary wage deduction" agreement with a local payday loan company. Tom provides the form to his employer and requests that a portion of his pay be diverted to the payday loan company. Is the employer obligated to fulfill this request? No. Employers may choose whether to accept a voluntary wage deduction agreement from an employee. The payday company will just have to sue Tom to get their money. That said, employers are prohibited under other laws from using this as an excuse to prevent an employee from participating in a benefits program, such as health insurance, offered to employees of the business.

What should I do:

Good: Always get consent, be careful deducting below minimum wage as noted above, and check that the deductions made for multiple garnishments do not exceed the legal limit.

Better: In addition to the above, document any loan to an employee as a separate document to protect your ability to sue if the employee leaves. Consider creating a single consent form signed at the time of hiring (or as soon as you read this) with all the different types of deductions in it.

Best: All of the above plus create special policies in your employee handbooks regarding deductions and utilize a specific policy for any advances for premiums on health policies to ensure no discriminatory practices.



Michael Kelsheimer is a Shareholder in the employment law section at Looper Reed & McGraw where he is joined by a number of employment law attorneys with experience in all areas of employment and labor law. Michael recognizes that the cost and expense of litigation makes resolving employment disputes challenging. To help avoid these concerns, he utilizes his experience in and out of the courtroom to prevent or quickly resolve employment disputes through proactive employer planning and timely advice. When a dispute cannot be avoided, Michael relies upon his prior experience as a briefing attorney for the United States District Court and his extensive experience in employment and commercial lawsuits to secure favorable resolutions for his clients.

This guide is one in a series. For more information, or to receive the entire collection contact Michael Kelsheimer by email at mkelsheimer@lrmlaw.com or by phone at 214.237.6346