

# Deductions From Pay

YOUR LEGAL RIGHTS

## 1. Can my employer ever deduct money from my wages?

Normally, the only time your employer can deduct any money from your wages is if the money is: (1) for income taxes, social security or similar withholdings, or (2) used to pay premiums for health insurance, union dues, or a retirement plan or another payment that you authorized and that is for your benefit. This means that your employer generally cannot deduct money from your paycheck for any other reason.

## 2. Can my employer deduct money if I lose company money or break company property?

Your employer can't deduct money from your paycheck if, by accident or even *simple* negligence, you lose the company's money, break the company's property, or lose equipment that belongs to your employer. If you just make a mistake and the company loses money, your employer cannot collect that money from you. For example, if your cash drawer is "short" at the end of a shift or if you have an accident in your employer's car, your employer normally cannot make you pay for it. Even though these types of losses sometimes might be the employee's "fault," they are part of the employer's cost of doing business and your employer has to cover the costs.

### **Exception: Gross Negligence, Dishonesty, Willfulness**

If your employer can prove that you lost the employer's money or broke the employer's property through an act of "*gross negligence*" or an act that was "*dishonest*" or "*willful*," the deduction is probably legal. Your employer will normally need to have some proof or witnesses to show that you were dishonest or grossly negligent; a simple accusation does not give your employer the right to make these deductions.

### **What is Gross Negligence?**

Gross negligence occurs if you purposefully fail to follow your employer's reasonable rules, and you then lose money as a result. For example, gross negligence may exist if your employer required you to use a calculator to add up the cost of goods sold and you made a mistake and charged too little because you refused to use the calculator. On the other hand, you may not have to pay the cost if you forgot to use the calculator or used the calculator, but you pressed the wrong key or forgot to include an item, and charged too little as a result.

The California Labor Commissioner does not automatically assume that you are grossly negligent just because a loss or mistake occurs or property is missing or damaged. Therefore, if you make errors as a result of adding mistakes, recording incorrect prices, or failing to include all items sold when charging customers, then your employer cannot deduct money from your check.

### 3. If my employer can't deduct my wages for losing money or property, can he still discipline me?

Your employer may discipline you regardless of whether your mistake was due to simple negligence, gross negligence, dishonest or willful conduct. But your employer may *not* make you pay for the loss out of your pocket *unless* it proves that you were you were dishonest, willful, or grossly negligent.

Although your employer *can* discipline you for losing money or property, it can't discipline you because you *objected* to what you believed was an illegal deduction. This means, for example, that your employer can probably fire you if your register is short at the end of a shift. However, if the employer deducts or tries to deduct the missing money from your paycheck and you object because it is against the law, your employer cannot legally fire you because you objected. Sometimes this can be hard to prove because your employer will claim it is firing you for the loss of money, not because you complained about it, so it may be helpful to put your objections in writing (and keep a copy) so you can prove you objected right before being fired.

### 4. Can my employer deduct wages to pay off a debt I owe my employer?

You may owe money to your employer for a purchase or repayment of a loan (for example, if you asked for an advance before payday). If you are legitimately in debt to your employer, the debt can be deducted from your wages but only in a limited way. The law has been written to protect your wages and your employer must take certain steps before withholding (or garnishing) wages.

- While you are still employed, deductions from your paychecks for a loan or purchase are legal *only* when you authorize the deductions in writing. These deductions can *only* be for an amount that you authorize to be deducted during each pay period.
- If you *quit* or *get fired* and still owe money to your employer, your employer cannot simply deduct a "lump sum" or the total balance of what you owe from your final paycheck.

### 5. If my employer accidentally overpays me, can it just take the money back whenever it wants?

Normally no. There are laws in California about the "garnishment" and "attachment" of wages. These laws protect your paycheck and require any person who wants money from your paycheck to go to court and prove you owe the money before taking it back (just like a child support or collection agency garnishment). If your employer accidentally gives you too much money in your paycheck and you object to giving the money back, he must go to court. However, if you agree that you received too much money, you may well lose if your employer takes you to court so it may not be worthwhile fighting. If you know you owe the money but just want to wait to pay it back, it may be easier to make an arrangement with your employer to take a portion of the overpayment out of each paycheck until you are even. You should get this agreement in writing and keep a copy for your records,

## 6. Can my employer deduct money from my paycheck because I am late for work?

Your employer can deduct money from your paycheck if you are late for work. However, he can *only* deduct the wages that you would have earned during the time lost while you were late. For example, if you earn \$10.00 per hour, and you are 45 minutes late, the maximum amount that your employer can deduct is \$7.50. There is a law that says your employer can deduct 30 minutes from your wages even if you are less than 30 minutes late, but most employers do not do this because it is not good business.

## 7. What if my employer illegally deducts wages?

If your employer refuses to return money that was illegally deducted, you can file a claim with the California Division of Labor Standards Enforcement (also called the “Labor Commissioner”). The phone numbers and address are in the white pages of your phone book in the “government” section.

## 8. What if my employer retaliates against me because I objected to a deduction from my paycheck?

Your employer is prohibited from firing or otherwise retaliating against you for objecting to what you believe is a wrongful deduction from your paycheck, even if you turn out to be wrong (see number 3, above, for more information). If your employer does retaliate or “get back” at you for filing a claim, you can file a retaliation claim with the Labor Commissioner.

**This fact sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Legal Aid Society - Employment Law Center cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.**

For further information about your employment rights, please call:

### **The Workers’ Rights Clinic**

**415-864-8208** (SF Bay Area) or **866-864-8208** (Toll Free in CA)

The Workers’ Rights Clinic is a project of The Legal Aid Society - Employment Law Center, a non-profit organization focusing on the employment-related legal rights of low-income workers and providing free legal information on a wide range of employment-related problems.