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EMPLOYMENT

The requirements for effecting lawful deductions arising out of damages caused by an employee's negligence

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Sections 34(1)(a) and 34(2) of the Basic Conditions of Employment Act of 1997 ("BCEA") state that an employer can make a deduction from an employee's remuneration for any losses or damages caused by the employee's negligence during the course of employment provided the requisite requirements are met.

Shenaaz Padaychee and Interpak Books

In the case of *Shenaaz Padaychee and Interpak Books (PTY) Ltd* the Court determined whether an employer was entitled to make a deduction from the employee's salary for damages occasioned by such employee's conduct in circumstances where no written agreement permitting same existed. The employer, in this case, sought to make a deduction for loss and damage caused by the employee, the quantum of which had been determined by the chairperson of a disciplinary hearing.

The employee claimed that the deduction was unlawful as she had not agreed to such a deduction.

The Court held that a deduction from an employee's remuneration can only be made if:

1. a fair procedure is followed allowing the employee to make representations
2. the employee agrees in writing to the deduction
3. the debt is specified in the agreement
4. the debt does not exceed the actual amount of loss or damage and
5. the debt repayment does not exceed one quarter of the employee's monthly remuneration.

In applying the law to the facts, the Court held that because there was no written agreement between the employer and employee specifying the debt, there was no agreement by the employee to effect such a deduction and because the deduction exceeded one quarter of the employee's salary (it should be noted that while the total debt owed by an employee to an employer can exceed one quarter of his salary, any given deduction, by way for example of an instalment payment, cannot, in any one instance, exceed one quarter of the employee's salary), the employer was not entitled to make the deduction.

Deductions from an employee's remuneration

Employers wanting to make a deduction from an employee's remuneration for loss or damage caused by an employee must ensure that they follow fair procedure in compliance with the formalities prescribed in Section 34(1)(a) and 34(2) of the BCEA. It is important that employers ensure that a written agreement is entered into with employees which clearly gives them authority to affect deductions in terms of section 34 of the BCEA in circumstances where such deductions arise by virtue of damages resulting from the employee's negligence. Such agreements can be entered into when the debt arises and should specify and quantify the exact nature of the debt owing.

Alternatively, a general agreement can be entered into when employing the employee and can form part of the contract of employment.

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Andre van Heerden

Director

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Jacques van Wyk

Director

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