

Deducting wages for unworked notice periods

If an employee does not work their notice period, an employer cannot utilise a deduction clause without consultation and written consent.

Even if an employment agreement contains an appropriate and reasonable deduction clause for unworked notice periods, section 5 of the Wages Protection Act 1983 (WPA) stipulates that an employer still needs to consult the employee, and get their written consent to deduct from wages.¹ A signed employment agreement with a deduction clause can be considered 'written consent', but the consultation obligation still applies.²

Section 5 of the WPA also states that a worker can withdraw their consent for deduction from wages by giving the employer written notice of such withdrawal.³ After an employer receives a withdrawal of consent notice, they must cease making deductions either within 2 weeks of receiving the notice, or as soon as is practicable.²

Utilising a deduction clause without consultation and written consent is considered a penalty, and is unlawful.

What is an employee liable for if they do not work their notice period?

All deduction clauses need to be *reasonable* for an employer to rely on them.⁴

If an employer has consulted with the employee and has written consent to do so, the employer may claim 'actual losses'. This may include the reasonable costs of finding, or paying for a replacement during the rest of the notice period. The full wages of the replacement will not be claimable, only the *additional* amount that the employer wouldn't have needed to pay if the employee

had worked out their notice period. If an employer withholds pay from an employee who does not work their notice period, the Employment Court has held that this is also an unlawful penalty.⁵ The Court explained that deductions need to be a genuine pre-estimate of damage caused by the employee failing to work their notice period.⁵

If there is no deduction clause in the employment agreement, or no other form of written consent, then the employer will have to go to the Employment Relations Authority to claim these costs.

Making an employee work out their notice period will not always be the best option.

With the 'talent drain' overseas, employers may be tempted to increase the length of notice periods, in order to allow for sufficient time to find replacements. However, if an employee has given notice and made the decision to leave, there may not be any benefit in requiring a demotivated employee to stay on for an extended period of time. The employer should make an assessment based on the circumstances of the employee leaving, and what their continued performance is estimated to look like throughout the rest of the notice period.

Want to know more?

If you have any questions about Employment matters please contact our specialist [Employment Team](#).

¹ Wages Protection Act 1983, section 5.

² [Deductions](#)

³ Wages Protection Act 1983, section 5(2).

⁴ Wages Protection Act 1983, section 5A.

⁵ *Livingston v G L Freeman Holdings Ltd* as cited in *Labour Inspector v Victoria 88 Ltd (t/a Watershed Bar and Restaurant)* [2018] NZEmpC at [15].