

Making Deductions from Wages

A commentary by Tony McKone, Director McKone Consultancy, 12 September 2016

The Wages Protection Act 1983 was amended with effect from 1 April 2016 as part of a bunch of legislative changes that went through Parliament at the beginning of the year.

As an employer, it is important that you understand the changes and are applying these correctly in your workplace. This commentary has been prepared to help you understand your basic obligations towards your employees when it comes to their wages and when you can and cannot make deductions.

The Wages Protection Act 1983 sets out the way wages must be paid, and prevents unlawful deductions from wages.

What this means is that employers must pay their employees their full wages without deduction unless that deduction is lawful **and agreed to** by the employee. Employers cannot simply rely on a provision in the employment agreement that gives or purports to give a blanket approval for deductions. The amendment to the Wages Protection Act 1983 clarifies the situation for both employer and employee on when a deduction can be made.

The deductions that **DO NOT** require the employee's approval are those that are provided by law. These include PAYE tax, student loan repayments, child support and any other court ordered deduction.

If the employee is a KiwiSaver contributor, then the employer may also deduct the employee's KiwiSaver contribution. New employees are automatically enrolled into KiwiSaver and unless they opt out, the employer is obliged to deduct at least 3% from the employee's wages and pay this to a default provider or a provider of the employee's choice.

All other deductions from an employee's wages **MUST** be with the written consent of the employee. You can and most likely do have a "Deductions" provision in your employment agreement. However, the 1 April 2016 amendments mean that any deduction an employer seeks to make, for whatever reason, from their employees' wages must be done **in consultation** with the employee(s) concerned.

The fact that you have a deductions clause in your employment agreement no longer gives you open right to make deductions. The agreement to this provision, despite it being in the employment agreement, can be withdrawn at any time by the employee by them giving written notice. If an employee provides you with such a notice, you **MUST** cease or vary (depending on what the employee has requested) the deductions within two weeks of receiving that notice.

To ensure that you do not fall foul of the law employers should consult with their employees prior to making a deduction from wages. The purpose of this consultation is not intended to provide a means for the employee to deny the deduction; rather it is to ensure that the deduction is reasonable and is not going to strip the employee of the bulk of their wages for the pay period.

If you haven't updated your employment agreements to reflect this change, it is recommended that you get in touch so we can provide you with a clause that complies with this requirement to consult and make reasonable deductions. **McKone Consultancy** can provide you a clause that is reasonable for both parties so that legitimate deductions can be made and the employee must not be unreasonable in agreeing to the proposed deduction from their wages.

Remember, failure to consult to consult and get the employee's consent to a deduction (which must be freely given – without threat or pressure) could result in employees taking action in the Employment Relations Authority. Employees can make claims in respect to wages for up to the previous six (6) years, so you want to make sure you get how you go about deductions right.

Contact **Tony** today to ensure your employment agreement will work for you.