

Deductions from your wages

Employment Rights Advice Leaflet

Number 8/ December 2002

Workers have legal right not to suffer unauthorised deductions. There are strict limits on when employers are allowed to make any deductions. If you think that a deduction has been wrongly made from your wages you should seek advice about whether you can bring a claim to an employment tribunal.

Methods of payment

Payments may be made in cash or by other methods, which may include:

- payment direct into a bank or building society account;
- payment by cheque, cashable at a local bank or Post Office.

The rate of pay, or method of calculating it, together with the intervals at which you receive payment, should be included in your written statement of terms and conditions. See ERAS leaflet "**Your written statement of terms and conditions of employment**".

You may have a right under your contract to be paid in a certain way and if your employer wants to change this they should obtain your agreement. However in practice if an employer wants to stop paying you in cash there may be little you can do to stop this.

If you have always been paid in cash and your employer wants to change to non-cash payment, you might be able to negotiate a way of helping you deal with the change. For example:

- your employer might agree to allow flexible lunch hours, initially, so that you can get to a bank or Post Office on pay day;
- your employer might agree to provide a lump sum or interest free loan to help you adjust to the new period of payment

Deductions from wages

All deductions from wages are subject to rules contained in the Employment Rights Act 1996. "**Wages**" are any sums paid by your employer in connection with your job, including:

- bonuses or commission;
- holiday pay;
- statutory payments, such as Statutory Sick Pay or Statutory Maternity Pay;
- payments due under the contract, such as enhanced contractual sick pay or enhanced contractual maternity pay;
- luncheon vouchers, or other vouchers or tokens which can be exchanged for money, goods or services.

Wages do *not* include: loans or advances of wages, expenses, pension or redundancy pay-

ments or lump-sum payments. Pay in lieu of notice will not count as Wages.

When are deductions lawful?

A deduction is lawful if:

- it is authorized by statute, (e.g. deductions for tax or national insurance, as required by law); or to comply with a court order e.g. maintenance payments;
- it is authorised by a relevant provision in the contract. The term does not have to be in writing and can be an implied term, rather than an express one. But your employer should let you know in writing that such a term exists and what it means, before any deduction is made.
- you have agreed in writing with your employer beforehand that the deduction can be made;

However, even where none of the above apply, an employer is still entitled to make a deduction:

- to recover an overpayment of wages or expenses;
- if the deduction is made as a result of statutory disciplinary proceedings;
- if the deduction is made for a statutory purpose to a public authority (e.g. tax due to the Inland Revenue);
- because of a contractual obligation to pay a third party (e.g. union dues);
- as a consequence of a strike, or other industrial action;
- because of a court order requiring the worker to pay the employer;
- as a result of an error of computation.

Remember, if you have a contract (whether in writing or not) which does not include the power to make a deduction your employer should not alter it without your agreement.

Any deductions should be itemised on your pay slip. See ERAS leaflet "**Itemised Pay Statements**".

Special rules for retail workers

There are special rules relating to cash shortages or stock deficiencies for people working in retail employment.

If you are involved in selling or supplying goods to the public or fellow workers, or receiving money in this connection, these rules apply to you. They apply even if you only do so on odd occasions, or are not directly involved in the sale or supply of goods, but handle money. For example, a cashier working in a staff canteen could be covered by these rules.

Maximum deductions for retail workers

If your employer has reached agreement with you, either in writing or in your contract, that a deduction can be made for shortages, then s/he must:

- notify you in writing of the total amount owed before taking any money;
- make a demand in writing for payment on a pay day;
- any demand must not exceed 10% of the gross amount of that pay packet, although similar deductions can be made from future pay packets.

The 10% restriction does not apply to deductions from your final pay packet. Your employer must make any such deductions within twelve months of discovering the shortages.

What does this mean in practice?

If you are a shop worker selling goods, and your contract of employment allows your employer to recover any shortfall of cash in the till, then your employer must first let you know of the shortfall and the full amount owing.

If your gross wage is £200 a week and the shortfall is £50, the maximum your employer can take from one pay packet is £20 (10% of £200). Your employer would have to recoup the remaining £30 from your next 2 pay packets. The 10% rule does not apply to your final pay packet, if you are leaving.

Your remedies

If you think your employer has made an unauthorized deduction from your wages, you should contact your trade union or see a solicitor; alternatively you can get advice from your local Law Centre, Citizens Advice Bu-

reau or other independent advice centre. You may be able to bring a claim to an Employment Tribunal. This is done on form ET1, which can be obtained from your local Citizens Advice Bureau or Job Centre. You might also be able to bring a civil claim in the County Court for Breach of Contract.

You must submit any claim to an employment tribunal within three months of the date of the deduction. If there are a series of deductions, you must complain no later than three months from the date of the last deduction. Tribunals can allow claims which are late, but this is very rare in practice, so you should make sure any claim is submitted in good time.

The Employment Tribunal can order repayment, if it believes a deduction was unlawful. The employer may also lose the legal right to recover any sums which have been unlawfully deducted, at a later date by other means.

A tribunal will not order additional compensation simply because wages have been unlawfully deducted, so it is generally a good idea to reach a settlement with your employers if you can, as this avoids the need to attend a tribunal hearing. If you bring a tribunal claim, the Advisory Conciliation and Arbitration Service (ACAS) will contact you to see whether a settlement is possible.

An Employment Tribunal has no power to award interest on the sums deducted, even if it does order repayment.

Unfair Dismissal

Normally you need to have worked for your employer continuously for over one year before you can make a complaint of Unfair Dismissal to an Employment Tribunal.

However where you are dismissed for “asserting a statutory right”, you can claim Unfair Dismissal from the first day of your employment.

If you are dismissed for complaining that unlawful deductions have been made, that will count as “asserting a statutory right”. If you can prove that was the reason why you were dismissed, any dismissal will count as “automatically unfair” and you will be entitled to compensation.

For further details contact:
Employment Rights Advice Service (ERAS)
Low Pay Unit
10 Dukes Road
London WC1H 9AD
Advice line: 020 7387 2522
www.lowpayunit.org.uk

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