

## Making Employees Pay for Damaged Company Property

Many employers have a policy requiring employees to reimburse for damage to company property, usually through payroll deductions or a deduction from the employee's final paycheck. These policies generally reflect employers' legitimate concerns about lost revenue resulting from employees' negligent or willful misconduct. From an employer's viewpoint, such policies are a matter of security and fairness, particularly when reimbursement is required only for intentional misconduct or damage resulting from unauthorized use of company property.

In general, an employer may not deduct for cash shortage, breakage, or equipment loss unless caused by the employee's gross negligence, or dishonest or willful act. However, an employer may deduct from a final paycheck the cost of a uniform, tools, or equipment not returned by a terminated employee within a reasonable time, if the employee gave the employer prior, written authorization to do so and if the employer can show that the employee committed theft or was negligently responsible for the loss.

Under the federal Fair Labor Standards Act (FLSA), a deduction for loss or damage may be made if two conditions are met:

- The employee signed a written agreement prior to the shortage (at the start of employment or when the policy related to deductions is adopted) by which he or she agrees to such a deduction; and
- The deduction does not bring the employee's hourly rate below the minimum wage.

While employers may be limited or prohibited from deducting from employees' paychecks for loss or damage to company property, they can take other affirmative steps to limit their losses from employee negligence or willful misconduct.

- **Discipline.** If an employee causes damage or loss because of poor performance, the employee should be subject to discipline in the same manner as employees with other performance issues.
- **Termination.** In the absence of a collective bargaining agreement or other employment contract, employees can generally be terminated at the will of the employer. Employers should include a provision in their discipline policies reserving the right to impose discipline, up to and including termination, in any situation they deem appropriate. Willful or intentional misuse of company property resulting in significant loss could be grounds for immediate termination.
- **Civil Suit.** Employers can file a civil suit or make a claim in small claims court to recoup the money owed for the loss or damage.

Thus, before implementing such a policy or executing an agreement with an employee to authorize payroll deductions for damage or loss to company property, employers should be aware that many states and the federal government have laws restricting or even prohibiting an employer's ability to make such payroll deductions.



[www.sheakley.com](http://www.sheakley.com)