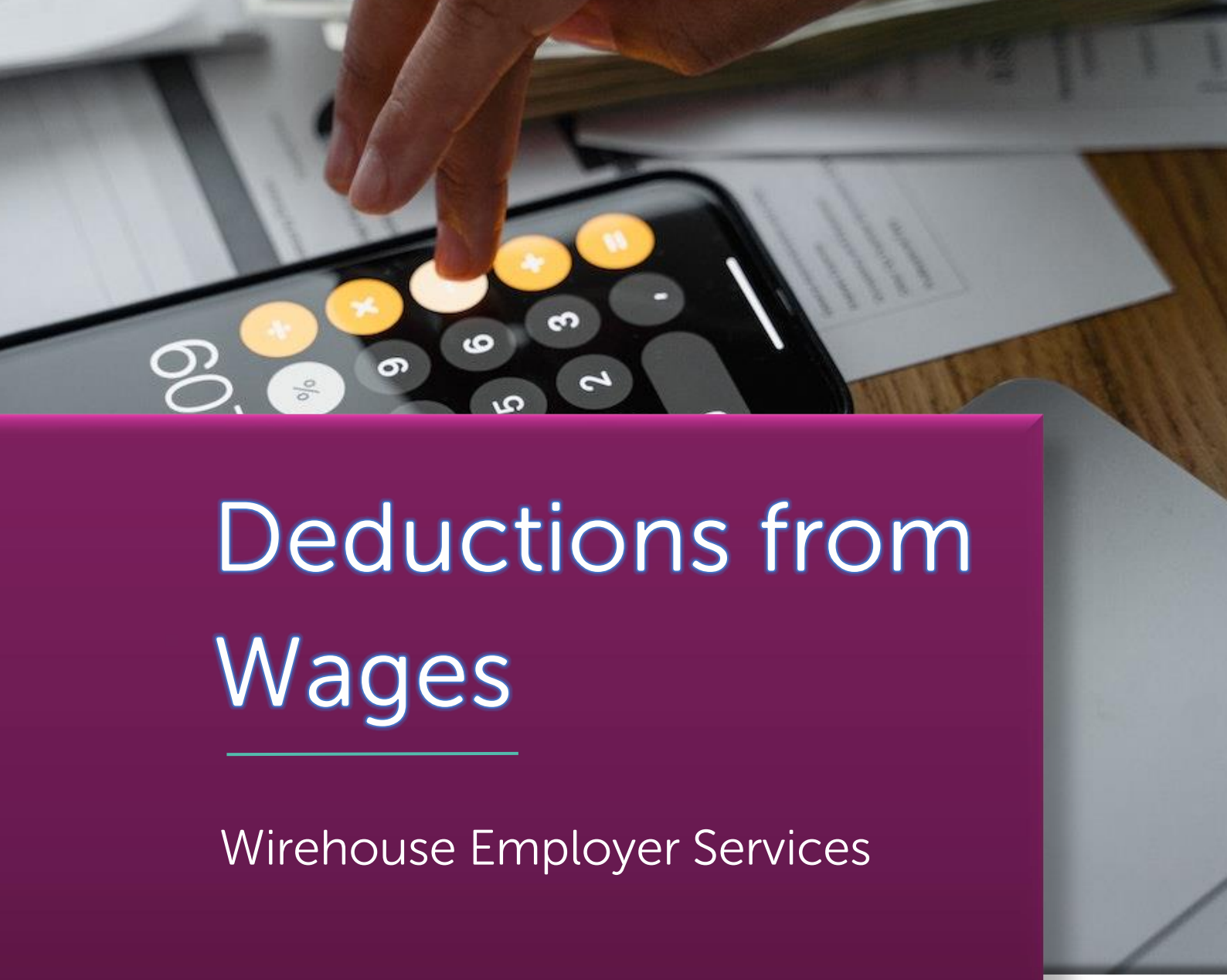

Deductions from Wages

Wirehouse Employer Services

HR Whitepaper

Wirehouse Employer Services

Whitepaper – Deductions from Wages

The protection against payments or unlawful deductions from wages applies to all workers. The law makes no distinction between a non-payment and a deduction. A deduction from wages occurs when the total amount of an employee's (or worker's) wages is less than the total amount properly due to him or her on that occasion. This definition can be flexible enough to extend to late payment of wages.

An employer may not make any deduction or receive a payment from a worker's wages unless:

- The deduction or payment is required or permitted to be taken by statute or by a relevant provision in the worker's contract; or
- The worker has given prior written consent that the deduction or payment can be made from his or her wages.

Types of Deductions

Deductions required or authorised by statute

A number of statutory provisions require or authorise deductions from a worker's pay e.g. income tax, attachment of earnings orders in England, Wales and Northern Ireland and arrestment of earnings orders in Scotland.

Deductions required or authorised by a provision in the worker's contract

The contractual provision allowing for authorisation needs to be a relevant contractual provision. A relevant contractual provision may be a written or oral term of the contract of employment that has been notified to the worker prior to the deduction being made. The term may even be an implied term, as long as the worker has had notice of it. However, clearly there can be serious difficulties for an employer in proving the existence of an oral or implied term authorising deductions, so written is always best.

Deductions allowed due to prior written consent

It's not sufficient that a written agreement from the worker agrees that they owe their employer money; there must be an agreement that the money can be deducted from their wages. It's vital that the employee's consent must be obtained prior to the event that gives rise to the deduction in order that the employee has protection against being pressurised into agreeing to a deduction after the incident.

© Wirehouse Employer Services

Justification

Even in circumstances where a deduction is authorised by a relevant provision in a contract or a written agreement the employer must still be able to justify making the deduction. If, for instance, an employee's contract of employment provided for the cost of training to be recovered from their final salary if the contract was terminated during the probationary period but, in actual fact, the only training given had been on-the-job training at no material cost to the employer, then the deduction will probably be deemed to be a penalty clause and unlawful.

Deduction Must be Made from Wages

The wages from which an employer may not make unauthorised deductions are any sums payable from the employer to the worker in connection with his or her employment, whether due under the contract or not. They include:

- Bonuses, commissions, holiday pay or other emolument referable to employment, whether contractual or not;
- Statutory sick, maternity, paternity and adoption pay;
- Guarantee payments;
- Payments for time off to look for work or arrange training while under notice of redundancy, time off for antenatal care, time off to carry out duties as an occupational pension scheme trustee, employee representative or trade union official, and time off as a young person for study or training;
- Pay during suspension on medical or maternity grounds;
- Payments ordered as compensation for failure to reinstate or re-engage after a finding of unfair dismissal;
- Payments due under an order for the continuation of the contract of employment; remuneration under a protective award against an employer for failure to consult employee representatives in connection with a collective redundancy.

'Wages' do not include:

- Advances under loan agreements;
- Advances of wages;
- Expenses incurred in carrying out employment;

© Wirehouse Employer Services

- Pensions;
- Redundancy payments;
- Compensation for loss of office;
- Payments that are not referable to a worker's capacity as a worker;
- Benefits in kind other than those capable of being exchanged for money, goods or services.

Pay in lieu of notice relates to a period after the employment has ended and not for work performed under the contract, so is not wages, even if the contract contains a right to make such a payment. However, payments in respect of garden leave could be regarded as wages as these are payments due under a prevailing contract of employment.

The right not to suffer an unauthorised deduction from wages does not apply to a deduction in respect of:

- Overpayments of wages or expenses;
- A requirement placed upon the employer by statute to make payments of specified sums to a public authority e.g. deductions made in accordance with any type of court order requiring the employer to make a deduction from wages;
- Payments to a third party that have been agreed by the worker in advance in writing e.g. union subscriptions;
- Deductions made because the worker has taken part in a strike or other industrial action; deductions made in terms of a court order requiring payment by the worker to the employer.

Retail Workers

Special provisions apply to deductions from the wages of workers in retail employment.

Employers can make deductions from retail worker's wages in respect of cash shortages or stock deficiencies but the amount of any deduction or deductions from a retail worker's wages must not exceed 10% of the gross amount of the wages payable to the worker (on a particular pay day). The 10% limit on deductions does not apply to deductions made from a final instalment of wages. This limit applies even if the worker's dishonesty or other conduct resulted in the shortage or deficiency.

© Wirehouse Employer Services

Deducting wages from retail workers can be a complicated business and as a result specific advice should be sought if you are considering this, or indeed deducting wages from any worker for any reason.

This information is provided for general reference purposes only. If you have a specific enquiry relating to this topic please contact Wirehouse on:

033 33 215 005 | info@wirehouse-es.com

Deductions from Wages updated March 2024

© Wirehouse Employer Services