Wage deductions – what’s fair and reasonable?

Being a good employer means acting in a fair and reasonable way. This includes keeping the lines of communication open and taking circumstances into account when making a decision. This expectation permeates the entire employment relationship, including wage deductions.

An employee may request, or agree, to a deduction in writing, e.g. in an employment agreement or other written document. However, in order to be enforceable, the deduction clause needs to be 1) specific to the situation and 2) fair and reasonable.

In all cases, the employer is expected to act in good faith. In the event of a dispute, their actions will need to meet the test: "What could a fair and reasonable employer have done in this situation?" If either the amount of the deduction, the reason for the deduction, or the process followed, are found to be unreasonable and unfair, then the employer may be ordered to repay the deduction and penalties as well.

Key tips for employers:

- Meet with the employee prior to making any deductions and explain the reason for it.
- Keep an open mind – consider the employee’s point of view and circumstances and take this into account when making any decision.
- Be willing to consider a repayment arrangement where wage deductions are spread over time.

Even with these guidelines, sometimes it can be difficult to know for sure ‘what a fair and reasonable employer could do’. At the end of the day, this is decided by the Employment Relations Authority and Employment Court. If in doubt seek advice from your lawyer or employers’ association.

Use the examples below to help you on farm.
Example 1

An employer grants an employee one week’s annual leave in advance to attend a wedding overseas. This means that if the employee resigns within the next 3 months, they would owe the employer for that annual leave. The employer asks the employee to sign a statement agreeing that any annual leave still owing to the employer on termination will be deducted from their final wages and/or holiday pay.

Example 2

An employer wishes to deduct $400 for damage the employee caused to the employer’s property during a drunken antic one night after work. The employee is remorseful and agrees to pay for this damage as a wage deduction. In this case, if the employer insists on making the $400 deduction from one week’s pay, it would leave the employee with just $100. Would this be enough to cover all other bills or will the employee face significant hardship as a result of this action?

After consulting with the employee and working out what they can afford to pay each week, the employer and employee agree on a wage deduction of $80 per week over 5 weeks.

Example 3

An employee’s private vehicle breaks down and he can’t afford to pay for it to be repaired. He approaches his employer, who agrees to loan him the money. The employee will pay back the loan via a regular deduction from his wages. The employer asks the employee to sign an agreement stating that, in the event that he resigns before the debt is cleared, any remaining money will be deducted from his final wages and/or holiday pay.

Example 4

An employer provides accommodation as part of the employment package. The employment agreement includes a clause about cleaning too – “the employee agrees to leave the property in the state it was when they moved in. This means reasonably clean, tidy and clear of rubbish and possessions. If the property is not left in a clean and tidy condition, the employee agrees that the cost of any required professional cleaning can be deducted from their wages and/or final holiday pay”.

The employee signed the employment agreement at the start of their employment. Nine months later, the employee resigns and moves out of the employer’s property. Unfortunately, the employee has left the house in a real mess – it looks like it hasn’t been vacuumed or cleaned in weeks, there’s beer cans and rubbish everywhere, the fridge is full of rotting food and so on.

The employer phones the employee and tells them that they have to 1) come back and clean the place up or 2) they will make a wage deduction for the cleaning required to bring it up to a reasonable standard as per the employment agreement. Based on past experience, the employer is able to provide an estimate over the phone of how much the cleaning will cost. The employee is not interested in coming back to clean up.

Given that there’s rotting food in the fridge and rubbish everywhere, the employer has no choice but to arrange for the cleaning to occur immediately. However, just in case there’s a dispute later on, the employer decides to take photos of the house beforehand. They write a letter to the employee.
explaining that the house was not left in an acceptable condition and include the photos as evidence. They provide a breakdown of the cleaning costs required to bring the house up to a reasonable standard. They state their intention to deduct this cost from the employee’s final pay in one week’s time and ask the employee to contact them if they have any questions or concerns about the process.

The employer doesn’t hear back from the employee and so goes ahead and deducts the cost from the final pay.

A word of caution:

If the employee leaves the property reasonably tidy – although perhaps not as tidy as you might have hoped – then it’s unlikely you can make a deduction from their wages. As in all tenancy situations an employee cannot be expected to pay for cleaning costs over and above the norm. If in doubt please seek advice from your lawyer or employer’s association.

The final pay should still be paid on or before the next regular pay day. Therefore it’s important to act quickly if you want to make any deductions from the final pay. Don’t delay in phoning the employee and seeking quotes.