

DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF LABOR STANDARDS ENFORCEMENT  
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MILES E. LOCKER, *Chief Counsel*

September 22, 1999

Martha Buck  
665 Granada Pass Drive  
Roseville, CA 95678

Re: Deductions for Overpayment of Wages

Dear Ms. Buck:

This is response to your letter concerning overpayment of wages. You specifically ask two questions: (1) What is the law when an employer overpays an employee; and (2) What is the enforcement policy of DLSE with respect to recovery of the overpayments.

Under most circumstances, California law prohibits an employer from deducting from an employee's wages any debts the employee may owe to the employer. *Barnhill v. Saunders* (1981) 125 Cal.App.3d 1, provides a good example of the law in this regard. In *Barnhill* an employee executed a promissory note for a debt owed to her private employer. When the employee was terminated, the employer deducted the balance of the promissory note from the employee's final paycheck. In finding that the employee was entitled to full payment of wages without deduction, the court explained that under the attachment laws, all wages of a debtor earned in exchange for personal services are exempt from levy. *Code of Civil Procedure Section 487.020(c)*. The underlying public policy for the wage exemption statutes serve to insure that the debtor and his or her family will retain sufficient money to maintain a basic standard of living and be afforded fundamental due process. The *Barnhill* court concluded that to permit an employer to engage in self help by deducting directly from an employee's paycheck

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would accomplish what any other creditor of the employee could not do by attachment and defeat the public policy of the attachment exemption for wages. *Barnhill, Id.* at 6. Thus, *Barnhill* established that an employer is not entitled to an offset against wages for debts an employee may owe the employer.

*Barnhill, supra*, was extended in *California State Employees' Association v. State of California* (1988) 198 Cal.App.3d 374, to include those situations where overpayments of wages have been made to employees. In the *CSEA* case, an audit by the California Medical Facility at Vacaville revealed erroneous salary advances to state employees. Thereafter, the State notified the employees that the overpayments would be deducted from their paychecks. The State reasoned that it was authorized to correct the errors based on *Government Code Section 17051*, under which the State could correct errors in warrants it had issued for payment of claims.

*CSEA* challenged the deductions on the ground the wage garnishment laws provided the sole remedy for recovery of the overpayments. The court agreed, holding that the wage garnishment law provides the exclusive judicial procedure by which a judgment creditor, including an employer, can execute against the wages of a judgment debtor. In so holding, the *CSEA* court reaffirmed the underlying public policy set forth in *Barnhill, supra*, that wages are exempt from attachment. *CSEA, Id.* at 377 [citing *Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1, 6]. Although the *CSEA* case concerns public employees, we believe that its reasoning is fully applicable to private sector employment.

Moreover, the California Legislature has declared that it is unlawful for an employer to collect or receive any part of an employee's wages. *Labor Code Section 221*. Lawful withholdings are limited to those authorized by federal or state law (such as tax withholdings or court-ordered garnishments), pension contributions, payment of medical insurance, or other deductions not amounting to a rebate or deduction from the standard wage that are expressly authorized by a collective bargaining agreement, or an individual written wage agreement signed by the employee.

You should be advised, however, that although under most circumstances an employer is not permitted to deduct an employee's debt from earned wages, the employer would be entitled

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to pursue a civil action to recover any unpaid debt from the employee. If the employer brings such an action and prevails, the employer may be entitled to recover the court costs incurred in pursuing the civil action against the employee.

DLSE vigorously enforces the law with respect to unlawful deductions. If an employer deducts any portion of an employee's paycheck because the employer previously overpaid the employee, DLSE would view the deduction as unlawful. DLSE would not, however, view the deduction unlawful if the employer and employee have previously entered into a written agreement allowing for deductions based on the voluntary consent of the employee, provided that the amount of the deduction from any one paycheck cannot exceed the amount authorized by the employee for any such deduction, and that after making any such authorized deduction, the employee must still receive no less than the minimum wage for all hours worked in the pay period (except to the extent that amounts deducted for meals and lodging provided by the employer, with the employee's prior written consent, and up to the amount authorized by any applicable Industrial Welfare Commission Order, may be applied as a credit against the minimum wage).

If you believe that your employer has deducted monies from your paycheck unlawfully, you should immediately file a claim with the Labor Commissioner's Office. An investigation will be commenced and an administrative hearing held, if appropriate, to determine your entitlement to recover monies owed to you. Enclosed for your convenience is a pamphlet describing the claim process through the Labor Commissioner's office, together with a claim form to be completed by you if you wish to file a claim.

I trust this letter adequately responds to your questions. Thank you for your interest in California labor laws.

Sincerely,



Miles E. Locker  
Chief Counsel

MEL:bf

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cc: Marcy Saunders  
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