

## WAGE REDUCTIONS SAFER THAN WITHHOLDING

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Sometimes it's difficult to get employees to comply with expectations like submitting timesheets or completing dictation on time, providing two weeks notice of resignation, and other expectations that, because of practical reasons, are not effectively remedied through your discipline program. Employers often attempt to address their concerns by withholding paychecks until the employee comes into compliance. In Indiana, withholding an employee's paycheck is quite risky, often exposing an employer to liability for up to three times the amount withheld, plus the costs and fees (including reasonable attorneys' fees) that the employee incurred in collecting amounts owed.

A safer approach may be to adopt a written policy and/or to document an agreement with your employees that their wages will be reduced (but never below the applicable minimum wage) under certain circumstances. That is just what the employer did in *Haxton v. McClure Oil Corporation*, 697 N.E.2d 1277 (Ind. App. 1998). According to that case, employee Haxton had an employment agreement that stated, in part:

The term of this agreement shall begin on October 19, 1995 and shall be an "at will" agreement. The Employee may terminate this agreement at any time by giving a required two weeks notice in writing. This notice is to be given to the Employee's immediate supervisor . . .

Conditions of Wage Reduction. The Employee agrees that their weekly paycheck can be reduced to the Federal Minimum Wage rate if the following conditions exist: . . .

Upon resignation, the Employee does not give the required written two weeks notice to their immediate supervisor.

Haxton gave two weeks notice of her resignation but quit four days after she gave notice. McClure reduced her pay from \$6.70 per hour to \$4.75 per hour (the federal minimum wage rate at that time) for one week's vacation and for hours worked as paid on her last paycheck.

Haxton sued for \$110.48 in wages, statutory penalties, attorneys' fees and costs. The trial court ruled that she had, and breached, a valid employment agreement with McClure. Haxton appealed.

The Indiana Court of Appeals found that the reduction in wages for hours worked after Haxton's resignation was neither an assignment of wages under Ind. Code 22-2-6 or a fine under Ind. Code 22-2-8. Rather, the reduction was simply a term of the parties' valid contract. However, the Court also ruled that McClure should not have applied the deduction to Haxton's vacation pay. In Indiana, vacation pay is additional wages, earned weekly, with only the time of payment deferred. Since Haxton had already earned her vacation, McClure should have paid it out at the rate she was earning when she resigned.

This case illustrates an innovative response to concerns that cannot, as a practical matter, be addressed through the discipline process. However, you should proceed with

caution when implementing any wage reduction. Considerations should include but are not limited to distinguishing between different forms of compensation, the impact on an employee's exempt status, and the potential for treble damages and attorneys' fees under Indiana's wage payment statute (Ind. Code 22-2-5).

This case also illustrates the time and expense that people sometimes commit to fighting over a few hundred dollars. Never underestimate the resolve of employees and their attorneys.

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