

## A-Z Guide

# DEDUCTIONS (WAGES PROTECTION)



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## Use This Guide to Understand

- The law regarding the payment of wages
- When it is lawful to make deductions from an employee's pay
- When wages can be withheld from an employee
- When the overpayment of wages to an employee can be recovered

## The Protection of Wages in New Zealand

The payment of wages to an employee in New Zealand is covered by the Wages Protection Act 1983 ("the Act"). The Act deals with the manner in which employees are able to be paid for working, protects employees against unlawful wage deductions, and allows for the recovery of overpayments in limited circumstances. The provisions of the Act apply to all employment relationships. It is not possible to contract out of the obligations provided in it.

Note: Under this Act, the meaning of wages, salary, bonuses, overtime and any other contractually agreed payments such as performance payments.

The Minimum Wage Act 1983 also provides obligations regarding the payment of wages, but these obligations are not discussed in this guide.

For more information on the Minimum Wage Act 1983, please refer to our [A-Z Guide on The Minimum Wage Act 1983](#).

## Obligations Under The Wages Protection Act 1983

### Payment

The purpose of the Act is to ensure all wages that are contractually due to an employee are paid to that employee. The Act stipulates that the entire amount of wages due must be paid to an employee (without deduction) when they become payable, which is determined by the employment agreement or contract.

In order to make a deduction from an employee's wages, the employee must agree to the deduction, unless it is for an unavoidable overpayment, which is specified below. A deduction of any sum from wages by a different method or at a different time from what has been agreed will constitute a breach of the Act.

The Act also requires that wages are to be paid in cash, unless the employee has agreed to payment by cheque or direct bank lodgment into an account in the name of the employee, or a joint account of which they are a named party. In both these situations, the employee's consent may be given in the employment agreement.

### Lawful deductions

Deductions may be made from wages owing to the employee as long as both parties, the employee and you, have agreed to make those deductions. These deductions must be agreed in writing and signed by both parties.



Examples of common deduction provisions may include:

- Deduction for cost of work tools/uniform not returned at the end of employment;
- Deduction for purchase of goods/service on a staff account;
- Deduction for traffic infringements incurred whilst using a company vehicle.

Before making any deduction in accordance with a general deduction clause in a worker's employment agreement, the employer must first consult with the worker.

An employer must not make a deduction from wages payable if the deduction is unreasonable.

The courts have held that deductions from an employee's wages under a deductions clause must be a genuine attempt to pre-estimate damages, rather than a penalty. A deduction clause is likely to be unenforceable where it is excessive or out of proportion in comparison to the loss arising from an employee's breach.

## Spending

The Act protects the right of an employee to spend his or her wages as he or she sees fit. Historically, employers were able to control their employees' spending by paying them in kind, for example groceries from their own stores, but presently this is prohibited.

## Premiums for work

The Act protects employees from offers of employment that require the employee to pay a premium to the employer for that offer. If an employee can prove that their employment was provided on the condition of payment of a premium, that premium will be repayable in full to the employee.

# Enforcing the Wages Protection Act 1983

The rights and protections contained in the Act are enforceable in the Employment Relations Authority by employees, their representatives, and Labour Inspectors. An action for the recovery of wages (because of an unlawful deduction or because of unlawfully withheld wages) may be pursued in the Employment Relations Authority, up to 6 years after the wages were due to be paid. For this reason alone, it is important to keep correct and up to date records.

An individual who breaches this Act is liable to a fine of up to \$10,000. A company that breaches the Act is liable to a fine of up to \$20,000.

# Recovering Overpayments

The Act states that there are limited circumstances in which you can recover overpayments made to employees. These are:

- When the employee has provided written consent; or
- When the deduction is made in order to comply with another statute such as the:
  - Income Tax Act 1976; or



## Deductions (Wages Protection)

- Child Support Act 1991; or
- District Courts Act 1947; or
- Student Loans Scheme Act 1992.
- Where the deduction is provided for in the employee's employment agreement (such as in the absence or default of an employee); or
- The deduction is made in accordance with the Act.

Any overpayment of wages made to any employee may be recovered if an employee consents in writing. It is then considered a lawful deduction. However, consent can be withdrawn by an employee if they provide written notice. You are then obligated to stop making the deduction within 2 weeks of being provided with that notice, or as soon as practicable. Consent can either be obtained directly from the employee or by way of a deductions clause in their employment agreement. A deductions clause may state for example that "the employer may make a deduction from your next salary/wage payment should any overpayment have been made to you". For the clause to be valid the agreement must be signed by the employee.

The Act makes it possible for employers to recover overpayments in other circumstances where there is a provision to that effect in a collective agreement.

## Deductions without consent

There are certain situations where an overpayment can be recovered without consent. However, this is only in the situation where there was no legal obligation to pay the employee wages because the employee was:

- Absent from work without your authority; or
- On strike (within the meaning of section 81 of the Employment Relations Act 2000); or
- Locked out (within the meaning of section 82 of the Employment Relations Act 2000); or
- Suspended from their employment (as per sections 87 to 89 of the Employment Relations Act 2000).

AND it was not reasonably practicable for you to avoid making that overpayment because of the methods or equipment used by you to pay wages. However, before recovering that overpayment the employer must give the employee notice of their intent to recover it before the next pay-day (there are some exceptions to this) and then must actually recover it (by deduction) within 2 months of giving that notice. These rules do not apply where the over payment was avoidable.

## Deductions for Unworked Notice

Where an employee fails to provide the required notice on termination employers often seek to make deductions from an employee's pay, an equivalent amount to the unworked notice period. This kind of deduction provision is also commonly known as a "forfeiture" clause.

Recent cases have outlined that such deductions are not enforceable if they seek to penalise the employee.

An employer may only deduct in this situation, if:

- There is a deductions clause in the signed employment agreement to this effect; and
- The employer has consulted with the employee about the proposed deduction; and
- The amount deducted is a genuine pre-estimation of costs incurred by the employer as a result of the inadequate



notice; and

- The amount deducted must be in proportion to the losses suffered by the employer.

Points to note:

- Prior to making such a deduction, employers should double check the wording of the employment agreement to ensure it contains a clause that allows this action and ensure the agreement is signed by the employee.
- The employer should also consult with the employee and notify them that they are proposing to make this deduction in reliance of such a clause.

## Deductions with Worker's Consent

For deductions with a worker's consent, whether that consent is through express written consent for a specific deduction (e.g., an overpayment) or a general deductions clause in the employment agreement, employers should note that employee may vary or withdraw their consent to a deduction at any time including during consultation.

Under section 5(2) of the Wages Protection Act 1983 an employee may vary or withdraw consent given for the making of deductions from their wages by giving the employer notice to that effect, following which the employer should within 2 weeks of receiving that notice or as soon as practicable cease making or vary the deductions concerned.

## Conclusion

In cases where you cannot rely on written consent from the employee or they cannot rely on the specific circumstances set out above, an action can be taken to recover the amount. To recover an overpayment successfully you must be able to show the overpayment was not made recklessly or indifferently. However, even where the employer has taken due care in making the payment it will not be recoverable where the employee has received it in good faith and changed his or her financial position in reliance on the payment.

EMA Advice can assist with the drafting and understanding of provisions allowing for deductions from wages in circumstances not proscribed by the Act.

## Remember

- Always call AdviceLine to check you have the latest guide
- Never hesitate to ask AdviceLine for help in interpreting and applying this guide to your fact situation.
- Use our AdviceLine employment advisors as a sounding board to test your views.
- Get one of our consultants to draft an agreement template that's tailor-made for your business.

**This guide is not comprehensive and should not be used as a substitute for professional advice.**

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