

DEDUCTIONS FROM EMPLOYEE PAYCHECKS: DOING THEM RIGHT AND MAKING THEM LEGAL

A Common Scenario

Sometimes, as a matter of convenience, an employee may request that a portion of his or her paycheck be deducted and applied toward a debt or other obligation. For example, the employee might ask that insurance premiums be deducted - or charitable contributions - or the cost of purchases from the employer. To accommodate the employee's request, an employer will often oblige and make the deduction as requested.

Everyone is happy - - but is the deduction legally valid? Maybe not.

In order to be valid, an employee wage deduction in Indiana must meet several very important and technical requirements. Any deduction that fails to meet one of these legal requirements can be void. A void wage deduction could mean that the employer failed to pay the full amount of an employee's wages when they were due. An employer's failure to pay wages when due can run afoul of another Indiana law - the Wage Payment Statute (I.C. 22-2-5-1). A violation of this statute can result in liability for three times the amount of wages improperly deducted, plus attorney's fees and the costs of collection.

Make sure your employee wage deductions are valid and avoid being surprised. Here is what you need to remember.

EMPLOYEE WAGE ASSIGNMENTS IN INDIANA

Under Indiana law, an employer may withhold portions of employee paychecks *only* under limited conditions, and *only* for certain statutorily prescribed purposes. Such a withholding by an employer is known as a wage assignment, and is governed by the Indiana Wage Assignment Statute (I.C. 22-2-6-2).

MEETING THE LEGAL REQUIREMENTS

To be valid, an employee's wage assignment must satisfy *all* of the requirements listed in the statute. They are:

- **Writing.** The assignment must be in writing.
- **Personally Signed.** The employee must personally sign the assignment document.
- **Revocable.** The assignment must state by its terms that it is revocable at any time by the employee by giving written notice to the employer.
- **Employer Consent.** The employer must agree to make the deduction.
- **Delivery.** An executed copy of the assignment document must be delivered to the employer within ten days of its execution.
- **Thirteen Specific Purposes.** Valid deductions can only be made for the purpose of paying any one of the following:
 1. *Premium on an insurance policy* obtained by the employer for the employee;
 2. *Pledge or contribution* of the employee to a *charitable or nonprofit* organization;
 3. *Purchase of bonds or securities, issued or guaranteed by the United States*;
 4. *Purchase of stock of the employer*;
 5. *Dues owed to a labor organization* of which the employee is a member;
 6. *Merchandise sold by the employer* to the employee, at the *written request* of the employee;
 7. *Payment of a loan made to the employee by the employer*, as evidenced by a written instrument executed by the employee, and subject

to a specific weekly limit;

8. *Contributions* of the employee to a *hospital service or medical expense plan*, or to an employee's association, trust, or plan existing for the purpose of paying *pensions or other benefits* to the employee or others designated by the employee;
9. Payment to any *credit union, nonprofit organization, or association of employees*;
10. Payment to an employee's *direct deposit* account;
11. Premiums on policies of *insurance and annuities purchased by the employee on the employee's life*;
12. Purchase of shares or fractional interests in shares in one or more *mutual funds*;
13. A *court judgment* owed by the employee made in accordance with an agreement between the employee and the creditor, but is not a legal garnishment.

THERE'S MORE - RECOVERING OVERPAYMENT OF WAGES

Suppose you find out that the employee has been overpaid by mistake. How can the employer recover the amount of the overpayment when recovery of overpayments is not among the listed purposes? Indiana law addresses this issue.

If an employer has overpaid an employee, the employer may deduct the amount of the overpayment, but *only if*:

- The employer gives the employee *two weeks advance notice*;
- The amount of overpayment is *not in dispute*; and
- The deduction is not more than the *lesser* of: (a) 25% of the employee's disposable earnings (essentially take home pay) for the pay period, or (b) the amount of disposable earnings for the period that exceeds thirty times the federal minimum wage (i.e. $30 \times \$7.25 = \217.50).

Not an Assignment of Wages. The employer does not need to comply with the formalities of a written wage assignment because the law specifically states that recovery of overpayment of wages is *not a wage assignment*.

The Misplaced Decimal Point. The employer does not even need to meet these restrictions if there has been a single gross overpayment of wages equal to ten times the employee's gross wages earned due to the inadvertent misplacement of a decimal point. In that case, the law allows the entire amount of the overpayment to be deducted immediately.

THINGS TO REMEMBER . . .

- Because all wage assignments must be in writing, signed by the employee, and be revocable by its terms – Consider developing a standard “Wage Deduction Authorization” form to be used every time an employee wage deduction will be made.
- Deducting for damaged or lost employer property is not specifically permitted. Consider developing a form that would convert the obligation to pay for lost or damaged property into an “Employee Request for Purchase of Merchandise.”
- The deduction for a “fine” from an employee's paycheck is not permitted.
- Deductions for the payment for “services” of the employer are not specifically permitted. Consider converting the employee's obligation to pay for the purchase of services into a loan to the employee (which is specifically permitted, see purpose #7) by having the employee execute a promissory note – and then deducting the loan payments from the employee paycheck.
- The payment to “nonprofit organizations” is permitted. This may allow for the deduction for the payment of services directly to the employer if the employer is a “nonprofit organization.”
- There are specific limitations on the amount of an employee's paycheck that can be taken through a deduction for the repayment of a loan. Those limitations are the same as the limitations set out for the recovery of an overpayment of wages.
- The employee can revoke the deduction authorization at any time, in writing. Don't deduct after the employee gives the revocation notice.

If you have questions regarding this topic, please contact Steve Lyman at 317.977.1422 or slyman@hallrender.com or your regular Hall Render attorney.