

Accidentally overpaid an employee? Here's what to do...

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12 Apr 2021

It's month-end. Your employee gets a notification on their phone that their salary has cleared into their bank account. Jackpot! They've received more than what is due to them. Mistakes and human miscalculations can occur easily, leaving employers in a difficult position. How should you address a genuine mistake that has been made resulting in employees receiving payments that they have not earned?



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A recent Labour Court matter might help to provide some guidance. In *Sekhute and Others v Ekurhuleni Housing Company*, the applicants had received an erroneous overpayment. The employer, after realising that staff had been overpaid, corrected the error by making certain deductions from the employee's salaries. Before that, the employer had consulted with the employees and offered a repayment plan, which they refused. The employees challenged the employer's actions on the basis of its HR policy which prohibits any deductions without an employee's consent other than statutory deductions, court order or arbitration award.

The Labour Court reasoned that the employer had made a genuine bona fide error regarding the overpayments. In determining whether the employer was within its rights to recover overpayment in the absence of a repayment agreement, it referred to section 34 of the Basic Conditions of Employment Act 75 of 1997.

The Act recognises two types of deductions from an employee's remuneration:

1. Deductions for repayment of debt - which require the employee's consent and;
2. Deductions not requiring consent (for example, court order, authorised by law or statutory deductions)

More specifically, section 34(5) of the Act explains that an employer may not require or permit an employee to repay remuneration except for overpayments as a result of a calculation error in remuneration.

The court confirmed that it is lawful to recover any overpayments from employees and that prior consent from the employee is therefore not required. It also confirmed that the employer was permitted to make these deductions regardless of its human resources policy.

In a more recent matter, *Jonker v Wireless Payment Systems CC*, the employee received a monthly vehicle allowance for using her own vehicle to perform her duties. The employee was subsequently provided a company vehicle for this purpose but continued to enjoy a benefit that she was not entitled to. The employer erroneously continued paying her a vehicle allowance for almost a year thereafter. When her services were terminated as a result of operational requirements, she was instructed to pay back the amount in two instalments. The employee approached the Labour court to recover the initial deduction and applied for an interdict prohibiting any further deductions as a result of the overpayment. Although the court held that, in general, deductions without consent are prohibited where it is not in terms of the law, court order or collective agreement, overpayments are considered an exception to this rule. Her application was therefore unsuccessful.

While these judgments and guidelines may be good news for employers, they are urged to apply due caution, as Section 34(2) of the Basic Conditions of Employment Act also states that deductions may not exceed 25% of an employee's salary.

It would be prudent for employers to consult with their employees before making any deduction from their salary. If possible, concluding an acknowledgement of debt may assist employers with the recovery of overpaid funds and avoid any unhappiness.

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