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May 13, 2014

HEADS UP!

THE DEDUCTION SEDUCTION

Many employers just can't resist the temptation to deduct the unpaid debts of departing employees from their final paycheck. It's like a sparkling, multi-colored lure dancing before a sea bass -- irresistible.

California law is very rigid on this subject. There are certain deductions that employers are allowed to take from paychecks and others that are not permitted…period.

Deductions that are permitted include those authorized or required by law, such as state and federal income taxes, social security taxes and state disability insurance taxes.

Other deductions that are allowed with the affected employee's written consent include:

1. Premiums for life, health and disability insurance;
2. Voluntary wage assignments consistent with Labor Code requirements;
3. Pension/retirement plan contributions;
4. Final pay check deductions to reimburse the cost of uniforms and/or equipment issued to a departing employee in the event they are not returned as agreed; and
5. Periodic or installment deductions in repayment of certain types of indebtedness to the employer.

Employers have historically, and mistakenly, relied on wage deductions to recover reimbursement associated with loans to employees, wage overpayments, wage advances and employee purchases.

The California Division of Labor Standards Enforcement (Labor Commissioner) takes the position that employers are prohibited from deducting from an employee's final paycheck the unpaid balance of a debt owed. Such deductions are proscribed even if the debt is evidenced by a written promise to "pay on demand."

The DLSE permits the deduction of only one installment payment, and even then only if it is due at the time of separation pursuant to a written agreement signed by the employee. DLSE expressly prohibits employers from accelerating repayment by deducting the entire unpaid balance from the final check on the theory that this would constitute a prejudgment garnishment.

A related question involves whether employers can deduct the cost of damage or loss caused by employee negligence or theft. The answer is, “no,” and “yes,” respectively. Contrary to common perception, employers may not deduct the cost of damage caused by an employee’s negligence. This is considered a cost of doing business, which can be borne more readily by the employer by passing the cost on to consumers. Only losses caused by employee gross negligence, willful misconduct or dishonesty may be lawfully deducted from an employee’s wages.

But, even then, employers are well-advised to use extreme caution, and must be prepared to produce evidence that is admissible in court proving the employee’s infraction to the satisfaction of a judge or jury. The failure to do so can have the effect of inviting a lawsuit that will likely make the employer rue the day the decision was made to resort to “self-help” remedies.