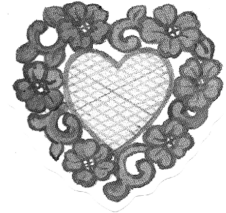




Mesmer & Deleault, PLLC
41 Brook Street, Manchester, NH 03104

Happy Valentine's Day



"Tip of the Month"

The Protected Paycheck

Employers occasionally run into a jam when an employee owes money to the company. The employer might want to deduct the employee's debt from the employee's paycheck. That is when the employer can run into trouble with New Hampshire labor law. The employer is not permitted to engage in "self-help" to recover the money it believes the employee owes. RSA 278:48 says:

- "I. No employer may withhold or divert any portion of any employee's wages unless:
- (a) The employer is required or empowered to do so by state or federal law, or
 - (b) The employer has a written authorization by the employee for deductions for a lawful purpose accruing to the benefit of the employee as provided in regulations issued by the commissioner;
 - (c) The deductions are pursuant to any rules or regulations for medical, surgical, or hospital care or service, without financial benefit to the employer and openly, clearly, and in due course recorded in the employer's books."

Thus, the general rule is that the employer is not allowed any setoff, recovery or other deduction from an employee's paycheck in the absence of an exception. The three exceptions noted above are quite limited, even in the NH Labor Department Regulations. Go to www.gencourt.state.NH.us/rules/Lab800. See Lab 803.03, Prohibitions.

Besides payroll deductions for taxes and social security, the only other way to authorize any deduction from an employee's paycheck is to have the employee sign off in writing. Verbal does not count. The Hearings Officers at the NH Department of Labor are strict about this. When an employer is defending against an employee wage claim, they want to see something in writing.

The two main ways to get it in writing are 1) to prepare a specific agreement for signatures, or 2) to have employees sign that they have read the company's policy manual that specifies when the employer may deduct from a paycheck.

As an example of a specific agreement, the company might loan money to an employee. Provisions of the promissory note might include an agreement for payroll deduction of repayments, or permit recovery of the balance due from the final paycheck in the event of termination.

A company's policy manual can also cover some payroll deductions, but this can be cumbersome. For example, the company might loan valuable equipment, such as a laptop computer, which must be returned to the company if the employee terminates. The policy manual can prescribe a value to the equipment and should characterize the equipment as a loan. If the equipment is not returned, that value might be deducted from the employee's last paycheck. The company must require each employee to sign off that he or she has read the manual. This also applies to policy changes and new policies.

If you have any questions about payroll deductions or other employment law questions, give us a call at 668-1971 or contact us by e-mail at Meslaw@aol.com.

Frank B. Mesmer, Jr., Esq.
Robert R. Deleault, Esq.

(603) 668-1971

Fax (603) 622-1445

Internet: Meslaw@aol.com

Web site: www.biz-patlaw.com