



LAW UPDATE EDUCATION

PHONE: (661) 636-4830 • FAX: (661) 636-4843
E-mail: sls@kern.org • www.schoolslegalservice.org

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AB 185: RECOVERY OF WAGE OVERPAYMENTS

AB 185 (trailer bill legislation) was signed by Governor Newsom on September 28, 2022, and became effective immediately. AB 185 creates Education Code Section 44042.5 setting forth a formal process for recovery of wage overpayments made to a school employee by a school employer (which includes school districts, county offices of education and charter schools).

If a school employer determines that a wage overpayment has been made, the school employer must provide notice (written notice is recommended) of the overpayment to the employee and allow the employee to respond before formally pursuing collection. If there has been an overpayment, the employee has the following repayment options:

- Full cash payment or installments.
- Installment payments through payroll deduction covering at least the same number of pay periods in which the error occurred, not to exceed 12 months.
- The adjustment of appropriate leave credits or compensatory time off, where the overpayment involves leave accrual or crediting (i.e., vacation, holiday, or compensatory time off). Errors in sick leave balances may only be adjusted by sick leave adjustments.

If the employee and school employer do not agree on a form of repayment, the school employer must utilize installment payments through payroll deduction. Installment payments may not exceed 25% of the employee's net disposable earnings for each payroll period, with one exception: where an employee is separating from the school employer prior to full repayment, the school employer may withhold amounts necessary for full repayment. If the amount is insufficient for full repayment, the school employer may pursue other legal means for recoupment.

An action by a school employer pursuant to Education Code Section 44042.5 must be commenced within three years of the date of overpayment.

If the school employer has a negotiated procedure for handling wage overpayments in a collective bargaining agreement or memorandum of understanding, the negotiated procedure will govern. Education Code Section 44042.5 specifically provides that it does not override any contrary negotiated agreement with an exclusive bargaining representative.

Please call our office if you have questions or need further information.

-Timothy L. Salazar

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