

**MOTHER DOESN'T ALWAYS KNOW BEST – EMPLOYER COULD BE
LIABLE FOR FINAL PAYCHECK VIOLATION**

QUESTION: I am a co-owner of a company. A couple of weeks ago, while I was out of town, one of my business partners loaned an employee \$50 from the petty cash till. I returned to town on payday, signed all the paychecks, and distributed them to employees. My partner then told me about the employee who borrowed \$50. I immediately told the employee that he would have to pay back the money right away or I would take it out of his next paycheck.

As luck would have it, the employee didn't come in to work the next day and he hasn't been back since I spoke to him.

I called the employee's house and spoke with his mother. Once I explained the situation to her she gave me permission to stop payment on the paycheck we'd given him and to reissue a new paycheck less the \$50 he owes the company.

I arranged for a stop payment on the employee's paycheck, but I haven't yet issued a new check to him with a deduction for the \$50 loan repayment.

Today I came in to work and was greeted by a nasty e-mail from the employee complaining because our bank refused to honor his paycheck (the one I stopped payment on).

My question is, since the employee is so angry with us and threatening, are we potentially liable for how we handled this matter?

ANSWER: As an employer you should focus on fulfilling your legal obligations related to the employee's paycheck. There are two significant legal requirements that, from the facts you provide, your company has already violated and/or will soon violate: you have failed to provide the employee his final paycheck within legal time limits, and subtracting the \$50 loan amount from the next paycheck you issue to the employee will violate statutory restrictions on paycheck deductions.

Employers must provide the final paycheck to a departing employee who fails to provide at least 48 hours notice to the employer by the fifth working day (after the employee departs) or on the next regular payday, whichever occurs first. Since the employee has been a no-show for several work days, you would likely be correct to view him as a former employee. However, you would be safer if you had a policy specifically stating that after a certain amount of time away without explanation, an employee is considered to have been "voluntarily terminated" or to have resigned without notice.

It has been longer than five working days since the employee left the company, yet you admit that you still have not provided to him a valid and negotiable paycheck. You should make the employee's final paycheck available to him immediately, without any deduction for the \$50 loan (as explained below). Otherwise, you could be subject to

potentially significant monetary penalties.

As for any deductions to the employee's final paycheck for the company's recovery of the \$50 loan, you must evaluate whether the planned deduction satisfies any one of the five categories of lawful payroll deductions. These five types of deductions are the only ones that ORS 652.610 allows:

- **Deductions required by law (for example, taxes or garnishments);**
- **Deductions that are for the employee's benefit (such as health insurance premiums) as long as the employee has signed a written authorization for the deduction;**
- **Other deductions authorized by the employee in writing as long as the employer is not the ultimate recipient of the money (charitable contributions, for example);**
- **Deductions authorized by a collective bargaining agreement; or**
- **A deduction from a final paycheck for a cash loan to an employee, if the employee has voluntarily signed a loan agreement and as long as the loan was for the employee's sole benefit. Such a deduction may not exceed 25% of the employee's disposable earnings or the amount of disposable earnings in excess of \$170 per week, whichever is less.**

Thus, in order for there to be a legal, valid deduction from the employee's final paycheck to repay the \$50 loan, there must be a voluntarily signed loan agreement in which the employee specifically authorizes such a deduction. In your situation that was not the case. The "permission" granted to you by the employee's mother does not suffice for the required written, voluntary authorization which supports a final paycheck deduction.

You should not have stopped payment on the employee's paycheck in the first place. So, perhaps the best approach -- that is, the one that minimizes the likelihood of liability -- would be to immediately provide him with his final paycheck without deducting the \$50 he owes the company. In addition, you might also ask the employee whether he was charged any fees from the bank for the stop payment, and offer to reimburse him.

Of course, you can always ask the employee repay you the \$50 at the time you reissue the paycheck. If he refuses, you always have the option of pursuing repayment in Small Claims Court.

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