

Deductions for damage caused

Question: May an employer make a deduction from an employee's wages for damage caused?

Answer: Yes, but for such a deduction to be lawful the employer has to meet several requirements.

Brief explanation: If an employee has caused an employer harm due to the employee's fault (e.g. an accident with a company car), the employer would in principle have a claim against the employee. It does not make practical sense to sue the employee. However, the employer may not simply go ahead and deduct the amount from the employee's wages. The Basic Conditions of Employment Act (BCEA) is very prescriptive about what an employer may deduct and how to go about it. Section 34 of the BCEA provides as follows:

Deductions and other acts concerning remuneration

1. *An employer may not make any deductions from an employee's remuneration unless –*
 - (a) *subject to subsection (2), the employee in writing agrees to the deduction in respect of a debt specified in the agreement; or*
 - (b) *the deduction is required or permitted in terms of a law, collective agreement, court order or arbitration award.*
2. A deduction in terms of subsection (1)(a) may be made to reimburse an employer for loss or damage only if –
 - (a) *the loss or damage occurred in the course of employment and was due to the fault of the employee;*
 - (b) *the employer has followed a fair procedure and has given the employee a reasonable opportunity to show why the deduction should not be made;*
 - (c) *the total amount of the debt does not exceed the actual amount of the loss or damage; and*
 - (d) *the total deductions from the employee's remuneration in terms of this subsection do not exceed one-quarter of the employee's remuneration in money.*

It might seem, on the face of it, that a deduction for damages suffered by the employer would be in order if the employer complied with the four requirements mentioned in subsections (2)(a) to (d). Yet, if one reads this in the context of subsection (1)(a), it becomes clear that these four requirements are not enough. There is, indeed, a fifth requirement, namely that the employer also needs the written agreement of the employee.

The above interpretation is supported by Regulation 4.6.2 of the General Administrative Regulations, promulgated in terms of the BCEA: "A deduction in respect of damage or loss caused by the employee may only be made with agreement and after the employer has followed a fair procedure".

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The above was also discussed and confirmed in the Labour Court in the matter of ***Padayachee vs Interpak Books (2014)***. In the process of interpreting the relevant provisions of the BCEA, the court added that the intention was to protect employees against arbitrary conduct.

Further comment: In our view section 34(2)(b) does not mean there has to be a formal hearing. A discussion with the employee that results in the employee signing an acknowledgement of debt, which authorises deductions, should be adequate.

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