

Loans to Employees: Neither a Borrower Nor Lender Be

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Although loaning money to an employee in need may seem like a nice thing to do, it can lead to a number of problems. Employers may determine it to be more trouble than it is worth. Here is a list of common problems with loaning money to employees.

Discrimination Charges: In order to avoid claims that the employer refused to loan money to some employees because of their sex, race or other protected class status, if an employer is going to loan money to one employee, the employer should be prepared to provide similar loans to similarly situated employees. Having a written policy regarding loans and strictly following it can help protect the employer from such charges.

Documentation Issues: Employers providing loans should document those loans in an agreement with the employee. The agreement should include the total amount of the loan and it should set forth the payment schedule. It is a good idea to have the employee sign a promissory note.

Employers usually like to deduct the payment amounts from the employee's checks. Before making any such deductions, employers need to obtain a written agreement from the employee stating that such deductions are acceptable and what amount may be deducted from each check. As discussed below, employers should not require that the balance be deducted from the employee's final check.

Final Paycheck Issues: The Labor Commissioner requires employers to pay employees for all hours worked. If final paychecks do not include payment for all hours worked, the Labor Commissioner can require the employer to pay penalties, including a waiting time penalty, to the employee. The waiting time penalty is a maximum of thirty days worth of pay. It is not calculated as a month's worth of pay; it is calculated as if the employee had worked thirty consecutive days.

The Labor Commissioner imposes the waiting time penalty on employers who deduct all remaining loan payments from the employee's last check. The Labor Commissioner does not care if the employee signed a written agreement that would allow the employer to deduct all remaining loan payments from the last check. The Labor Commissioner considers this to be against public policy. As a general rule, unless the last payment is no greater than the usual amount the employee agreed to have deducted from each check, the employer should never deduct all remaining loan payments from the employee's last check.

Post Employment Collection: When the employee leaves employment with the employer, the employer obviously cannot continue to deduct the loan payments from the employee's paychecks. At that point, the employer with a promissory note signed by the employee can take the employee to small claims court if the employee fails to make the required payments. The employer may obtain a judgment against the employee, and then the employer can spend years trying to collect on that judgment.