

GIVE ME MY MONEY BACK! 8 TIPS FOR RECOVERING DEBTS FROM DEPARTING EMPLOYEES

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Departing employees can end up owing a dealership money for a variety of reasons. Overpayments by the dealership, outstanding loans or pay advances, unresolved invoices on dealership services provided to the employee, advances on vacations or other paid leaves, cash shortages, damaged property or equipment, failure to return property or clothing, and training expenses are just a few of the many reasons why you might find your dealership owed money by a worker.

The likelihood of your being able to recover money for these purposes depends in large part on your dealership's diligence in maintaining the right policies, using the correct implementing documents, compliance with applicable laws, and constant improvement in the dealership's processes. Although each situation is different, this article provides eight general recommendations or tips for dealers who find themselves in situations where a departing employee owes them money.

1. 1. Anticipate And Plan For These Situations<

Anticipating and planning in advance for the departure of employees owing money is critical. If you wait until the employee has left to collect, your dealership has far fewer options for ever collecting the money form the departed employee.

2. Maintain The Right Policies

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Having the right policies in place is a critical step in establishing options for recovering money from departing employees. Among others, you should consider adopting policies addressing: overpayments; deductions from pay; dealership services; loans; pay advances; vacation or paid leave advances; training payments; and return of property. These policies can articulate the circumstances, terms, and conditions under which the dealership will make these payments or deductions. They should also explain the consequences of non-payment by a departing employee.

3. Use The Right Implementing Documents

In addition to having the right general policies, you need to use documents in each situation to protect against employees who do not voluntarily pay back money to your dealership upon their departure. Among the other implementing documents, dealers should consider using: formal loan agreements; promissory notes; receipt forms for property such as electronic devices, tools, equipment, or clothing; deduction authorization forms or language embedded in other forms; non-disclosure or other agreements imposing post-termination requirements such as the return of property; and stand-alone memos memorializing the specific terms and conditions of the arrangement.

4. Comply With State And Local Laws

An increasing number of state and local laws apply to deductions from wages or salaries or impose other limitations on an employer's ability to charge for or collect money from an employee. Before adopting a policy and implementing documents, you should review and comply with these applicable laws.

For example, some states require an employer to get a written authorization prior to making any deduction from an employee's paycheck. Some states also require you to itemize the specific amounts to be deducted from the employee's paycheck and the reasons for the deduction. Moreover, you can be assessed punitive or liquidated damages for improper pay practices.

5. Comply With The Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) can come into play in several ways in making deductions from the employee's pay. For example, the pay of a non-exempt employee should generally not be reduced below the minimum wage for all hours worked in the work weeks of the final pay period. Thus, it would be a violation of that law to reduce a cashier's pay below the applicable minimum wage because of cash shortages, unreturned uniforms, or tools.

On the other hand, a dealership could reduce the pay of a non-exempt employee below the minimum because of a cash advance – assuming compliance with other applicable laws, of course, such as one requiring all deductions to be in writing. In addition, one of the conditions of the executive and administrative exemptions is that the worker be paid on a "salary basis" of pay. Certain deductions can potentially "destroy" the salary basis of pay, thus making the worker ineligible for those exemptions.

6. Consider All Your Options

Several options exist when trying to collect money from a departing employee including, among others:

- Ask the departing employee to voluntarily repay the money owed;
- Deduct the money owed from the final paycheck to the maximum extent permitted by law and in compliance with any state or local laws requiring written authorizations or other conditions;
- Enter into an installment agreement with the employee, requiring them to sign a binding promissory note;
- Threaten to sue or actually sue the employee in court to collect the money owed; or
- Forgive the employee, save collection expenses, and write off the money as an uncollectable debt.

7. Fix Any Problems That You May Discover

If the employee left owing money that was a result of a mistake, such as an erroneous overpayment or a failure to get a wage deduction or property receipt

form, the most important thing is to fix the problem so it does not occur again. When faced with a collection situation, your dealership should always reflect on the circumstances and see if there are any process improvements, including shoring up or adding new documents to the process.

8. Consult Your Counsel

We cannot overstate the importance of quickly consulting your labor and employment law counsel when a collection situation arises. You need to have your counsel on speed dial to help when you are confronted with a situation where an employee owes money and to help you deal with the aftermath (if any). Every situation is different, and laws are constantly changing. Always consult your counsel to help you make decisions that are appropriate under the specific circumstances of each situation.

CONCLUSION

Many scenarios exist where employees can leave an employer owing the dealership money. Hopefully, the guidelines in this article serve as a starting point for situations where your dealership needs to recoup money from a departed employee.

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