

Double Dipping

Suzy, the payroll manager at Dot's Ice Cream, came across an interesting problem while reconciling the company's bank account after the last payroll. She noticed that one of the employees, Joe, had cashed his paycheck twice.

The first time, the check was cashed through a mobile banking app; and the second time, the check was cashed at a check cashing store. After speaking with the check cashing store and reviewing their surveillance footage, Suzy confirmed that Joe had cashed the check.

Suzy then asked Joe about the transactions and he could not provide a reasonable explanation. His only response was "Oops!"

Based on the evidence, Suzy concluded Joe had intentionally cashed his paycheck check twice and recommended that Joe's employment be terminated. While the owner agrees with Suzy's recommendation, he also wants to deduct the "overpayment" from Joe's final paycheck?

- A. No. The bank made a mistake by allowing Joe to cash his paycheck twice. Joe cannot be penalized for the bank's error.
- B. No. The company should file a police report and recoup the stolen monies from Joe using the legal system.
- C. It depends on the location of the business. Before making any deduction, Suzy should check the laws in her state to see if such a deduction is permissible.
- D. Yes. By cashing his paycheck twice, Joe stole from the company and the company may recoup its losses.



The correct answer is C:

Explanation

While employers may believe they have the power to deduct from an employee's wages to recover stolen monies (or the value of damaged or stolen property), whether an employer is actually allowed to make that deduction is governed by state, and in some cases, federal law.

In many states, employers are strictly prohibited from making a deduction from an employee's wages to recover monies lost due to employee theft (or to recover the value of lost/damaged equipment). In those states, an employer's only recourse is to attempt to recover the stolen monies from the employee is through the Court system.

In other states, employers are only allowed to deduct from an employee's wages to compensate for an employee's theft if (1) a report has been filed with the proper legal authorities or (2) the employee has authorized the deduction in writing or (3) the employee has been given advanced notice of the deduction.

Other states do not have laws governing the deduction from employee wages. In those states (and in states where deductions are permissible), FLSA-covered employers must follow the FLSA guidelines.

Under the FLSA, employers are permitted to deduct from an employee's paycheck for theft provided that the deduction will not reduce the employee's wages below the required minimum wage or overtime compensation and provided that the employee has voluntarily authorized the deduction. It is recommended that employers obtain the authorization in writing.