**Beware of Varying State Laws Governing Deductions from Wages**

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How many of the following situations has your company faced?

- You just learned that your payroll department has made an error resulting in overpayments to many employees across the country.
- An employee has been out of work and receiving workers' compensation payments, but her supervisor forgot to notify payroll and she has received a paycheck she was not entitled to.
- All of your employees are required to sign a written authorization when they receive a corporate credit card authorizing the company to make deductions from the employee's paycheck for any personal items charged to the card. The final corporate credit card bill of an employee who just quit, but has not yet received his final paycheck, shows that he charged many non-business related items on the card.
- An employee has admitted to taking money from the petty cash drawer and has agreed, as a condition of his continued employment, to allow the company to make deductions from each of his paychecks until he has repaid the full amount.

One thing is clear - the employee owes you money. But may an employer legally make deductions from an employee's paycheck to get the money back? Must the company have the employee sign an authorization before making the deduction? In the case of the corporate credit card bill, is the "blanket" authorization the employee initially signed adequate? The answer to these questions may vary, and will often depend upon the state in which the employee works.

Many states have enacted statutes and/or regulations governing whether an employer may make a deduction from an employee's paycheck, and in what circumstances. State laws vary significantly, making it almost impossible for employers with employees located around the country to adopt a uniform company policy on wage deductions. Not all states have wage deduction statutes or regulations, and the statutes and regulations that do exist vary in the degree of restrictions placed upon an employer's ability to make a deduction from an employee's paycheck. In this article, we provide examples of some of these restrictions.

**Most Restrictive: Only Deductions that "Benefit" the Employee Allowed**

The wage deduction statutes in a few states only allow employers to make deductions from wages that are for the "benefit" of the employee, rather than for the administrative convenience of the employer. Under these most restrictive laws, an employer cannot legally make a deduction from an employee's paycheck to correct a wage overpayment or to
reimburse the employer for an employee's theft, even if the employee has signed a written authorization allowing the deduction. To recoup overpayments, or reimbursement for an employee's theft, employers in these states are required to file court actions, as any non-employer creditor would have to do. Very often, of course, the amount involved does not justify the expense of a lawsuit, so the overpayment or theft goes unremedied.

**New York**'s wage deduction statute is an example of this highly restrictive type of law. It specifies that only deductions that benefit the employee are allowed, such as deductions to cover the employee's portion of a health insurance premium, and an employer in New York must still obtain the employee's written authorization for those deductions. Under the New York statute, an employer who has mistakenly overpaid an employee (because of, for example, a clerical error) cannot legally make a deduction from that employee's subsequent paychecks to correct for the overpayment, even if the employee has agreed that he or she was not entitled to the payment and has signed a written authorization. The employee’s signed authorization would not protect a New York employer from liability should the employee later chose to sue the employer, claiming that he or she unwillingly signed the authorization under threat of termination.

**California** law imposes similar restrictions. Under the applicable California statutes and case law, employers cannot exercise greater self-help rights than ordinary creditors by making deductions from wages; employers are required to go to court to collect debts owed by employees in most circumstances. California employers may make only those deductions from wages that are expressly authorized in writing by an employee to cover insurance premiums, benefit plan contributions, or other deductions that directly benefit the employee, or where a collective bargaining agreement expressly authorizes deductions for health, welfare or pension contributions.

Under **Indiana** law, only certain categories of deductions are allowed, including: premiums on an insurance policy; contributions to a charitable organization; purchase price of bonds, securities or stock of the employing company; labor union dues; purchase price of merchandise sold by the employer to the employee; repayment of a loan to the employee by the employer; contributions to a hospital service or medical expense plan; and payment to an employee's direct deposit account. In addition, under Indiana law, deductions are permissible in these circumstances if the employee’s authorization is in writing, signed by the employee, revocable at any time with written notice, and a copy of the authorization is delivered to the employer within ten days after it is signed.
Iowa, Kansas, New Hampshire, Oregon and Washington also have wage deduction statutes and/or regulations, that forbid employers from making any wage deduction that is not for the "benefit" of the employee, even if the employee has authorized the deduction in writing. Unlike New York, however, Iowa and Kansas allow for deductions to correct overpayments. The Oregon Department of Labor has also stated that deductions to correct overpayments are allowed if made immediately after the overpayment occurs.

Blanket Authorization Insufficient

In several states, an employer may make a deduction from an employee's paycheck with the employee's written authorization, but a blanket authorization signed far in advance of the deduction, which does not specify the amount to be deducted, is insufficient. For example, an authorization for deductions that an employee signs upon receipt of a corporate credit card, as in the example noted at the beginning of this article, would not be a valid authorization in these states.

In Illinois, a blanket authorization is insufficient and an employee’s express written authorization is required at the time each deduction is made if the deduction is not required by state or federal law (i.e., for taxes) or does not inure to the benefit of the employee (i.e., one authorization in advance is sufficient for deductions for monthly health insurance premiums). Similarly under Maine law, every deduction must be preceded by a separate authorization unless there is an ongoing payment plan, which provides that specific deductions will be made over time (i.e., to repay a loan).

Maryland, Massachusetts and Maine also require that each deduction be preceded by a separate written authorization and these states do not allow blanket authorizations signed in advance. The Wyoming Department of Employment takes the position that blanket authorizations are not valid.

Some states require that the amount of the deduction be included in the authorization. The Minnesota statute, for example, specifies that an employee's authorization for a deduction from wages due to a "claimed indebtedness" to the employer must be made "after . . . the claimed indebtedness has arisen. . ." and must set forth the amount to be deducted, so a blanket authorization (such as one for "all unpaid personal charges to a corporate credit card") signed in advance would not be sufficient. North Dakota also requires that the employee's written authorization include the date the deduction is to be made, the amount of the deduction and the reason for the deduction.
Although not included in the Oregon statute, the Oregon Commissioner of the Bureau of Labor and Industries has stated that to be valid, an employee authorization must include the amount to be deducted. Similarly, the Nevada authorities take the position that an employee's authorization must contain the specific amount of the deduction and the date the deduction will be made, although the statute itself does not contain such requirements.

In North Carolina, a blanket authorization that does not specify the amount to be deducted is valid only if the employer gives the employee advance notice of the specific amount of the deduction to be made and the employee is given a reasonable amount of time (at least three days) to withdraw his or her prior authorization before the deduction is made. Under North Carolina law, the authorization must also set forth the reason for the deduction. Texas also requires that the authorization signed by the employee give the employee a "reasonable expectation" of the amount to be deducted.

In Virginia, an employee's authorization must include the time period in which the deduction will be made, and the time period cannot exceed one year, so a blanket authorization signed years in advance of a deduction will not be sufficient.

No Authorization Required To Correct Erroneous Overpayment

A number of states that ordinarily require employers to obtain an employee's signed authorization prior to making most deductions from the employee's paycheck nevertheless allow employers to make deductions to correct payroll errors without a signed authorization, because such a deduction is considered to be from an "advance" rather than from "wages" actually earned by the employee.

For example, Alaska requires an employer to obtain written authorization from an employee prior to taking any deduction from the employee's paycheck, but does not require an employee's authorization for deductions made to correct mistaken overpayments. Deductions for overpayments are regarded as deductions for "advances" made to the employee and are allowed by the Alaska regulations without employee authorization. Such deductions cannot, however, reduce wages below the state or federal minimum wage.

Similarly, Arizona ordinarily requires employers to obtain an employee's authorization prior to making deductions for health and welfare benefits. According to the Industrial Commission of the Arizona Labor Department, however, an employer can make deductions for an overpayment of wages without a written authorization, so long as the deduction...
does not cause the payment to fall below the state and federal minimum wage or overtime rate, because this situation is considered a "reasonable good faith dispute as to the amount of wages due."

In **Illinois**, a deduction to correct an overpayment can be made without a prior written authorization only if the employee agrees and the overpayment is discovered early enough so that it can be made from the employee's first regular payday after the payday on which the overpayment occurred. If the overpayment is not discovered until one or more paydays have passed, the employer and employee must agree in writing on a repayment schedule, and each deduction in the repayment schedule cannot exceed 15% of the employee's gross wages per paycheck. If the employer and employee cannot agree on a repayment schedule, then the employer may pay only the amount it concedes is due to the employee, provided the employer reports the amount being withheld to the Illinois Department of Labor and states the reason why the payment is being withheld. The Department of Labor will then conduct an investigation to determine what wages are due.

Other states which do not require an employee's authorization to make a deduction to correct an overpayment include Colorado, Connecticut, Delaware, Hawaii, Idaho, Kansas, Kentucky, Louisiana, Massachusetts, New Jersey, North Carolina, Ohio, Rhode Island, Tennessee, Virginia, West Virginia, Wisconsin, and Wyoming.

**Deductions for Employee Theft**

Some states do not allow employers to make deductions to reimburse the employer for theft, even if the employee has signed an authorization admitting to the theft. For example, employers in **New York, California, Indiana, Iowa, Puerto Rico and Rhode Island** may not legally make a deduction from an employee's paycheck to reimburse the employer for an employee's theft, even if the employee has signed an authorization. Deductions also are not permitted for employee theft in **Hawaii, Kentucky, or Oklahoma**, even with an employee’s written authorization, if the employee was not in sole control of the money (i.e., a deduction would not be permitted in the case of a cash shortage where two or more persons had access to the money till, cash box, or register).

In **Colorado**, an employer may deduct the amount of an employee's theft from that employee's wages only if the employer has filed a police report regarding the theft and the matter has not yet been decided by a court. If the employee is found not guilty or no charges are filed within ninety days of the police report, or if the charges are dismissed, the employee can recover the amount wrongfully withheld, plus interest. If the employer withheld wages without good faith, the employee can recover three times the amount wrongfully withheld.
Delaware also does not allow employers to recoup employee thefts through a wage deduction; its regulations do, however, allow employers to ask for voluntary reimbursement from employees. For example, in one Delaware Department of Labor opinion letter, the Department ruled that an employer could condition continued employment on the repayment of the stolen money. On the other hand, employers in Michigan, Ohio and Virginia cannot require an employee provide a written authorization for a payroll deduction as a condition of continued employment.

Other Considerations: Forms, Notice, Amount Restriction

Employers should also be aware of a variety of procedural restrictions that apply to deductions under different state laws. For example, in Connecticut, deductions made pursuant to an employee's written authorization are permissible, but the authorization must be on a form approved by the Connecticut Commissioner of Labor.

In some states, an employer must provide an employee with specific advance notice before making a deduction. For example, in Indiana, an employer must give the employee two weeks notice before making a deduction to correct a wage overpayment. Under a 2003 amendment to Nevada’s wage payment laws, an employer may not decrease an employee's usual compensation unless the employer provides the employee with written notice of the decrease "7 days before the employee performs any work at the decreased wage, salary or compensation." While this new provision was probably meant to address true decreases in an employee's regular rate of compensation, it could be applied to require seven days notice where a compensation rate is temporarily decreased to make up for a prior overpayment. South Carolina also requires employers to provide employees with seven days notice before making a deduction.

Some states limit the amount that may be deducted from a paycheck, even with prior authorization by the employee. For example, in New York, the deduction from each paycheck may not exceed 10% of the employee's gross weekly pay. In Illinois, the amount deducted cannot exceed 15% of the employee's gross wages per paycheck. In Indiana, an employer may only deduct the lesser of 25% of the employee's disposable income per pay period or the amount by which the employee's disposable earnings for that week exceed thirty times the federal minimum wage. In Virginia, the employee authorization must state that the deduction cannot exceed 25% of the employee's wages.

Conclusion
As these examples illustrate, state laws governing an employer’s ability to make a deduction from an employee’s paycheck vary greatly from state to state and from one factual situation to another. Accordingly, employers should not assume that they can legally make a deduction, even if the employee has agreed to the deduction and signed a written authorization, and even if the employee was, by all appearances, not entitled to the payment under the employer’s compensation plan. Employers should always consult legal counsel and take into account each state’s statutes, case law, department of labor regulations and opinion letters prior to making any deductions from an employee's paycheck. Any employer attempting to adopt a uniform nationwide wage deduction policy will almost certainly run afoul of one or more state's restrictions.