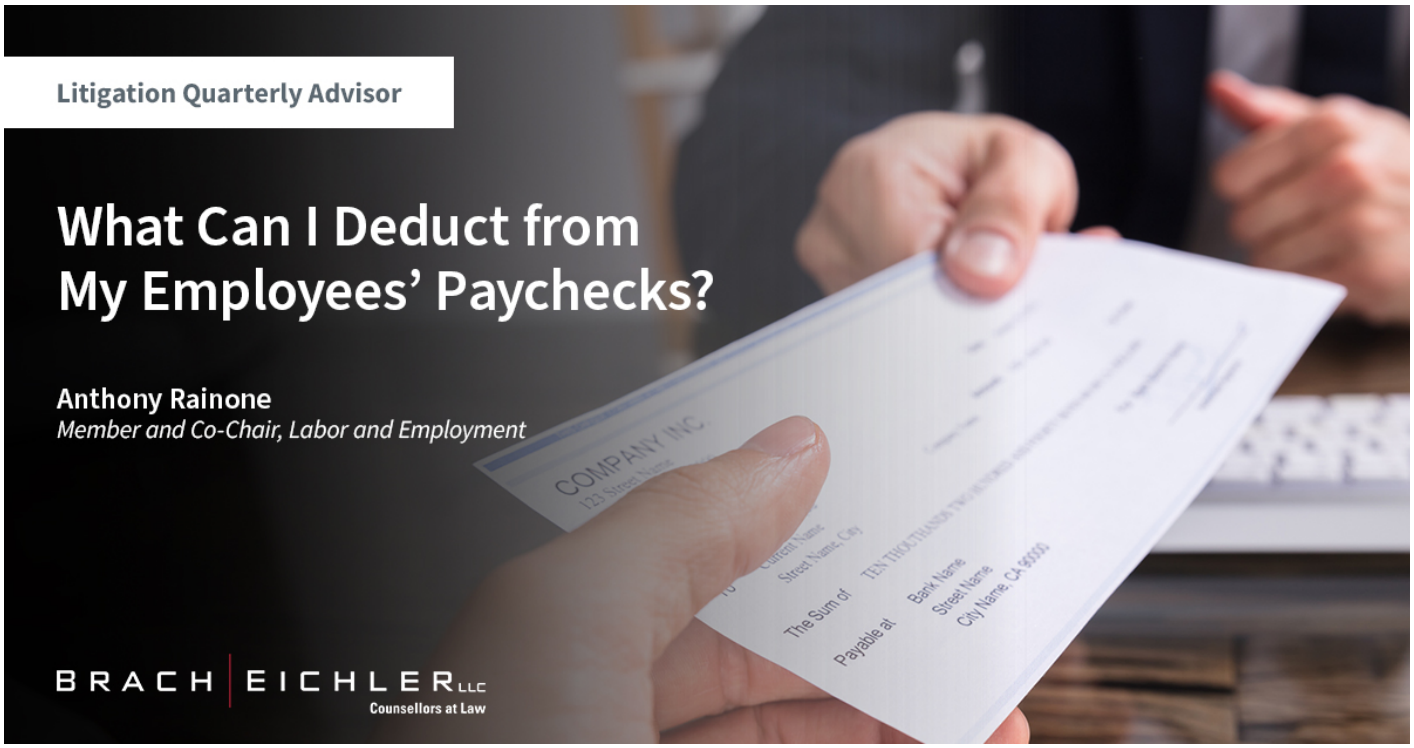
What Can I Deduct From My Employees' Paychecks?



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Many times, employers are frustrated by the lack of a clear answer from their employment lawyer on a myriad of issues ranging from candidate screening, background checks, offer letters, discipline and, when necessary, terminations. The lack of clarity often stems from an unclear statute or regulation, which results in litigation, which results in a not-always-clearer judicial interpretation of the ambiguity in the first place.

But one area of the law that has been relatively stable for many years is paycheck deductions. This may seem like a more mundane issue easy to get right, but there are painful financial consequences for employers who get this wrong in addition to potential criminal charges. Not a week goes by when an employer client calls and asks "can I deduct _____ from my employee's paycheck?" Most times, the answer is clear cut, yes or no. But it is always a good time for a refresher on permissible (and not permissible) deductions from an employee's paycheck. And these rules apply to every employer in New Jersey regardless of size.

Impermissible Deductions

There is a bright line rule that all employers can follow in New Jersey. That is: employers cannot "withhold or divert"(i.e., deduct) any portion of an employee's wages from the paycheck unless expressly permitted. As a practical matter, that means if you do not see the deduction you want to make in the section below on Permissible Deductions, you cannot make the deduction from the paycheck.

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> Separate from the financial penalties, an employer who knowingly and willfully makes impermissible deductions from wages is guilty of a disorderly person's offense which, if convicted, is subject to a fine of not less than $100 nor more than $1,000.

Making impermissible deductions from wages can result in the employer as well as the officers or agents of the entity having management of the employer (i.e., personal liability). Where the New Jersey Department of Labor & Workforce Development ("DOL") Commissioner investigates violations, he has the power to not only compel payment to the Commissioner of the unlawfully deducted wages, but to charge an administrative fee of at least 10% and as much as 25% of the amount of unlawfully deducted wages. And on top of that, the DOL can assess an administrative penalty of $25 to $500 for each violation. Separate from the financial penalties, an employer who knowingly and willfully makes impermissible deductions from wages is guilty of a disorderly person's offense which, if convicted, is subject to a fine of not less than $100 nor more than $1,000. Further, each impermissible deduction is a separate and distinct offense. So, if you are making an unlawful deduction from 100 employees' paychecks, the money you will owe = A LOT.

Permissible Deductions

So, what can an employer deduct from an employee's paycheck? Below is a broad stroke list of the categories of permissible deductions. The full list is found at N.J.A.C. 12:55-2.1(2) and you should consult the full list as well as consult with your attorney before acting.

If it is not on this list, you cannot deduct it from wages. And no, you cannot deduct from an employee's wages even if they agreed to it in writing if it is not in the permissible list below.

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