Information Sheet

Deductions from an Employee's Pay for National System Employers

November 2021

The following information applies to national system employers and employees only.

Definition of deductions from pay

A deduction from pay occurs when an employee's overall wage or salary is reduced because the employer has withheld their full earnings for a particular purpose.

Entitlement to deduct

The ability for an employer to lawfully deduct monies from an employee's wages depends on several factors. An employer cannot make deductions without the employee's written consent or clear lawful authority to do so.

The *Fair Work Act 2009* (Cth) permits deductions when they are authorised:

- in writing by the employee **and** principally for the employee's benefit; or
- by the employee in accordance with an enterprise agreement; or
- by a modern award or order of the Fair Work Commission; or
- by a law or order of a court.

> **CCIWA Publication**
>
> Our Employment Lifecycle Kit contains an **authority to deduct form** template.
>
> This kit covers the full life-cycle in-depth, from the recruitment process to management of employees and termination.
>
> Contact us on (08) 9365 7660 or at advice@cciwa.com for more information.

An example of a deduction permitted by law is the deduction of income tax. A deduction required via court order might include child support payments issued by the Family Court.

The *Fair Work Act 2009* (Cth) provides that deductions authorised in an award, agreement or contract of employment have effect to the extent that the deduction is directly or indirectly for the benefit of the employer **and** is reasonable in the circumstances. This is important as it allows deductions to be made that are not principally for the employee's benefit.

An example of this might include withholding monies owing to the employee on termination of employment where the employee fails to provide, or work out, the required notice period provided that the relevant industrial instrument contains terms allowing the employer to withhold wages.

Another example may be where the employer is a financial institution and loans the employee a sum. The employee may authorise the employer to deduct an amount each pay period to pay back the loan over a period of time.

It is important to note that civil remedy provisions apply to employers who enforce unlawful terms contained in industrial instruments relating to deductions from wages. Penalties may also apply to employers who force employees to spend amounts which are not reasonable. Fines of up to $66,600 per occasion for companies and $13,320 for individuals may be incurred.

Where an authorisation to deduct wages is agreed to by the employee and is principally for their benefit, each agreement must specify the amount of the deduction and may be withdrawn in writing by the employee at any time.

Employees under 18 years of age are allowed to have a deduction of wages (where lawful); however, an agreement in writing from the parent or guardian must accompany the request.

Where an employee requests their employer make deductions from their wages where it is not a requirement of an industrial instrument, law or order of a court, caution is recommended.

For example, An employee accidentally damages an employer's property and the employee insists on paying back the employer via deductions from their salary.

The arrangement itself is acceptable, as long as both parties have agreed in writing. However, problems may arise in the future if the employee questions this within 6 years (the statutory period over which underpayment claims may be made). The employee may claim or make allegations that they didn't receive their full pay or that they were forced into paying the amount. It is therefore important to have written record of such arrangements, should a claim arise.

As there are many possible scenarios, uncertainty can arise when determining if a deduction is lawful or not. The following examples and explanations are designed to illustrate the distinction between deductions that are permitted and those that are considered unlawful under the *Fair Work Act 2009*.

Examples

Lawful deductions

Lawful deductions which are for the employees' benefit and are reasonable in the circumstances include:

- Salary sacrificing - allowable through the *Super Guarantee (Administration) Act 1992;*
- Social club fees - the employee is receiving a benefit which has been accepted voluntarily;
- Union fees - the benefit is principally for the employee and has been accepted voluntarily;
- Charity contributions- Assuming that the deduction is voluntary, it is likely that the employee views it as a benefit for them;
- The purchase of additional annual leave.

The following costs prescribed by the *Fair Work Regulations 2009* provide that, it if the employee agrees, it is reasonable for a deduction to be made in the following circumstances:

- The cost of items purchased on a corporate credit card for personal use by the employee;
- The cost of personal calls on a company mobile phone;
- The cost of fuel purchased for the private use of a company vehicle by the employee.

The above are allowable as the employee has received a direct benefit.

The following are examples of lawful deductions where the circumstances are *reasonable* notwithstanding the fact that the deductions are being made for the employers benefit:

- A deduction of health insurance fees made by an employer that is a health fund;
- A deduction for a loan repayment made by an employer that is a financial institution.

Unlawful Deductions

An unlawful deduction can arise where there is an agreement between the employer and employee to deduct an amount from the employee's wages, however the deduction is not for the employee's benefit and not reasonable. The following are examples where deductions are not reasonable:

- Automatic deduction for a deposit for a security access card which is refunded when the item is returned on termination of employment;
- Deductions from wages to replace untidy uniform items due to normal wear and tear;
- Deducting the cost of an induction program after 12 months of service with the employer;
- Deductions to reverse overpayments that have occurred over a period of time;
- Exceeding the amount of money that can be withheld from an employee as stipulated in a registered agreement (i.e. for failure to work out a required notice period etc).

FAQ

Scenario 1:

I am the owner of a transport company and it has come to my attention that one of our drivers has started to become unreliable and careless. As a result, they have caused significant damage to a company owned vehicle, the cost of which total over $5000. We have a policy in place that states that employees may be required to pay the costs of restoring damaged vehicles due to negligence.

Furthermore, we have a signed agreement with the employee stating that they agree to pay for any damage done to the vehicle due to negligence. Does this allow me to deduct their wages even though they have changed their mind and do not want to pay the amount?

No. Regardless of the policy and agreement that is in place, the employee does not have to pay the damages. While the employee has agreed to the deductions, they are *not* for the employees benefit and may be considered *unreasonable* in the circumstances.

The employer would need to pursue the employee for payment through other means than deduction of wages.

Scenario 2:

I am a HR manager for a major financial institution. Many of our employees have their mortgages with us as they receive improved interest rates. By their agreement our payroll system automatically deducts the mortgage repayments due from their wages before being deposited into the employees' account. Is this deduction allowable even though the employees receive no direct benefit as an employee?

Yes. Employees who agree to have deductions from their wages (although they receive no benefit from it as an employee) are not creating an unlawful deduction, as it is *reasonable*.

This reasonableness stems from the fact that a contract (the mortgage and repayments) was made outside the employment relationship.

As the employer is the provider of the loan, it is a matter of convenience to allow the payment to be deducted as the employer would have received those funds from the employee anyway. (It is important to understand that the loan and mortgage repayments are a separate commercial contract made *outside* the employment relationship).

Scenario 3:

I am a payroll clerk for a medium size warehousing business. One of our entry level storemen, Jim, has requested that he attend forklift training so he can become a licensed operator. He feels this would increases his skills and potential for promotion later on even though his current position does not require licensed forklift operation. Jim requested that the company simply deduct the cost of the training from his wages as it was more convenient. If actioned by the employer would this deduction of wages be lawful?

Yes. This is an example of a lawful deduction as the employee has agreed to it, and in return he receives a clear benefit (the training course which will equip the employee with skills that are transferable to other jobs).

Like to know more?

Our **Employment Law Fundamentals for Payroll Professionals training** is designed for anyone who is responsible for payroll function. During the training, you will learn about employee entitlements, the hierarchy of industrial instruments, how to calculate wages and much more!

For more information, click here.