

Unlawful Deductions

What is an Unlawful Deduction?

There are only a very limited number of things that your boss can take out of your wages before they give them to you. They must pay things like superannuation on your behalf. You can also ask them, and provide your consent in writing, for them to take out other things, like your Union fees, or the social club membership fee.

Unlawful deductions are anything that the law does not specifically authorise, or you have not authorised to have removed from your wages.

How common are these sorts of deductions?

It is common for people who handle cash to be asked to pay, or have deducted from their pay, the amount that their till is down at the end of a shift. Some workers will top up their tills at the end of a shift if it does not balance.

Another example is having to pay for breakages or mistakes you are responsible for. Employers will often threaten to deduct the cost of making something if it is not done right and the item cannot be sold or used. The worker might also have the cost of the item deducted from their pay.

We have had many young workers come into the YWLS who have had money taken out of their pay because their tills are short in supermarkets and the boss has put up a sign in the staff room saying that money will be taken out.

We saw a young worker whose employer demanded he have \$2,000 removed from his wages because, through no fault of his own, a car which appeared abandoned was removed from his work premises and squashed for scrap metal. Some of our clients have even been sacked because they have not agreed to have these things removed from their wages.

What can I do if I have an unlawful deduction made from my pay?

- You should make a written record of the deduction and the reason for it. This should be signed and dated so that you have an accurate record of it. If deductions happen regularly, then you might want to make a diary.
- You should also approach your employer and ask them to not make the deduction. You should make it very clear that you do not authorise the payments. Depending on how you feel, you might like to do this in person, on the telephone or by letter.

Can I get sacked for not letting my employer make the deductions?

The deductions are unlawful. You should not be sacked for your employer doing what they are not allowed to do, but it does happen. If it does, you might have a good case to run a claim for unfair dismissal. If you do get sacked for this reason, then you should consult your unions, or the Young Workers Legal Service.

What should I do if my boss demands that I have some money taken out of my pay?

We say that you should never agree to have money taken out of your pay for shortfalls in tills, or mistakes or any of the things that have been mentioned. But if you do feel that you will lose your job if you don't agree and you do decide to allow money to be removed from your wages, against this advice, you should make sure your employer has got your agreement in writing – don't agree to or sign a general statement or memo on staff room walls about any amount that may be removed at any time for shortfalls etc. If you must, agree to each amount on each occasion where necessary.

You can remove AT ANY TIME your consent to have the deduction removed. But you should put this in writing to your employer.

What if talking to my employer about the deduction does not work? Are their legal options?

If your employer makes the deduction when you have not authorised it, you can make a claim for underpayment of wages, for the amount deducted. Firstly, approach your employer as we have already mentioned. Then send a letter of demand asking your employer to pay for the unlawful deduction, and if they don't pay you can fill in a form and lodge it in the Industrial Relations Court for underpayment. You may want to get help with this from the Young Workers Legal Service or your Union.

How long do I have to make the claim?

You have up to six years after the day the deduction was made to make the claim. If you plan to only work in the job for a short time, such as in the school or uni holidays, then it may be worth keeping a diary, and approaching your boss at the end of your job.

How much does it cost to make a claim?

Making the claim is free. Having someone represent you may cost money. Your Union or the Young Workers Legal Service may be able to provide you with advice in running a claim.

What are other situations and costs where unlawful deductions get made?

Other things which do get deducted that are still unlawful are things like parking fines, or the cost of repairs to company vehicles. Console operators might get the cost of petrol deducted when people drive off at petrol stations.

All of these things are unlawful deductions.

Often when workers are accused of stealing from their employers they are asked to pay the money back, or the employer will go to the police. In these circumstances you do not have to pay the money back.

Another common situation is sales people who have targets to meet. Some of these people have their shortfalls deducted from their salary. This is an unlawful deduction, even when you agree with it.

Where can young workers go for advice and more information?

- The Union that covers their industry – and if you are unsure of what that is you can SA Unions on 8279 2222 web: www.saunions.org.au or Unions Australia 1300 486 486
- The Young Workers Legal Service on 8279 2233 web: www.ywls.org.au or email ywls@saunions.org.au