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PAYROLL DEDUCTIONS

The rules of wage garnishments

by Lauren E.M. Russell

Employers frequently want to garnish employees' wages for a variety of reasons — theft, destruction of company property, and retaining company property at the time of termination, to name a few. But wage garnishment is a tricky issue and must be approached carefully.

What are the restrictions?

Wage garnishments by employers (as opposed to courts) are governed by the Delaware Wage Payment and Collection Act (DWPCA). The DWPCA states that "every employer shall pay all wages due to the employer's employees on regular paydays designated in advance by the employer." That means that when an employee performs work for your company, he is entitled to compensation. The fact that he stole goods or money from the company does not affect his entitlement to wages. As a result, an employer *may not* withhold money from an employee's wages to satisfy a debt the employee owes to the company.

What are your options?

Employers in this situation have two options: get the employee's consent or file a lawsuit and have a court garnish his wages. (Courts have more power to withhold wages than employers do.) Each approach has benefits and drawbacks.

The DWPCA directly addresses the withholding of wages and provides that "no employer may withhold or divert any portion of an employee's wages" unless one of three exceptions is met. The first two exceptions address deductions permitted or required by law, such as an employer's obligation to comply with a child support garnishment or an employer's right to withhold an employee's contribution to the cost of health insurance premiums.

The third exception is the one we are concerned with: Employers may withhold wages when they have "a signed authorization by the employee for deductions for a lawful purpose accruing to the benefit of the employee." In other words, an employee must give written consent to a withholding of wages. Many employers attempt to obtain consent with a blanket authorization in a handbook. Here is an example:

> Execution of this Handbook Acknowledgment permits the employer to withhold, from the employee's final paycheck, the value of any employer property retained by the employee after the last day of employment.

The validity of such an authorization is highly suspect. The withholding could occur years — or even decades — later, and the employee has no notice of the rights he is waiving when he signs the authorization. As a result, employers are well-advised to obtain a subject-specific authorization before withholding wages.

Alternatively, employers may file suit — usually in justice of the peace court — seeking a judgment against the employee and a garnishment of his wages. The problem with this approach, of course, is that you have to know where the employee is working (presumably not for you anymore since he stole or destroyed property), and it can take an extremely long time to recoup the loss. However, if an employee has been terminated and refuses to sign an acknowledgment permitting the withholding of wages, this is frequently an employer's only option. This option does have the benefit of showing that the employer takes theft seriously, but the costs frequently outweigh the benefits.

Bottom line

Employers are well-advised to know the limits on their right to withhold employees' wages. Violations of the DWPCA come with heavy penalties, including personal liability for business owners who knowingly permit the company to violate the law, liquidated damages, and costs and attorneys' fees. Although letting an employee get away with reckless or criminal behavior is unpalatable, the solution is not to withhold wages. The solution is to report the incident to police or file a civil suit to recover the debt the employee owes. If you have questions about your rights or the wage policies in your handbook, contact your employment counsel.

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