

# Vacation Overpayments in various States of America

Author : Vicki M. Lambert



If vacation is earned and taken then there is no overpayment situation. If vacation is permitted to be taken prior to accruing then an overpayment situation can occur and if an employee is paid vacation before it is earned it is an advance on wages. Federal government will follow the same rules as any other overpayment of wages, so it is advised to keep your policy written and up to date. California is the role model on this one. In this article we will study in dept about the vacation overpayments in California, overpayment requirements in Indiana, overpayment requirements in Michigan, overpayment requirements in New Hampshire, overpayment requirements in Washington, overpayment requirements in Tennessee. The best policy to be in compliance is to verify the vacation rules in addition to overpayment rules for each state.

## **Vacation Overpayments in California**

Your employer cannot deduct "advanced" vacation (i.e., vacation that is taken before it is earned or accrued) from your final pay check. Because of work schedules and the wishes of employees, most of the employers allow employees to take their vacation before it is actually earned.

According to California law, vacation benefits are a form of wages, and the practice of allowing employees to take their vacation before it is actually earned or accrued is in effect an advance on wages. Thus, if a worker takes an advance on vacation and then quits or is discharged before all of that advanced vacation is earned or accrued, it will effect as an overpayment of wages which is a debt owed to the employer. The California courts have noted on a number of occasions that an advance on wages, as with any other debt owed (either to the employer or a third party), is subject to the terms of the attachment law. However, given that wages are exempt from prejudgment attachment; neither the job provider nor any third party can recover the debt via attachment of the employee's final pay, as to do so would breach the public policy considerations underlying the wage exemption rulings. Thus, in California since the wage garnishment law offers the exclusive judicial procedure by which a judgment creditor can execute against the wages of a judgment debtor, an organization may not resort to self-help to pull through debts owed to the employer by an employee from the wages then due to the employee.

## **Overpayment Requirements in Indiana**

Sec. 22-2-6-4. Wage deductions; overpayments; disputed amounts; limitations.—Sec. 4. (a) If an organization has overpaid a worker, the employer may deduct from the wages of the employee the overpaid amount. Deduction of money by an employer for reimbursing overpayment of wages previously made to an employee is not a fine under IC 22-2-8-1 or an assignment of wages under section 2 of this chapter. An employer must give an employee 2 week notice before the employer may deduct, under this section, any overpayment of wages from the employee's wages. (b) An employer may not deduct from an employee's wages an amount in dispute under IC 22-2-9-3. (c) The wage deduction made by an employer under subsection (a) is limited to the following: (1) Except as provided in subdivision (2), the maximum part of the aggregate disposable earnings of an employee for any work week that is subjected to an employer deduction for overpayment may not exceed the lesser of: (A) twenty-five percent (25%) of the employee's disposable earnings for that week; or (B) the amount by which the employee's disposable earnings for that week exceed thirty (30) times the federal minimum hourly wage approved by 29 U.S.C. 206(a)(1) in effect at the time the earnings are payable. (2) If a solo gross wage overpayment is equivalent to ten (10) times the employee's gross wages earned due to an inadvertent misplacement of a decimal point, the entire overpayment may be deducted immediately.

#### **Overpayment Requirements in Michigan**

Section 7(4) of Wage Payment Act: Employers may recover overpayments within 6 months after making the overpayments without written consent if: (1) the overpayment resulted from a clerical mistake or mathematical miscalculation made by the employer or the employee, (2) the employer gives the employee a written explanation of the deduction at least one pay period before the wages affected by the deduction are paid, (3) the deduction is not more than 15% of the gross wages earned in the pay period, (4) wage deduction is carried out after all deductions required by law or collective bargaining agreement and any employee-authorized deduction are made, and (5) the deduction does not reduce regular gross wages below the applicable minimum wage.

#### **Overpayment Requirements in New Hampshire**

New Hampshire now allows withholding from wages for any purpose on which the employer and employee mutually agree that does not grant financial advantage to the employer, if the employee has given his or her written authorization and deductions are duly recorded. The withholding may not be used to offset payments intended for purchasing items required in the performance of the employee's job in the ordinary course of the operation of the business. (H.B. 647, Laws 2011, effective August 6, 2011.) Sec. R. 380:30-1-11., (a) If an organization determines that an employee has been overpaid, the organization may recover the overpaid sum from the employee in one of two ways: (1) Lump sum cash repayment; or (2) Agreement for deduction of payroll in a lump sum or in instalments over a term not to exceed the length of the term in which the erroneous payments were made, provided that such agreement is made pursuant to the provisions of this subchapter regarding deductions. (b) The election as to which method is used, and the terms

thereof, shall be made by the employee in writing, and must be subject to all other provisions of law and which may apply. (c) Upon closing the employment agreement, any remaining balance of overpayment shall be considered an offset to any final wages otherwise due the employee.

#### **Overpayment Requirements in Washington**

Sec. WAC 296-126-030. Adjustments for overpayments. (1) An overpayment occurs when an employer pays an employee for: (a) More than the agreed-upon wage rate; or (b) More than the hours actually worked. (2) Recovery of the overpayment may reduce the employee's gross wages below the state minimum wage. (3) An organization cannot recover an overpayment when the disputed amount concerns the quality of work. (4) An employer can recover an overpayment from an employee's pay check provided the overpayment was infrequent and unintended. The task of proving the inadvertent error rests with the employer who committed the error. The employer gets ninety days from the initial overpayment to detect and implement a plan with the employee to collect the overpayment. If the overpayment is not detected within the permitted ninety-day period, an employee's current or future wages cannot be adjusted to recoup the overpayment. Recouping of overpayments is limited to the ninety-day detection period. (5) The employer must provide advance written notice to the employee before making any adjustment. The notice should include the terms under which the overpayment will be recouped. Example: One adjustment or a series of adjustments. (6) The employer must provide documentation of the overpayment to the affected employee or employees. (7) The employer must identify and record all wage adjustments openly and clearly in employee payroll records. (8) Regardless of the provisions of this section, if appropriate, employers retain the right of private legal action to recover an overpayment from an employee.

#### **Overpayment Requirements in Tennessee**

Effective from July 1, 2011: An employer may offset an employee's wages due and owing for an amount the employee owes the employer if: (1) An employer enters into an agreement with an employee to advance the employee wages prior to the date the wages are due and owing, agrees to otherwise lend the employee money, or permits the employee to charge personal items on the business or corporate credit card issued to the employee. (2) The employee agrees (signs) to a written agreement prior to any actions occurring pursuant to item (1) allowing the employer to offset the employee's wages for any amount the employee owes the employer, and the employer has in its possession at the time of the offset a copy of such signed agreement; (3) the employer notifies the employee in writing 14 days prior to the payment of wages due and owing that: (a) there is an amount the employee owes the employer; (b) The employee's wages may be offset if the amount owed is not paid prior to the payment of wages due and owing; and (c) the employee may submit an affidavit as described just below; and (4) the employee has not paid the amount owed the employer that was described in the notice sent by the employer.

#### **Related Webinars**

[Handling Payroll Overpayments Correctly](#)

### **Upcoming Webinars**

[Customer Relationship Management: Strategic Methods to improve Customer Service](#)

[Prior Disclosure of Import Violations to US Customs and Border Protection: Steps to Reduce Risks and Avoid Penalties](#)

[Immigration Issues - Implications for HR and Insurance Professionals](#)

[5 Elements of Effective Communication](#)

[How to Document Employee Discussions and Why it is Important](#)

### **Top Articles**

[HealthCare Marketing and OIG's Advisory](#)

[6 Significant Facts about Cobra Continuation Coverage](#)

[6 Best Practices to Prevent Electrical Shocks and Hazards in an Organization](#)

[Unfair Labor Practices By Employer Sec. 8. \(A\)](#)

[Go Green with Green Chemistry](#)