NATROAD
NATIONAL ROAD TRANSPORT ASSOCIATION

Factsheet – Pay Deductions

Why It Matters

What an employer can and cannot deduct from an employee's pay is regulated by law and can often be confusing. Making a deduction from an employee's pay that is not permitted can expose you to underpayment of wages claims, repaying the employee, prosecution for breaches of the law and penalties.

The Basics

Federal law restricts what can and cannot be deducted from an employee's pay. Generally, an employer must pay an employee in full, in money, and cannot deduct anything from an employee's wages unless the deduction is authorised by:

- The employee in writing and the deduction is mainly for their benefit; or
- An award or enterprise agreement covering the employee, a court order, or some other law. Although limitations apply to what an award or enterprise agreement can authorise.

In addition, an employer cannot require an employee to spend their wages if the requirement is unreasonable.

The Detail

What can and cannot be deducted from an employee's pay can be complex. Other than straight forward legal requirements like tax, superannuation, and compulsory child support payments, it pays to check that the deduction is one that can legitimately be made.

Employee Requests

Requests from an employee to make a deduction from their pay are subject to the legal restrictions explained in this factsheet. An employer does not have to agree to a request from an employee to make a deduction from their pay, unless required by law, or an award, or enterprise agreement. Usually employee requests are things like expenses they wish to salary sacrifice, contributions to special accounts, and union fees.

NATROAD
NATIONAL ROAD TRANSPORT ASSOCIATION

Employer Deductions

The way the law operates means an employer cannot usually make deductions from an employee's pay when they think the employee owes them money. This applies to things like the loss or damage to the employer's property caused by an employee, shortfalls in cash being handled by an employee, recovering money stolen by an employee, and overpayment of wages. An employer may, however, be able to deduct an amount from an employee's pay when they use their employer's money or equipment for personal purposes.

Deductions Allowed

General

The Commonwealth *Fair Work Act 2009* limits deductions from an employee's pay to those authorised by:

- An employee in writing and the deduction is mainly for the employee's benefit. This authorisation must be in writing and state the amount of the deduction. An employee can withdraw this authorisation at any time. Any variation to the authorisation must also be in writing.
- An employee, as allowed by an enterprise agreement.
- An award or order of the Fair Work Commission.
- A law or court order.

Salary Sacrifice

Deductions can be made for salary sacrifice arrangements so long as the employee has authorised the deduction in writing and it is mainly for the employee's benefit.

Requirement To Spend

A reasonable requirement for an employee to spend money may be an allowable deduction, such as for expenses incurred by an employer in providing training to an employee. However, whether the requirement is reasonable or not will depend on many factors such as the amount and timing of any deduction, what the spending requirement is for, and whether the requirement would be inconsistent with any award or enterprise agreement.

Reasonable Deductions

Any deduction from pay made according to an award, enterprise agreement or contract of employment that goes directly or indirectly to the employer, or another person, that is for the benefit of the employer, or a related person or organisation, can only be made if it is reasonable in the circumstances. Defining "reasonable" can be quite difficult and will depend on the facts of a situation. However, the *Fair Work Regulations 2009* help a bit by explaining some reasonable grounds as:

- The deduction is for goods and services provided by the employer, or a related person or organisation, and the terms given the employee are no worse than offered by the employer to the public.

- Recovering the cost of an employee's voluntary use of the employer's property for private use. This can include things like personal calls made on an employer's phone, personal spending on an employer's credit card or account, or personal use of the employer's vehicle.

Some awards also allow an employer to make a deduction from an employee's termination pay if they do not give enough notice of their termination. The *Road Transport & Distribution Award 2010* (Cl 13.2), Road *Transport (Long Distance Operations) Award 2010* (Cl 11.2), and *Clerks Private Sector Award 2010* (Cl 13.2), all have such a provision. These provisions permit an employer to deduct from an employee's final pay an amount equal to the difference between the notice of termination the employee gave and the notice they were obliged to give. Despite the wording of these provisions, a deduction should not be made from statutory entitlements such as annual leave, long service leave or superannuation contributions. It is also important to note that the Fair Work Commission is considering whether such clauses can be included in awards and, if so, to what extent should they allow a deduction.

Deductions Not Allowed

General

An employer cannot deduct from an employee's pay unless the general conditions previously explained are met.

Requirement To Spend

An employer is not permitted to directly, or indirectly require, an employee to spend any part of their wages or other employment benefit if the requirement is unreasonable in the circumstances.

NATROAD
NATIONAL ROAD TRANSPORT ASSOCIATION

Award & Enterprise Agreement Restrictions

The terms of an award, enterprise agreement or contract of employment permitting a deduction will be unenforceable if the deduction goes directly or indirectly to the employer, or another person, that is for the benefit of the employer, or a related person or organisation, and is unreasonable in the circumstances.

A deduction under an award, enterprise agreement or contract of employment is also unenforceable if the employee is younger than 18, and it has not been agreed in writing by the employee's parent or guardian.

Overpayment

The restrictions on making deductions from an employee's pay will also affect how an employer recovers an overpayment of wages, or other amounts, to an employee. In trying to recover an overpayment, the first step is to try and agree with the employee about the amount and timing of the repayment. If the employee does not agree to the recovery of the overpayment, you may be able to treat this as a debt and take recovery action in a state or territory court or administrative appeals tribunal. In most cases overpayment would be processed in the applicable small claims stream of the relevant court or tribunal.

Need More

NatRoad's practical advisors are experienced in assisting employers meet their legal obligations in employment matters, including pay issues. For more information and advice about payment obligations, contact a NatRoad adviser on (02) 6295 3000 or info@natroad.com.au .