

LAW

Employers: Pay what you agree, pay it on time

Not all employers know that wage-and-hour laws are concerned with more than minimum wage and overtime. A major concern of Kentucky's laws is the timely payment of employee wages without unauthorized deductions.

Employers generally violate the laws by failing to pay timely employee wages agreed upon or improperly deducting from employees' wages. For instance, if an employer only pays its employees once a month, it violates wage laws. Another violation occurs if an employer deducts money from an employee's paycheck because the worker accidentally damaged the employer's tools.

An employer cannot excuse a wage-payment violation by arguing that the employee still received minimum wage. If the parties agreed on paying more than minimum wage, the employer must timely pay that wage without unauthorized deduction.

Explain all terms

Because the term "wage agreed upon" is of central importance to wage laws, it's important that employers clearly explain all the terms of each employee's compensation — preferably in writing. Employers should also review their policies and procedures to ensure that descriptions of employee compensation arrangements are consistent with actual practice.

Employers should explain to employees the availability of vacation and sick pay, fringe benefits, bonuses, commissions, reimbursement of expenses incurred on behalf of the employer, as well as any other items of compensation customarily provided to employees in the employer's industry.

Arguably, wage laws include in the definition of wage agreed upon all compensation an employee is entitled to receive due to his work. If he is entitled to be paid an item of compensation, the



Robert Goff

Employers can save time and expense later by clearly defining employee compensation. They should only withhold or deduct an item from wages if required by law, deducted pursuant to a collective bargaining agreement or authorized by the employee in writing.

employer should treat it as wages to comply with the law.

When to pay

An employer must pay the wages agreed upon at least bimonthly, and never more than 18 days after they are earned. If an employee is absent on payday and doesn't pick up his check, his boss must pay his wages within six days of the employee's demand. An employer must pay an employee who has quit or been discharged by the later of the next regular payday or 14 days after termination.

How to pay

An employer must pay an employee's wages in cash, not by issuing a promissory note or store credit, and without restriction. Direct deposit is not payment without restriction because the employee would be faced with a minimum-balance bank fee if he withdrew all his wages. Employers who wish to use direct deposit should first obtain employees' written authorization.

What to deduct

An employer must pay wages without unauthorized deduction or withholding. Federal, state and local laws can authorize certain wage withholding, such as with taxes or valid garnishment orders. Collective bargaining agreements can also authorize certain wage withholding.

A worker can expressly authorize withholding for insurance premiums and medical dues, but it must be in writing. Generally, an employee can authorize any withholding in writing as long as the withholding isn't an attempt to avoid paying wages.

Some deductions are illegal even if an employee gives written authorization. An employer may not deduct fines, cash shortages from a register used by more than one employee, breakage, losses from dishonored checks, losses due to defective or faulty workmanship, lost or stolen property, damage to property, default of customer credit, or nonpayment for goods or services that a customer receives from an employee's wages even if the employee authorizes the deduction in writing.

Employers should avoid deductions not required by law or collective bargaining agreement and that don't provide some benefit to the employee even if authorized in writing.

Detailed paystubs

Businesses with at least 10 employees must describe the nature and amount of each wage deduction.

Each employee should receive a paystub that is straightforward and easy to understand. It should provide the hours worked, rate of pay and gross wages before withholding.

Gross wages reflected on the paystub should be equal to the hours worked multiplied by the hourly rate. If the employee gets paid in addition to his hourly rate, it should come by separate check or be separately listed on the paystub as an added item so the worker can understand what he is being paid. Deductions and withholdings should be itemized. Each deduction or withholding should have a dollar amount and a description that the employee can understand.

Summary

To avoid trouble with the Kentucky Department of Labor as well as double damages and attorney's fees, employers should pay all agreed-upon compensation at least bimonthly in cash without unauthorized deductions. Employers can save time and expense later by clearly defining employee compensation. They should only withhold or deduct an item from wages if required by law, deducted pursuant to a collective bargaining agreement or authorized by the employee in writing.

Robert Goff is an associate with Paducah's Denton & Keuler law firm. His areas of practice include estate planning wills, trusts, estates and probate, contracts, business corporations and partnerships, and elder law. He is admitted to practice in Kentucky and Tennessee and expects to be admitted in Illinois in May. He can be contacted at 270-443-8253.