

AMENDATORY SECTION (Amending Order 74-9, filed 3/13/74, effective 4/15/74)

WAC 296-126-025 Deductions from final wages. (~~Except as otherwise provided by law, no employer shall make any deduction from the wage of an employee:~~

~~(1) For any cash shortage, walkout (failure of customer to pay), breakage, or loss of equipment, unless it can be shown that the shortage, walkout, breakage or loss was caused by a dishonest or willful act of the employee.~~

~~(2) For acceptance of a bad check, unless it can be shown that the employee accepted such a check in violation of procedures previously made known to him or her by the employer.~~

~~(3) For any cash shortage from a cash register, drawer or portable depository provided for that purpose, unless the employee has sole access to the cash and has participated in the cash accounting at the beginning of his or her shift and again at the end of said shift. Where a portable cash depository is in use the employer shall provide for periodic withdrawals of cash receipts during the shift to prevent large accumulations of cash.)~~ (1) An employer may deduct any portion of an employee's final wages 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:

(a) Required by state or federal law; or

(b) For medical, surgical, or hospital care or service. No deductions may be made for these services if covered under RCW 51.48.050; or

Example: The business paid a worker's medical costs for an injury not related to the employee's job duties, and the employee agreed to a deduction from final wages to repay those costs to the employer.

(c) For pension, medical, dental, or other benefit plans when such agreement has been specifically agreed upon orally or in writing by the employee and employer; or

Example: 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.

(d) To satisfy a court order, judgment, wage attachment, trustee process, bankruptcy proceeding, or payroll deduction notice for child support payments; or

(e) For a payment to a creditor or other third party if the employee authorizes it in advance in writing to pay a sum for the benefit of the employee. The creditor or other third party

cannot be the employer of the employee.

Example: Assignment to third party: An employee may request in writing 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.

(2) An employer may withhold or divert a portion of an employee's wages only if the deduction is specifically agreed upon orally or in writing by the employee and employer. None of the deductions contained in this subsection can reduce the employee's final gross wages below the state minimum wage. If the employee is paid the minimum wage rate, no deductions for violations in (a) through (d) of this subsection may be made. An employer can deduct wages from an employee's final paycheck for the reasons in (a), (b), (c), and (d) of this subsection, but only when these incidents have occurred in the final pay period.

(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.

(3) It is the employer's responsibility to prove the existence of any agreement. Therefore, the department recommends that all agreements, policies, and procedures be in writing and signed by the affected employees.

(4) The employer must identify and record all wage deductions openly and clearly in employee payroll records.

Helpful information:

The following are examples of situations when deductions are allowed from the employee's final paycheck. Examples 1, 2, 3 cannot reduce the employee's gross wages below the state minimum wage but Example 4 may:

 Example 1: Employee purchase of employer's goods or services: An employee worked for a tire store. The employee 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 cannot reduce the employee's wage below the state minimum wage.

 Example 2: 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 3: Cash shortages: An employee and employer may agree orally or in writing that the employer may deduct wages for cash shortages if the provisions of WAC 296-126-028 have been met. This type of deduction cannot reduce the employee's wage below the state minimum wage.

 Example 4: Advance on wages already earned: An employer and employee may agree in writing that the employee may get an advance on wages already earned. Because the advance is for wages already earned, the employer may deduct the advance from the employee's paycheck for the pay period in which the advance was given, and the deduction may reduce the employee's gross paycheck below the state minimum wage. The employer must record the advance payment in the employee's payroll records. This type of deduction may reduce the employee's wage below the state minimum wage.

NEW SECTION

WAC 296-126-028 Wage deductions during on-going employment. (1) During an on-going employment relationship, an employer may deduct any portion of an employee's wages below the state minimum wage if the deduction is for any of the following reasons:

(a) Required by state or federal law; or

(b) For medical, surgical, or hospital care or service; or

Example: The business paid a worker's medical costs for an injury not related to the employee's work, and the employee agreed in writing and in advance to deductions from wages to repay those costs to the employer.

(c) For pension, medical, dental, or other benefit plans when the agreement has been specifically agreed upon orally or in writing by the employee and employer; or

Example: The employee chose a 401K pension plan and agreed in writing and in advance to payroll deductions for the specified amount(s) to participate in that plan.

(d) To satisfy a court order, judgment, wage attachment, trustee process, bankruptcy proceeding, or payroll deduction notice for child support payments; or

(e) For a payment to a creditor or other third party if the employee authorizes it in writing and in advance to pay a sum for the benefit of the employee. The employer cannot derive any financial benefit from these deductions.

Example: An employee may request 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.

(2) During an on-going employment relationship, 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 not reduce the employee's gross wages below the state minimum wage.

Example 1: Employee purchase of employer's goods or services: An employee works for a tire store and wants to buy tires from the store. The employee 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 they would sell the tires to the customer because the employer cannot gain financially from the deduction.

Example 2: Employee loan: An employee worked for a hardware store and asked the employer for a loan. The employer loaned the employee money and charged 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.

(3) Neither the employer nor any person acting in the interest of the employer, directly or indirectly, 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.

(4) The employer must identify and record all wage deductions openly and clearly in employee payroll records.

Helpful information:

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: The amount of a customer's check that is returned for nonsufficient funds when an employee accepts a check 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.

NEW SECTION

WAC 296-126-030 Adjustments for overpayments. (1) An overpayment occurs when an employer pays an employee for:

- (a) More than the agreed-upon wage rate; or
- (b) More than the hours actually worked.

(2) Recouping the overpayment cannot reduce the employee's gross wages below the state minimum wage.

(3) An employer cannot recover an overpayment when the disputed amount concerns the quality of work.

(4) An employer can recover an overpayment from an employee's paycheck provided the overpayment was infrequent and inadvertent. Infrequent means rarely, not occurring regularly, or not showing a pattern. Inadvertent means an error that was accidental, unintentional, or not deliberately done. The burden of proving the inadvertent error rests with the employer who made the error. The employer has ninety days from the initial overpayment to detect and implement a plan with the employee to collect the overpayment. If the overpayment is not detected within the ninety-day period, the employer cannot adjust an employee's current or future wages to recoup the overpayment. Recouping of overpayments is limited to the ninety-day detection period.

In the case of employees covered by an unexpired collective bargaining agreement that expires on or after October 1, 2005, the effective date of this rule shall be the later of:

- (a) The first day following expiration of the collective bargaining agreement; or
- (b) The effective date of the revised collective bargaining agreement.

Example 1: Allowed. Overpayment of agreed wage rate: An employee was paid an agreed rate of ten dollars per hour but received a paycheck at the rate of eleven dollars per hour. The

employer provided documentation of the overpayment to the affected employee and adjusted the employee's next paycheck for the amount overpaid in the previous pay period.

Example 2: Allowed. Overpayment for hours worked: An employee worked seventy-two hours in the pay period, but the employee was paid for eighty hours for that period. The employer provided documentation of the overpayment to the affected employee and adjusted the employee's next paycheck for the eight hours overpaid in the previous pay period.

Example 3: Not allowed. Overpayment not detected within ninety days of first occurrence: An employer agreed to pay an employee ten dollars per hour, but when the first check was received, the amount paid was paid at eleven dollars per hour. The employee may or may not have brought it to the attention of the employer. Six months later the employer detected the overpayments and adjusted the employee's wages in the next paycheck for the entire amount of the overpayment. This is not an allowable adjustment because it was not detected within ninety days from the first occurrence.

(5) The employer must provide advance written notice to the employee before any adjustment is made. The notice must include the terms under which the overpayment will be recouped. For example: One adjustment or a series of adjustments.

(6) The employer must provide documentation of the overpayment to the affected employee or employees.

(7) The employer must identify and record all wage deductions openly and clearly in employee payroll records.

(8) Regardless of the provisions of this section, if appropriate, employers retain the right of private legal action to recover an overpayment from an employee.

(9) This regulation does not apply to public employers. See chapter 49.48 RCW, Wages--Payment--Collection.