

## **Deductions from Wages for Faulty Workmanship, Loss, Theft, or Damage Wisconsin Statutes Section 103.455**

### **2011–12 Wisconsin Statutes updated though 2013 Wis. Act 324 and all Supreme Court Orders entered before April 25, 2014.**

**103.455 Deductions for faulty workmanship, loss, theft or damage.** No employer may make any deduction from the wages due or earned by any employee, who is not an independent contractor, for defective or faulty workmanship, lost or stolen property or damage to property, unless the employee authorizes the employer in writing to make that deduction or unless the employer and a representative designated by the employee determine that the defective or faulty workmanship, loss, theft or damage is due to the employee's negligence, carelessness, or willful and intentional conduct, or unless the employee is found guilty or held liable in a court of competent jurisdiction by reason of that negligence, carelessness, or willful and intentional conduct. If any deduction is made or credit taken by any employer that is not in accordance with this section, the employer shall be liable for twice the amount of the deduction or credit taken in a civil action brought by the employee. Any agreement entered into between an employer and employee that is contrary to this section shall be void. In case of a disagreement between the 2 parties, the department shall be the 3rd determining party, subject to any appeal to the court. Section 111.322 (2m) applies to discharge and other discriminatory acts arising in connection with any proceeding to recover a deduction under this section.

**History:** 1989 a. 228; 1997 a. 253.

The consent of the employee may only serve as a basis for a deduction if it is given in writing after the loss and before the deduction. *Donovan v. Schlesner*, 72 Wis. 2d 74, 240 N.W.2d 135 (1976).

Termination of an employee-at-will may violate the public policy underlying this section. *Wandry v. Bull's Eye Credit*, 129 Wis. 2d 37, 384 N.W.2d 325 (1986).

Commissions earned over and above a salary are wages under this section. The 6-year statute of limitations, under s. 893.43, applicable to claims for commissions applies to the recovery of deductions from commissions under this section. A claimant need not first bring a claim before DILHR if the employer has never given the employee an opportunity to contest the deductions. *Erdman v. Jovoco, Inc.* 181 Wis. 2d 736, 512 N.W.2d 487 (1994).

The exception to the at-will employment doctrine, founded on well-defined public policy found in this section, does not reach every potential deduction by an employer from an employee's wages. *Batteries Plus, LLC v. Mohr*, 2001 WI 80, 244 Wis. 2d 559, 628 N.W.2d 364, 99-1319.

This section necessarily creates a separate and distinct claim from simple breach of contract, and it must be pled as such. *Wolnak v. Cardiovascular & Thoracic Surgeons of Central Wisconsin, S.C.* 2005 WI App 217, 287 Wis. 2d 560, 706 N.W.2d 667, 04-1051.

Once an employee earns wages, this section protects that employee from having the employer deduct those earned wages on charges that the employee was responsible for defective or faulty workmanship, or lost or stolen property or damaged property unless one of 3 things occur. The public policy goal of the statute is to prevent the employer from arbitrarily deducting hard earned wages at its prerogative. *Farady-Sultze v. Aurora Medical Center of Oshkosh, Inc.* 2010 WI App 99, 327 Wis. 2d 110; 787 N.W.2d 433, 09-2429.

An employer who fired an employee after discovering that it had mistakenly overpaid her and concluding that the employee kept those overpayments to herself, did not run afoul of this statute or the public policy. The employee never earned the extra payments and the statute does not protect her. *Farady-Sultze v. Aurora Medical Center of Oshkosh, Inc.* 2010 WI App 99, 327 Wis. 2d 110; 787 N.W.2d 433, 09-2429.

**An opinion issued by the Wisconsin Attorney General on January 9, 1970, answered certain specific questions relative to Section 103.455 as follows:**

- Q:** May the employer require his employees to sign a statement giving the employer permission to deduct for shortages, mistakes, losses, etc., from the employees' wages prior to the time the alleged loss or shortage occurred (this would include signatures prior to the time the wages from which the deduction is to be made were earned)?
- A:** No. An employer cannot deny an employee the right to disagree and utilize the department as the determining party or foreclose his right to subsequent review.
- Q:** Is an endorsement of a payroll check by an employee considered written permission as defined under Section 103.455?
- A:** No. The endorsement on the check is required to cash the check. "Any agreement entered into between employer and employee contrary to this section shall be void and of no force and effect."
- Q:** Is an employee's signature on a daily checkout sheet considered a written permission as required by this section?
- A:** Probably no. It depends upon the purpose and function of a daily checkout sheet. The statute contemplates that documents signed for a specific purpose may not be used to meet the employee authorization for deduction as a byproduct for the employer's benefit.
- Q:** Is an employee's signature on a time card showing the shortage deduction or a check stub retained by the employer considered written permission?
- A:** Probably no. Here again the reasoning given at the above question is applicable.

**In summary:** Section 103.455, Wisconsin Statutes, contemplates that an employee may voluntarily and without undue pressure, authorize in writing deductions from his paycheck for grounds stated therein. Where his signature is required for some legitimate purpose that cannot be used for other purposes where the employee will be denied his right of choice.

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