

## Chapter 25 - Payroll

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### **25.80            Salary Overpayment Recoveries**

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## 25.80

# Salary overpayment recoveries

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### 25.80.10 Definitions

**Overpayment** means a payment of wages for a pay period that is greater than the amount earned for a pay period.

**Involuntary wage deduction** means a wage deduction the agency imposes through the procedures detailed in this section.

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### 25.80.20 Recovery of overpayments to employees

26 M.R.S.A. Section 635, effective July 14, 1990 has clarified the procedures that employers must use to recover overpayments made to employees because of employer error. This law and procedure must be followed if the employee did not knowingly accept the overcompensation. 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. Presumably, if the overpayment is more than 15% of the correct net amount of the employee's compensation, 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 10% 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.

The law makes it clear that overpayments to employees may be recovered by the employer if the proper steps are followed. To insure 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 10% of the employee's net pay to recover the overpayment.

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### **25.80.30 Recovery methods**

When an employee receives a full paycheck in error, it is the Department's responsibility to recover the overpayment and return the money to the Controller's Office for deposit in the Department's account. The Department must take the following steps:

- Contact the employee requesting the return of the full amount of the overpayment in the form of the "check" or personal check, bank check for the direct deposit amount. If the employee does not send the full payment within 10 days, a certified letter requesting the return should be sent.
- Once the payment is received from the employee, the Department must submit the payment along with a payment refusal form to the Controller's Office.

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### **25.80.40 Partial recovery for active employees**

When an overpayment is made to an employee who is currently active in the payroll system, it is the Department's responsibility to recover the amount that was overpaid. This is accomplished by making an adjustment in the MFASIS HR System. The following steps must be taken:

- Notify the employee of the overpayment.
- Reduce the employee's earnings by the overpayment amount in the next pay period. If you cannot recover the total amount in one pay period, use the next pay period(s) until the total recovery amount is satisfied.

- Recoveries of overpayment to active employees cannot bridge calendar years. If it would be necessary to recover the overpayment and the next pay period falls within the next tax year, please see **Recovery of Funds for a Previous Tax Year** for details.

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## **25.80.50 Recovery for funds affecting a previous tax year**

When funds are recovered for a previous tax year (i.e., funds received in February for a payment made in November), the Department must take the following steps:

- Send the employee a certified letter requesting the return of the overpayment in the form of a money order, bank check, or certified check.
- If applicable, request the Controller's Office to contact the appropriate vendor(s), requesting the return of the full amount(s) for each deduction.
- Once the payments are received from the employee the Controller's Office will enter a Cash Receipt (CR) and payment reversal transaction. This will adjust the history in HR and accounting information.
- Submit a request for a W2C to the Comptroller's Payroll Unit
- If an employee repays wages received in error in a prior year, the form W2C will correct only Medicare wages and Medicare tax. Wages paid in error in a prior year remain taxable to the employee for that year. This is because the employee received and had use of those funds during that year. This is consistent with the IRS instructions for Forms W2C and W3C.

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## **25.80.60 Employee termination from state with balance owing**

An employer who has overcompensated an employee through employer error may not withhold more than 10% 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.

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**25.80.70 Agency internal control system to prevent overpayments**

All agencies are to maintain an effective system of internal controls to prevent salary and wage overpayments.

All employees and all agency staff who affect the pay process in an agency including those who approve payroll, enter time, work with personnel actions, calculate payroll, produce payroll, or distribute payroll are responsible to assist in achieving an overall effective system of control to produce accurate timely payrolls.