



FACT SHEET

Deductions from Wages

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There is a common, yet mistaken, perception that employers are entitled to make deductions from employee wages in relation to till or gaming discrepancies, non-paying customers and breakages. The reality is that where an employer makes such a deduction they may be in breach of both Award provisions and the industrial relations legislation. Employers also face the risk of financial penalties as a result.

Members are encouraged to become familiar with deductions that can be made, and how they may be made. This Fact Sheet details deduction provisions from the *Hospitality Industry (General) Award 2010* (the 'HIGA'), as well as the *Fair Work Act 2009*.

HOSPITALITY INDUSTRY (GENERAL) AWARD 2010

Members with staff employed under the HIGA should note that clause 38 of the Award prohibits certain deductions and states:

“38 No Deductions for Breakages or Cashiering Underings

An employer must not deduct any sum from the wages or income of an employee in respect of breakages or cashiering underings except in the case of wilful misconduct”.

Wilful misconduct occurs where an employee has deliberately engaged in conduct which is considered serious, for example, proven (not just suspected) theft. It is important that employers conduct a thorough and fair investigation into any such incident prior to determining whether the employee has engaged in wilful misconduct and therefore making the deduction on that basis. Where the investigation reveals that an employee has engaged in wilful misconduct the employer may be able to deduct monies for breakage and/or cashiering underings from the employee's pay.

If an employer fails to conduct a thorough and fair investigation into the incident and proceeds to automatically deduct an amount from the employees pay, the employer may be found to have breached the Award.

Refer: QHA's Investigating a Workplace Incident Fact Sheet

Please note that some forms of wilful misconduct may fall within the definition of serious misconduct and consequently may result in the instant dismissal of the employee. To determine if the conduct amounts to serious misconduct reference should be made to the definition of serious misconduct in regulation 1.07 of the *Fair Work Regulations 2009*.

FAIR WORK ACT 2009

Section 324 of the *Fair Work Act 2009* (the 'Act') provides that:

“1. An employer may deduct an amount from an amount payable to an employee in accordance with section 323(1) if:

- (a) the deduction is authorised in writing by the employee and is principally for the employee's benefit; or*
- (b) the deduction is authorised by the employee in accordance with an enterprise agreement; or*

- (c) the deduction is authorised by or under a modern award or an FWA order; or
(d) the deduction is authorised by or under a law of the Commonwealth, a State or a Territory, or an order of a court”.

Note: an authorisation made by an employee must specify the amount of the deduction and may be withdrawn in writing by the employee at any time.

UNDUE INFLUENCE

In addition, section 344(e) of the Act prohibits an employer from exerting undue influence or undue pressure on an employee in relation to a decision by the employee to agree, or not agree, to a deduction from amounts payable to the employee in relation to the performance of work. Undue influence will be found where the employer takes advantage of their position of power over an employee.

Generally undue influence or pressure will be found where an employer is found to have threatened, pressured or influenced an employee where they agree or do not agree to a deduction.

In such a circumstance, an employee can lodge a General Protections Dispute Application and seek for the Fair Work Commission to deal with the dispute.

Refer: QHA's General Protections Fact Sheet

PERMITTED AND NON-PERMITTED DEDUCTIONS

Some industrial instruments (e.g. Award or Agreement) allow for various deductions to be made from an employee's pay where the employer provides certain benefits to an employee during their employment. The most common deduction allowed is where the employer provides accommodation and/or meals to their employees.

Other award permitted deductions include:

HOSPITALITY INDUSTRY (GENERAL) AWARD 2010

Clause 21.1(b)(vii)

An employer may require an employee on commencing employment to sign a receipt for item/s of uniform or property. An employer will be entitled to deduct the value stated on the receipt from the employee's wages where the employee fails to return any or all of the items in accordance with the receipt.

Clause 39

When an employer provides an employee with accommodation, meals or both, the employer may deduct an amount of money from the employee's wages in accordance with amounts set out in clause 39.2. Please note that different deductible amounts are provided for adult and junior employees.

FAIR WORK OMBUDSMAN

In 2010, the QHA obtained advice from the Fair Work Ombudsman regarding deductions that may be, in their view, permitted, as well as deductions that are not permitted:

PERMITTED DEDUCTIONS

Authorised deductions which are made in accordance with section 324 of the Act may include, but are not limited to:

- Voluntary social club fees;
- Voluntary union fees;
- Voluntary charity contributions, where the voluntary deduction is to a charity nominated by the employee;

- Voluntary purchasing of an employer's goods and/or services;
 - Despite the deduction for the purchase of the employer's goods and/or services being directly or indirectly beneficial to the employee, consideration should be given to whether the deduction is reasonable in the circumstance. A deduction made for goods or services by an employer to an employee will be reasonable if those goods or services are provided in the ordinary course of the employer's business and on terms which are no less beneficial than that offered to the general public.
 - E.g. discounted beverages, when an employee has purchased an item such as liquor or food;
- Car parking facilities at a reduced rate; and
- Payment for training course (employee voluntarily chooses to undertake it)
 - If the training is undertaken by the employee voluntarily and is principally for the benefit of the employee, the deduction would be reasonable in the circumstances.

Please note that in order for these deductions to be compliant with section 324 of the Act these deductions must be made by the employee voluntarily for their own benefit with a signed authorisation in place.

NON-PERMITTED DEDUCTIONS

On the basis of 2010 advice received by the Fair Work Ombudsman, deductions which are not permitted under section 324 of the Act include, but are not limited to:

- Deposit for security access card / car parking card / locker key (deposit originally deducted from wage and deposit refunded when employee returns item);
- Replacement name badges which have been lost by the employee (a cost deducted to the employee for their negligence);
- Replacement lost locker keys / access cards which have been lost by the employee (a cost deducted to the employee for their negligence);
- Bond or payment for uniforms; and
- Payment for training or development (where the employee is compelled to undertake it)
 - Where an employer requires an employee to undertake a compulsory training course the employer may not deduct the amount from the employee wages.

Please note that many situations depend on the individual facts of the case and consideration should first be given to provisions within relevant industrial instruments before making a determination as to whether a deduction is permitted or not.

INTERACTION WITH MODERN AWARDS, ENTERPRISE AGREEMENTS AND EMPLOYMENT CONTRACTS

Section 326 of the Act renders any term of a modern award, enterprise agreement or contract of employment to have no effect where such term permits an employer to make a deduction, or requires the employee to make a payment to the employer or another person, if:

- the deduction or payment is directly or indirectly for the benefit of the employer, or a party related to the employer, and is unreasonable in the circumstances (see below); or
- the employee is under 18, and the deduction or payment is not agreed to in writing by the employee's parent or guardian.

For example, a term contained in an employment contract (for a non-award employee) that allows an employer to make a deduction from an employee's termination pay where the employee resigns and does not give and/or work out the required notice period, has no effect. Such a deduction would be seen as being directly for the benefit of the employer. The appropriate way for an employer to recover damages from a non-award employee in this circumstance is by way of a small claims application before a local magistrate.

Please note, where an employee is covered by the HIGA, a deduction is permitted to be made from the employee's termination pay where the employee resigns and does not give and/or work out the required period of notice. Refer to Clause 16.2(a) of HIGA.

REMEMBER...

An employer who deducts an **unauthorised** sum of money from an employee's wages may be found to be in breach of an award or legislative provision and therefore may be subject to an audit of wage records and potential prosecution for underpayment.

QHA suggests deductions be addressed as part of a policy document that outlines guidelines for employee deductions.

Further Assistance

Financial QHA members are encouraged to contact the QHA's Employment Relations Department (refer the contact details at the bottom of this page) for a confidential discussion about the information in this Fact Sheet, or to discuss any queries relating to specific workplace matters.

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