

## **STATE OF MAINE**

### **RECOVERY OF OVERPAYMENTS TO EMPLOYEES**

Under 26 M.R.S. § 635, employers may recover overpayments made to employees even where the overpayment is the result of employer error. That said, the recovery effort must fall within the restrictions established by the law in all cases where the employee did not knowingly accept the overcompensation. For example, if the overcompensation is less than 15% of the correct net amount of the employee's compensation, the employer must prove by clear and convincing evidence that the employee knowingly accepted the overcompensation. If, on the other hand, the overpayment is more than 15% of the correct net amount of the employee's compensation, the employer may presume that the employee knowingly accepted the overcompensation.

This law does not apply if the employee knowingly accepted the overcompensation. However, failure to follow the procedures set out in the law to recover overpayments where the employee did not knowingly accept the overcompensation will result in the employer's forfeiture of all claims to the overcompensation. To implement the statute the following principle should be followed when overpayment occurs without the employee's knowing acceptance.

An employer who has overcompensated an employee through employer error may not withhold more than 5% of the net amount of any subsequent pay without the employee's written permission, except that, if the employee voluntarily terminates employment, the employer may deduct the full amount of overcompensation from any wages due.

Additionally, an employer who has overcompensated an employee through employer error may not recover more than the amount of overcompensation paid to that employee in the 3 years preceding the date of discovery of the overcompensation.

The law makes it clear that overpayments to employees may be recovered by the employer if the proper steps are followed. To ensure recovery Departments should talk to employees who have been overpaid and work out an arrangement to recover the overpayment. If the overpayment was less than 15% of the normal net pay and if no arrangements are made with the employee, do not withhold more than 5% of the employee's net pay to recover the overpayment.

In all instances, recovery of overpayments shall be consistent with the State Administrative and Accounting Manual (SAAM), including but not limited to Section 25.80.

If you have any questions about the implementation or administration of this procedure, please contact the Office of Employee Relations at [Employee.Relations@maine.gov](mailto:Employee.Relations@maine.gov).