



PAYROLL DEDUCTIONS AND OFFSETS AGAINST WAGES

An employer can lawfully withhold amounts from an employee's wages only when: (1) required or empowered to do so by state or federal law; (2) when a deduction is expressly authorized in writing by the employee to cover insurance premiums, benefit plan contributions or other deductions not amounting to a rebate on the employee's wages; or (3) when a deduction to cover health, welfare or pension contributions is expressly authorized by a wage or collective bargaining agreement. (Labor Code §§ 221, 224) Although a wage garnishment is a lawful deduction from wages under Labor Code § 224, an employer cannot discharge an employee because a garnishment of wages has been threatened or if the employee's wages have been subjected to garnishment for the payment of one judgment. (Labor Code § 2929(a))

The ability of employers to deduct amounts from an employee's wages due to cash shortage, breakage, or loss of equipment is specifically regulated by the Industrial Welfare Commission Orders and limited by court decisions (*Kerr's Catering v. Department of Industrial Relations* (1962) 56 Cal.2d 319). In addition, there have been several court decisions that significantly restrict an employer's ability to take an offset against an employee's wages. (See *Barnhill v. Sanders* (1981) 125 Cal.App.3d 1 Balloon payment on separation of employment to repay employee's debt to employer is an unlawful deduction even where the employee authorized such payment in writing); *CSEA v. State of California* (1988) 198 Cal.App.3d 374 (Unlawful to deduct from current payroll for past salary advances that were in error); *Hudgins v. Nieman Marcus* (1995) 34 Cal.App.4th 1109 (Deductions for unidentified returns from commission sales unlawful.)

Other payroll deductions that are unlawful include:

Gratuities: An employer cannot collect, take, or receive any gratuity given or left for an employee, or deduct any amount from wages due an employee on account of a gratuity given or left for an employee. (Labor Code § 351) However, a restaurant may have a policy allowing for tip pooling among employees who provide direct table service to customers. (*Leighton v. Old Heidelberg, Ltd.* (1990) 219 Cal.App.3d 1062)

Photographs: If an employer requires a photograph of an applicant or employee, the employer must pay the cost of the photograph. (Labor Code § 401)

Bond: If an employer requires a bond of an applicant or employee, the employer must pay the cost of the bond. (Labor Code § 401)

Uniforms: If an employer requires a uniform to be worn by an employee, the employer must pay the cost of the uniform. (See appropriate IWC Order and Labor Code § 2802)

Expenses: An employee is entitled to be reimbursed by his or her employer for expenses or losses incurred in direct consequence of the discharge of the employee's work duties. (Labor Code § 2802)

Medical Record: An employer cannot require an employee or applicant to pay for a medical examination or deduct from an employee's wages the cost of a medical examination taken as a condition of employment or required by any state or federal law. (Labor Code § 222.5)