

DEDUCTIONS FROM EMPLOYEE PAYCHECKS - INDIANA MAKES SOME WELCOME CHANGES

On July 1, 2015, amendments to Indiana's wage assignment and wage payment laws went into effect. These amendments allow for additional employee paycheck deductions and also reduce the potential damages to be charged against an employer for making an improper deduction.

CHANGES TO THE WAGE ASSIGNMENT STATUTE

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. To accommodate the employee's request, an employer will often oblige and make the deduction as requested. However, under Indiana law, an employer may only withhold portions of employee paychecks 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). In our previous post from May 2012, [Deductions from Employee Paychecks: Doing them Right and Making them Legal](#), we discussed the considerations employers should focus on when making wage assignment decisions.

Briefly, 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.
- **For a Specific Purpose Authorized by the Statute.** Valid deductions can only be made for the purpose of paying any one of the several specifically enumerated reasons. Initially, there were thirteen specifically authorized purposes. The amendments to the Wage Assignment Statute created three additional permissible purposes for making wage deductions and substantially altered one purpose already permitted. Effective July 1, 2015, valid wage deductions can be made for the purpose of paying any one of the following (new or amended purposes are in bold):
 - *Premium on an insurance policy* obtained by the employer for the employee;
 - *Pledge or contribution* of the employee to a *charitable or nonprofit* organization;
 - *Purchase of bonds or securities, issued or guaranteed by the United States*;
 - *Purchase of stock of the employer*;
 - *Dues owed to a labor organization* of which the employee is a member;
 - **Merchandise, goods or food offered by the employer and sold to the employee** for the employee's own benefit, use or consumption at the written request of the employee. Previously, any merchandise sold by an employer to an employee could have been deducted, without any regard given to the ultimate consumer of the benefit, at the written request of the employee;
 - *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;
 - *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;

- Payment to any *credit union, nonprofit organization or association of employees*;
- Payment to an employee's *direct deposit* account;
- Premiums on policies of *insurance and annuities purchased by the employee on the employee's life*;
- Purchase of shares or fractional interests in shares in one or more *mutual funds*;
- 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.
- **The purchase of uniforms and equipment necessary to fulfill the duties of employment**, provided that the total amount of wages assigned does not exceed the lesser of \$2,500 annually or five percent of an employee's weekly disposable earnings;
- **Reimbursement for education or employee skills training**, unless the education or skills training benefits were provided in whole or part though any federal, state or local economic development incentive program;
- **An advance payment for payroll or vacation.**

Additionally, the new law caps interest rates charged on amounts loaned or advanced to an employee and repaid through wage deduction at four percent above the bank prime interest rate as reported by the Board of Governors of the Federal Reserve System or any successor rate.

CHANGES TO THE WAGE PAYMENT STATUTE

An employer's failure to pay wages when due (including if an employer makes an invalid deduction) can run afoul of another Indiana law – the Wage Payment Statute (I.C. 22-2-5-1 et seq.). Previously, an employer who failed to pay any portion of an employee's wages when due was subject to automatic liquidated damages in the amount of ten percent of the unpaid wages per day the wages were past due, up to double the amount of the wages owed. However, pursuant to the amendments to the Wage Payment Statute, effective July 1, 2015, mandatory damages have been reduced to the unpaid wages due, reasonable attorneys' fees and court costs. That said, if a court finds that the employer's failure to pay an employee was *not in good faith*, then the court shall order that the employee be paid an amount equal to two times the amount of wages due to the employee as liquidated damages.

THE BOTTOM LINE

Employers as well as employees should welcome the wage assignment changes because there are now more valid reasons for making a paycheck deduction when an employee requests one. Further, employers can breathe a little easier if they act in good faith by avoiding the liquidated damage penalty if the deduction was not done strictly in accordance with the law.

If you have questions regarding this topic, please contact Kevin A. Stella at 317.977.1426 or kstella@hallrender.com, Mary Kate Liffbrig at 317.977.1455 or mliffbrig@hallrender.com or your regular Hall Render attorney.