

My Employee Is Leaving: What Do I Owe and What Can I Deduct at Termination?

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Employers frequently ask what they owe their employees at the time of termination. As a general matter, all wages earned by an employee up to the date of termination are to be paid at the time of termination or shortly thereafter. For hourly employees, this is a fairly straightforward computation. Under the federal regulations governing salaried, exempt employees, an employer is not required to pay the full salary in the terminal week of employment. Rather, an employer may pay a proportionate part of an employee's full salary for the time actually worked in the first and last week of employment. In such weeks, the payment of an hourly or daily equivalent of the employee's full salary for the time actually worked will meet the requirement.

Another frequently asked question is whether or not employers must pay for any accrued but unused paid time off -- vacation, sick or other paid time off -- at the time of an employee's termination. In Pennsylvania, wages include fringe benefits such as vacation and holiday pay. However, no statutory right to these fringe benefits exists. Thus, in Pennsylvania, an employment contract (which can be written or oral) or an Employee Handbook determines whether an employee is entitled to accrued but unused vacation pay or other paid time off at termination. Similarly, the employer's policies on severance or termination pay will bind the employer if those policies are either communicated to the employee or are the subject of an agreement between the parties. Pennsylvania employers may implement both a "use it or lose it" policy and a forfeiture provision with regard to the payment of accrued but unused paid time off at the time of termination. An employment agreement or policy may also provide for forfeiture of a bonus if an employee is discharged "for cause." However, in the absence of a clearly defined contract or handbook provision, courts will likely find that employees must be paid for all wages, including accrued but unused paid time off at separation. Each state addresses this issue differently, so it is important to verify each state's approach before implementing such policies.

Pennsylvania's wage regulations also place limitations on the deductions that employers may take from an employee's wages, including those at the time of termination. Deductions may be made from an employee's paycheck only for certain items, or for the convenience of the employee if authorized in writing in advance by the employee. Only the following deductions for the convenience of the employee are permissible:

- Contributions to and recovery of overpayments under employee welfare and pension plans;
- Contributions authorized in writing by employees or under a collective bargaining agreement to employee welfare and pension plans not subject to the Federal Welfare and Pension Plans Disclosure Act. These include group insurance plans, hospitalization insurance, life insurance, provided such insurance policies are written by companies certified by the Pennsylvania Insurance Department, and group hospitalization and medical service programs offered by nonprofit hospitalization and medical service organizations and medical group plans;

- Deductions authorized in writing for the recovery of overpayments to employee welfare and pension plans not subject to the Federal Welfare and Pension Plans Disclosure Act;
- Deductions authorized in writing by employees or under a collective bargaining agreement for payments into company-operated thrift plans or stock options or stock purchase plans to buy securities of the employer or an affiliated corporation at market price or less, provided such securities are listed on a stock exchange or are marketable over the counter;
- Deductions authorized in writing by employees for payment into employee personal savings accounts such as: (a) Payments to a credit union; (b) Payments to a savings fund society, savings and loan, or building and loan association; (c) Payments to the savings department of banks for Christmas, vacation, or other savings funds; and (d) Payroll deductions for the purchase of U.S. government bonds;
- Contributions authorized in writing by the employee for charitable purposes;
- Contributions authorized in writing by the employee for local area development activities;
- Deductions provided by law, including but not limited to Social Security taxes, withholding of federal or local income or wage taxes or occupation privilege taxes, and deductions based on court orders;
- Labor organization dues, assessments and initiation fees, and such other labor organization charges as are authorized by law;
- Deductions for repayment to the employer of bona fide loans, provided the employee authorizes such deductions in writing either at the time the loan is given or subsequent to such loan. This may also include tuition reimbursement programs;
- Deductions for purchases or replacements by the employee from the employer of goods, wares, merchandise, services, facilities, rent, or similar items, provided such deductions are authorized by the employee in writing or are authorized in a collective bargaining agreement;
- Deductions for purchases by the employee for his/her convenience of goods, wares, merchandise, services, facilities, rent, or similar items from third parties not owned, affiliated, or controlled directly or indirectly by the employer if the employee authorizes such deductions in writing; and
- Such other deductions authorized in writing by employees as, in the discretion of the Pennsylvania Department of Labor and Industry, are proper and in conformity with the intent and purpose of the Wage Payment and Collection Law.

Deductions cannot be taken for the employer's benefit, as in the case of damaged goods or failure to return property. On the other hand, when the employer seeks repayment of a loan made for the employee's benefit, such a deduction is permissible provided that the deduction was authorized in writing in advance by the employee. In no case, however, can a deduction be made that takes the employee below the minimum wage in Pennsylvania.

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