

Lucky or Not, Paycheck Deduction Rules Apply

QUESTION: Several days ago, one of our employees asked to borrow \$1,000. He said he would pay back the money out of his next paycheck. I agreed to the loan and followed our usual company procedure, which was to require Ron to sign a written agreement authorizing the company to deduct the amount of the loan from his next paycheck.

Ron mentioned to me that he needed the \$1,000 to purchase lottery tickets. Around the same time that I authorized Ron to get a cash loan, co-workers began to report to me that Ron was exhibiting strange behavior. One of the IT employees shared with me some of Ron's recent, and very unusual, use of his computer.

Apparently Ron's new obsession compels him to enter a certain string of "lucky" numbers into his computer at regular intervals throughout the workday. This obviously prevents him from being productive on the job. The day before yesterday, I called Ron in to discuss the issue and, after a lengthy discussion about the matter, he informed me that since I forbade him from entering "his numbers," he would have to resign immediately. I accepted his written resignation, stating it was effective immediately, less than a half an hour after our meeting.

Now, the really bizarre part: Ron won the lottery using the same numbers as those he was entering on his computer and won several million dollars.

Since Ron quit without giving notice, we know we must pay him his final paycheck within five days (excluding Saturdays, Sundays and holidays) because our next scheduled bi-weekly payday is still ten days away. Although we're confident we may follow our usual practice and deduct the \$1,000 that Ron borrowed from his paycheck, the problem is that his earnings, after taxes, only amount to about \$900. What can we do to recoup the remaining \$100 he will still owe the company?

ANSWER: Based on the background facts you provided, it is likely that the company may make a deduction to Ron's final paycheck toward repayment of the \$1,000. However, there are statutory limits that apply to how much a company may deduct from an employee's final paycheck, and that means that the company may not deduct the entire \$900.

A deduction from a final paycheck for a cash loan to an employee is specifically allowed by the deductions statute, ORS 652.610(3)(f), as long as the employee voluntarily signed a loan agreement, the employee received the funds in cash or check, and the loan was for the employee's sole benefit. From the facts you provide it sounds like your situation with Ron meets these requirements.

However, a deduction from the final paycheck for repayment of a loan may not exceed the amount which may be garnished under ORS 18.385. That garnishment limit is 25% of the employee's disposable earnings, or the amount of disposable earnings in excess of

\$170 per week (\$340 per two-week period), whichever is less. Disposable earnings generally mean net earnings after tax deductions and family support withholdings.

So, in your situation with Ron you may not “deduct” his total net wages of \$900, because doing so would exceed the statutory limit on deductions for loans in the final paycheck.

How much can you deduct from Ron’s final paycheck toward the \$1000 loan? Assuming that the amount of the paycheck, \$900, is also Ron’s disposable earnings for the two-week pay period, you will need to do the math to determine how much you are limited to when making your deduction.

Twenty-five percent of \$900 is \$225. The amount of disposable earnings in excess of \$340 per two-week period (\$900 less \$340) equals \$560. Your deduction is limited to the lesser of the amounts, so the company may deduct only \$225 from Ron’s final wages of \$900.

Ron will still owe the company \$775 to satisfy the loan in full. He may pay the company the remaining balance upon request without a fight, especially considering his extraordinary increase in net worth. In the event Ron refuses to reimburse the company for the rest of the loan, the company may utilize customary legal means (such as small claims court) to recover the balance due.

For more information on this and other important issues affecting Oregon employers, including seminars conducted by Boil's Technical Assistance Unit, visit our website at www.oregon.gov/boli/ta. You can also call us at 971-673-0824.