

The do's and don'ts for making a deduction from your employee's pay

With Amanda Chadwick

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Run Time: Approx 50 Mins

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Today We Will Cover

- Lawful deductions:
- Law
- Contractual provision
- Prior written consent
- NMW and deductions
- Risks of underpayment

Overview

- All workers are protected from unlawful deductions from wages
- In certain circumstances a lawful deduction can be made
- A claim for unlawful deductions from pay can be made within three months of the relevant pay date



The definition of wages

- Sums of money paid to employees for the tasks they complete.
 - Any salary, holiday pay, bonuses or contractual commissions whether payable under their contract or otherwise.
 - One-off payments. For example, overtime payments.
 - Statutory payments. For example, statutory sick pay or maternity pay.
 - Statutory payments made in lieu of wages.
 - Payment of “protective awards” for failure to adhere to minimum consultation times

The definition of wages

- Examples that are not classed as wages
 - Advances of wages/payments made under a loan agreement.
 - Expense payments.
 - Redundancy payments.
 - Pension contributions.



Who is protected from unlawful deductions?

- All workers
- Not only employees and apprentices but also agency workers, casual staff, homeworkers and some freelance workers
- Protection applies irrespective of age, length of service or hours of work



Lawful deductions –required by law

- Income Tax: Deducted under the Pay As You Earn (PAYE) system.
- National Insurance Contributions: Deducted based on the employee's earnings.
- Student Loan Repayments: Deducted if the employee has a student loan.
- Pension Contributions: If the employee has opted into a workplace pension scheme
- Overpayments: If an employer has mistakenly overpaid an employee



Other lawful deductions

- ✓ Recovery of an earlier overpayment of wages/expenses
- ✓ Legally backed disciplinary proceedings e.g. police disciplinary proceedings
- ✓ Participating in industrial action
- ✓ Fulfilment of a court order/tribunal decision (prior employee agreement needed)
- ✓ Payments to third party e.g. trade union that the employee agrees to have deducted through payroll
- ✓ Employer can seek agreement from employee to amend employment contract to enable future deductions



Lawful deductions - contractual provision

- Required or authorised by a relevant provision in the worker's contract, including:
 - Term in written contract given to the worker before the deduction was made; or
 - Express or implied term
- The existence and effect of it must have been notified to worker before deduction is made
- Must also be able to demonstrate that the event justifying the deduction has occurred



Lawful deductions - written consent

- Deductions can be made following prior written consent
- A deductions from pay agreement sets out when deductions can be made. Examples include:
- An agreement to cover costs if an employee damages or loses company property
- A Training Agreement to recover training costs from an employee



Deductions that reduce Minimum Wage

Deductions that can make pay fall below NMW/NLW	Deductions that can't make pay fall below NMW/NLW
✓ Income Tax and National Insurance	✓ Food/meals
✓ Student loan repayments	✓ Parking permits and/or travel costs
✓ Pension contributions	✓ Cost of, or lost, work equipment / PPE
✓ Recovery of accidental overpayment or pay advances	✓ Stock or till shortage (in most circumstances)
✓ Trade union fees	✓ Training costs (in most circumstances)
	✓ Uniform/worker purchase of clothes to meet dress code
	✓ Childcare costs



Risks of slipping below NMW threshold

Across 2024, over 500 employers made deductions which resulted in a breach of the NMW, including for:

✓ Food/meals	✓ Parking permits / travel costs
✓ Cost of, or lost, work equipment and/or personal protective equipment	✓ Salary sacrifice schemes e.g. cycle to work, pension and employer benefit schemes
✓ Worker purchase of clothes to meet dress code	✓ Christmas savings schemes (administered incorrectly)
✓ Uniform	✓ Training costs
✓ Childcare costs	✓ Stock or till shortage



Risks of slipping below NMW threshold

- Repayment to employee at the NMW/NLW rate at the time of the of repayment
- Inclusion on the 'Naming And Shaming List' and publication of total arrears, business name and registered address
- Penalty calculated at 200% of arrears owed (reduced if paid within 14 days)



What to do if you have underpaid

- Put it right straight away by paying any underpaid amounts
- If worker no longer employed, try to contact them
- Calculate amounts owed for each pay reference period, noting any from previous years



Employment Tribunal claims

- Complaints can be made to an employment tribunal for unlawful deductions
- Within three months of the relevant payday
- Tribunal can order the employer to repay the deducted amount and potentially award compensation for financial losses resulting from the deduction.
- If an employer's unlawful deduction leads to the employee incurring overdraft fees or other financial penalties, the Tribunal may order the employer to compensate the employee for those losses.



Conclusion

- All workers are protected from unlawful deductions
- Make sure you have all relevant paperwork in place
- Prior to making a deduction, check that it is lawful. Is it required under the law, permitted under the contract, or is there written consent?
- Where there is a risk that a deduction will cause wages to fall below NMW, ensure it is for one of the permitted reasons: tax or national insurance

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Any questions

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