



Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

EMPLOYER PAYROLL DEDUCTIONS

House Bill 4152 (Substitute H-3)
First Analysis (3-1-95)

Sponsor: Rep. Walter J. DeLange
Committee: Human Resources and Labor

THE APPARENT PROBLEM:

Currently, the state wages and fringe benefits act (Public Act 390 of 1978) prohibits employer deductions from employees' wages without the employee's written consent. (The act was amended in 1993 to exempt nonprofit organizations making deductions for charitable contributions once the employee authorized such deductions in writing.) Some people believe that if an overpayment is made inadvertently or accidentally, employers should be able to recover the overpayment without first getting the employee's written authorization. Legislation has been introduced to allow this.

THE CONTENT OF THE BILL:

The bill would amend the wages and fringe benefits act (Public Act 390 of 1978) to allow employers to deduct, without the written consent of the employee, certain overpayments of wages or fringe benefits from an employee's regularly scheduled wage payment under certain conditions.

The wages or fringe benefits would have to have been paid directly to an employee, and the deduction would have to be made within six months after the overpayment had been made. In addition, all of the following conditions would have to be met:

- (1) The overpayment would have to have resulted from a mathematical miscalculation, typographical error, clerical error, or misprint in the processing of the employee's regularly scheduled wages or fringe benefits.
- (2) The miscalculation, error, or misprint would have to have been made by the employer, the employee, or one of their representatives.
- (3) The employer would have to provide the employee with a written explanation of the deduction at least one pay period before the deduction was made.

(4) The deduction couldn't be greater than 15 percent of the gross wages earned in the pay period in which the deduction was made.

(5) The deduction would have to be made after the employer had made all of the deductions expressly permitted or required by law or a collective bargaining agreement, and after any employee-authorized deductions.

MCL 408.477

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill has no fiscal implications for the state. (2-27-95)

ARGUMENTS:

For:

Under current law, employers can't deduct even accidental or inadvertent overpayments to employees without the employee's explicit written permission. This can either impose a considerable burden on employers or even lead some employers to ignore the law. An example was related to the House Committee on Human Resources and Labor in which the state government itself ignored the law when House of Representative staffers received an accidental overpayment. Apparently, House staffers were paid an increased amount for their full two-week pay period although they were supposed to get the increase only halfway through their pay period. Reportedly, the treasury department simply notified the House employees that a deduction would be made from their next paycheck, rather than getting each employee's written authorization to do so as required by law.

Such simple mistakes, unfortunately, are not uncommon, and employers shouldn't be burdened by having to go through the time and expense of getting signatures from each and every employee

House Bill 4152 (3-1-95)

involved in order to correct these honest mistakes. The spokesperson for one large employer association listed eleven circumstances that could lead to inadvertent or accidental overpayments, including terminations and extended sick leave, incorrectly submitted clock and time sheets, incorrectly entered wage and salary dates, salaried employees who are paid on a current basis prior to receipt of time statements, probationary employees whose status changes but the payroll department isn't notified and makes overpayment of benefits compensation, errors on the books when employees are transferred from one location to another, timing of rate changes (such as when employees change shifts), and cases in which payroll drafts are produced well in advance of the end of the payroll period (for example, for computerized payroll systems or when employees have their payroll checks mailed to their homes or deposited in bank accounts). The bill is needed to ease an unnecessary burden on employers.

Against:

The bill doesn't allow employees any kind of due process appeal before the proposed deduction would be made, even if the employee believed that the deduction was improper and filed an objection to that effect with the Department of Labor. Without such protection, if an employee believed that a deduction was improper, he or she would have to file a complaint with the department, arguing that it was improper, after the deduction had been made. Given the current backlog in the department, it could take months or even a year or two for an employee to get a response to such a complaint. If an employee believed that a proposed deduction was improper, he or she should be allowed to file an objection with the Department of Labor before the proposed deduction was made, and the deduction shouldn't be allowed until the department had issued a determination approving it.

Response:

Such due process protection does not currently exist in law, and introducing such a process would impose an ongoing paperwork burden for employers, employees, and the department. The bill has enough safeguards for employees as it now stands.

Reply:

Due process protections don't currently exist in law because they aren't needed, since employers currently are prohibited from making deductions from their employees' paychecks without the employees' express written permission. The bill would make a major change to current employee

paycheck deduction procedures, possibly setting a precedent for further such changes in the future. Strong due process protection should be included along with any such changes, even if it would mean some inconvenience, in the form of more paperwork, for the Department of Labor and employers.

POSITIONS:

The Department of Labor supports the bill. (2-28-95)

The National Federation of Independent Businesses supports the bill. (3-1-95)

The Michigan Association of Home Builders supports the bill. (3-1-95)