

EMPLOYER PAYS FOR IMPROPER PAYROLL DEDUCTION

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August 12, 2003

May an employer withhold money from the paycheck of an employee who has damaged the employer's property or the property of a third party? That was the question faced by the Indiana Court of Appeals in *E&L Rental Equipment, Inc. v. Bresland*, 782 N.E.2d 1068 (Ind. App. 2003).

According to this case, Bresland worked for E&L Rental Equipment, Inc. ("E&L") as a truck driver. E&L alleged that Bresland ignored its directives and drove a truck while it needed repair, ruining eight tires. Bresland and E&L eventually agreed \$50.00 would be deducted from each of Bresland's paychecks to pay for the damage.

E&L alleged that, in a separate incident, Bresland's truck collided with the vehicle of an E&L customer, resulting in damage of \$2400.00. E&L told Bresland he would have to pay for that damage as well. Bresland soon quit. At the time he quit, E&L had deducted \$600.00 from his checks. Bresland sued, claiming, among other things, the money was wrongfully withheld from his paychecks.

E&L argued that the deductions of \$600.00 were lawfully assigned to E&L and that E&L had, in fact, paid Bresland all amounts due him as required by Indiana law. The Indiana Court of Appeals turned to several Indiana statutes, including Ind. Code 22-2-6-2. According to that statute, an assignment of wages is valid only if it is: (1) in writing, (2) signed by the employee, (3) revocable at any time by the employee on written notice to the employer, and (4) agreed to in writing by the employer (and the signed agreement must be delivered to the employer within 10 days of signing). Further, deductions are valid only if they are made for one of the purposes described in Ind. Code 22-2-6-2(b). The list of valid purposes does not include reimbursement for property damage.

The Court of Appeals ruled: "All deductions from wages constitute an assignment, which must meet specified statutory requirements." The evidence indicated that the parties did not have a written agreement to deduct the amounts and that the deductions were for a purpose not authorized by the statute. As a result, E&L was required to pay Bresland's damages and costs.

This case serves as a reminder that, as an Indiana employer, you must follow certain procedures before making any type of payroll deduction. Further, deductions are valid only if they are made for one of the purposes described in Ind. Code 22-2-6-2(b). This list of valid purposes currently includes:

- Premium on a policy of insurance obtained for the employee by the employer.
- Pledge or contribution of the employee to a charitable or nonprofit organization.
- Purchase price of bonds or securities, issued or guaranteed by the United States.
- Purchase price of shares of stock, or fractional interests therein, of the employing company, or of a company owning the majority of the issued and outstanding stock of the employing company, whether purchased from such company, in the open market or otherwise. However, if such shares are to be purchased on installments pursuant to a written purchase agreement, the employee has the right under the purchase agreement at any time before completing purchase of such shares to cancel said agreement and to

have repaid promptly the amount of all installment payments which theretofore have been made.

- Dues to become owing by the employee to a labor organization of which the employee is a member.
- Purchase price of merchandise sold by the employer to the employee, at the written request of the employee.
- Amount of a loan made to the employee by the employer and evidenced by a written instrument executed by the employee, subject to the requirement that the maximum part of the aggregate disposable earnings of an employee for any work week that is subjected to an employer deduction may not exceed the lesser of:
 - (i) twenty-five percent (25%) of the employee's disposable earnings for that week; or
 - (ii) the amount by which the employee's disposable earnings for that week exceed thirty (30) times the federal minimum hourly wage prescribed by 29 U.S.C. 206(a)(1) in effect at the time the earnings are payable.
- Contributions, assessments, or dues of the employee to a hospital service or a surgical or medical expense plan or to an employees' association, trust, or plan existing for the purpose of paying pensions or other benefits to said employee or to others designated by the employee.
- Payment to any credit union, nonprofit organizations, or associations of employees of such employer organized under any law of this state or of the United States.
- Payment to any person or organization regulated under the Uniform Consumer Credit Code (Ind. Code 24-4.5) for deposit or credit to the employee's account by electronic transfer or as otherwise designated by the employee.
- Premiums on policies of insurance and annuities purchased by the employee on the employee's life.
- The purchase price of shares or fractional interest in shares in one (1) or more mutual funds.
- A judgment owed by the employee if the payment: (i) is made in accordance with an agreement between the employee and the creditor; and (ii) is not a garnishment under Ind. Code 34-25-3.

Although not mentioned in the *Bresland* case, there is another, somewhat related statute in Indiana of which employers should be aware. Ind. Code 22-2-8-1 deals with employee fines and states: "It is unlawful for any employer to assess a fine on any pretext against any employee and retain the same or any part thereof from his wages. An employer who violates this section commits a Class C infraction."

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