



Overpayment of wages

Q. Can employers recover overpaid wages?

Under the common law principles, which a civil court would consider, this depends upon whether the overpayment is due to a mistake of law or a mistake of fact. However, it should be noted that an employment tribunal has no power to consider an application which relates to the recovery of an overpayment of wages under the protection of wages provisions.

Q. What is a 'mistake of law'?

It is classed as a misunderstanding or misinterpretation of a policy and in these circumstances wages cannot be recovered.

Q. What is a 'mistake of fact'?

It is seen for example as a clerical error, an accounting error, or a computer error. The employer is prevented from recovering the overpayment if the following conditions apply:

The employer has led the employee to believe that he or she is entitled to treat the money as their own.

The employee has changed their position to the money, ie spent it.

The overpayment was not caused primarily by the fault of the employee.

Unlawful deduction from Wages

Q. What deductions are lawful?

Deductions by, or payments to, the employer are lawful where they are allowed by:

Legislation, such as income tax or national insurance.

The worker's contract of employment.

Prior written consent of the worker, or;

Where the deduction/payment is made for the following purposes:

To recover an earlier over payment of wages or expenses by the employer to the worker.

As a result of disciplinary proceedings provided for in legislation, eg police disciplinary hearings.

Because the worker takes part in a strike or other industrial action.

To satisfy a court order or tribunal decision, provided the worker has given his or her prior written agreement.

Q. example: Could an employer deduct till shortages from wages?

Workers in retail employment (broadly those selling or supplying goods or services) have a special protection against deduction because of cash shortages or stock deficiencies.

For further information, see DTI Employment Relations or ACAS "Contracts of Employment".

Q. How can workers' complain about unlawful deductions/payments from their pay?

UNISON members can contact the branch or local representative who will take the circumstances into consideration. Once satisfied, we will challenge the appropriate pay office to rescind the action. If the complaint is rejected and it is deemed unlawful, the claim will be forwarded to a regional level for an employment tribunal. NB. All actions must be within three months of the alleged unlawful deduction or last deduction being made.