

Employment Fact Sheet: Employer withholds your pay

If your employer withholds any of your pay, this is called a deduction of wages. Your employer might have withheld your pay because they:

- have not paid you the wage agreed
- have not paid you any wages (this is called a **100% deduction of wages**)
- have paid your wages late or not paid you regularly
- have not paid you bonus or commission payments
- have not paid you holiday pay, Statutory Sick Pay, Statutory Maternity Pay, Statutory Paternity Pay or Statutory Adoption Pay
- have made other deductions from your pay

If your employer has done any of these things, they may have broken the law.

Deductions which can be made from pay

There are some deductions that your employer is allowed to make from your pay. These deductions will usually already have been made when you receive your pay. They include:

- tax and national insurance contributions
- repayment of student loans
- deductions following a court order
- deductions you have agreed to with your employer
- other deductions that you have given permission in writing to be made (for example, trade union subscriptions).

Can your employer withhold tips or service charges?

Tips

Tips are paid either in cash, or by the customer adding an extra amount to a credit card or cheque for a tip.

Cash tips which are voluntarily given by customers count as gifts to the staff. However, if the tips are pooled, your employer can keep some of the money back, for example, to make up money missing from the till. Your employer is allowed to do this because the tips are not wages, so this is not a deduction of wages.

Tips which are voluntarily paid by customers adding an extra amount to a credit card or cheque payment become the property of your employer. Your employer is allowed to keep this money but may choose to share it out amongst staff. If it is shared out amongst staff, it should be paid on top of your wages.

Compulsory service charges

If a service charge is compulsory, that is, it is added automatically to the customer's bill, it belongs to your employer who can distribute it as they wish. However, sometimes a contract of employment says that you are entitled to a share of the service charge. If your contract of employment says you are entitled to a share of the service charge, you must be paid your share of the charge and your employer cannot change the way it is shared out unless you agree. Your share of the service charge should be paid on top of your wages.

Retail workers

There are additional rules for retail workers. Retail workers work in jobs that involve taking money for an employer in exchange for goods or services. Retail workers include people who work, for example, in a shop, petrol station, bank or building society, as a waiter, a bus conductor or a car park attendant.

If there is a cash shortage or missing stock due, for example, to theft by a worker or customer, your employer is allowed to make a deduction from your wages under certain circumstances. Your employer must make the deduction within a year of discovering the shortage, and must explain the reasons for the deduction to you in writing. The deduction cannot be more than 10% of your gross pay (that is, your pay before tax has been deducted), on any single pay day. If there is a larger amount to be repaid, your employer can carry the balance over until your next pay day, but can never deduct more than 10% on each pay day. They can continue to do this until the full amount has been repaid.

If you are leaving your job your employer can deduct the full amount owed from your final wage. If you are in this situation you should **talk to an experienced adviser straight away** (see further help at the end of this fact sheet).

What can you do if your employer has withheld your pay?

If you think that your employer has withheld pay that you are entitled to, you should first try and resolve the problem by talking to your employer. You could ask for help from your trade union representative, if you have one, or from an experienced adviser (see below). Make sure you have a detailed (**itemised**) pay slip which lists how your pay has been made up and what deductions have been made. You have the right to an itemised pay slip so you should ask for one if you have not already been given it.

If talking to your employer does not work, you should **raise a written grievance**, detailing your complaint. Sign and date your letter and keep a copy. You should do this as soon as possible after your employer has withheld your pay. If you need to take matters further, you can make a complaint to an **industrial tribunal**. You should get help from an experienced adviser to do this. There is usually a three month time limit for making a claim to an industrial tribunal. The time limit starts from the date when the deduction was made.

A tribunal can order your employer:

- to pay back the full amount deducted from your wages if nothing should have been deducted at all, or
- if your employer deducted too much, to pay back the difference between what should have been deducted and what was deducted.

If your employer dismisses you because you have tried to claim back pay that has been wrongly withheld, you can make a complaint to an industrial tribunal for **unfair dismissal**.

In some circumstances, you may not be able to make a complaint to an industrial tribunal. If this is the case, you may be able to sue your employer for **damages** or **breach of contract**. You should get legal advice about this.

You have left your job and are still owed pay

When you leave your job, you might be owed pay. This could include:

- basic pay (including money owed because you were paid a 'week in hand')
- redundancy pay
- pay in lieu of notice.

If your employer refuses to pay you money you are owed, they are breaking the law.

You should **write to your employer** explaining what money is owed, and why it is owing. The letter should also include details of the period for which the money is owed. This letter will count as a written grievance, if you need to take the matter further. You should sign and date the letter and keep a copy. An experienced adviser could help you to write this letter (see below).

If writing to your employer does not work, you may need to make a complaint to an industrial tribunal or you may have to take your employer to court. An experienced adviser can help you do this. There is usually a three month time limit for making a claim to an industrial tribunal. The time limit begins to run from the date when the payment was due.

Further help

Citizens Advice Bureau

Citizens Advice Bureaux give free, confidential, impartial and independent advice to help you solve problems. To find your nearest CAB visit www.citizensadvice.co.uk or look under C in your phone book.

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