



July 2023

SB 114: NEW CHANGES TO THE WAGE OVERPAYMENT RECOVERY PROCESS

Last September, Governor Newsom signed AB 185 which created a formal process for the recovery of wage overpayments made to a school employee by a school employer (which includes school districts, county offices of education and charter schools). (See Education Code section 44042.5)¹ SB 114, also an education omnibus budget trailer bill like AB 185 and enacted July 10, 2023, made significant changes to Education Code section 44042.5.

If an employer determines that a wage overpayment has been made to an employee, the employer must now provide written notice of the overpayment to the employee, allow the employee an opportunity to respond before formally pursuing collection, and inform the employee of certain rights:

“If a school employee disputes the existence or amount of a school employer’s claimed overpayment made to the school employee, the school employer shall first initiate a legal action and obtain a court order or a binding arbitration decision validating the claimed overpayment amount before it may recover the overpayment amount. For purposes of this paragraph, binding arbitration may apply only when a memorandum of understanding between the school employer and an exclusive representative of the school employee sets forth procedures for adjudicating wage overpayment disputes that, at a minimum, meets the requirements and protections for school employees set forth in this section. If in court the school employee is represented by counsel supplied by the exclusive representative designated under the Educational Employment Relations Act (Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code), then the provisions of paragraph (b) of Section 3543.8 of the Government Code shall apply to that litigation.”
[Education Code section 44042.5(a)(4).]

If the employee agrees there has been an overpayment, the employee has the following repayment options, which must be mutually agreed to by the employer:

- Cash payment or cash installments,
- Installment payments through payroll deduction covering at least the same number of pay periods in which the error occurred, or

¹ See our May 2023 legal update, *AB 185: Recovery of Wage Overpayments*, by attorney Tim Salazar. [AB 185: Recovery of Wage Overpayments](#)

- 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 with sick leave adjustments.

Mutually agreed installment payments to be deducted from an employee's salary or wages cannot exceed the amounts specified in California Code of Civil Procedure section 706.050. Section 706.050 has various formulas and multipliers, depending on the operative date of the statute in effect at the time installment payments are made, and should be carefully reviewed to ensure compliance with the maximum amounts permitted. As an example, currently up to 25 percent of the employee's disposable earnings for any workweek may be deducted; however, as of September 1, 2023, only 20 percent of the employee's disposable earnings for that week may be deducted.

Where an employee separates from employment before full repayment of the overpayment is made as mutually agreed, the employer may withhold amounts necessary for full repayment, provided that the employee receives at least the state minimum wage. If the employee works in a location where the local minimum hourly wage is greater than the state minimum hourly wage, the local minimum wage in effect at the time the earnings are payable must be used. If the amount is insufficient for full repayment, the employer may pursue other legal means to recover the balance owed.

Legal action by an employer pursuant to Education Code section 44042.5 must be commenced within three (3) years from the date of overpayment. The employer cannot recover overpayments made to an employee more than three years before the employer initiates the action. If an overpayment involves leave credits, the date of the overpayment is the date the employee receives compensation in exchange for the leave credited in error. Leave hours are deemed to be exchanged for compensation in the order they were credited.

If the employer has a negotiated procedure for handling wage overpayments in a collective bargaining agreement or memorandum of understanding that was in effect on July 31, 2022, the negotiated procedure will govern until the expiration or renewal of the agreement or memorandum of understanding.

The employer's human resources and business offices should review these important changes, particularly the requirements of the written notice to the employee under Education Code section 44042.5 and the minimum wage requirements on recovery of the balance of the overpayment due at the time of separation from employment.

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

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