

**WAC 296-126-030 Adjustments for overpayments.** (1) An overpay-

ment occurs when an employer pays an employee for:

- (a) More than the agreed-upon wage rate; or
- (b) More than the hours actually worked.

(2) Recouping the overpayment may reduce the employee's gross wages below the state minimum wage.

(3) An employer cannot recover an overpayment when the disputed amount concerns the quality of work.

(4) An employer can recover an overpayment from an employee's paycheck provided the overpayment was infrequent and inadvertent. Infrequent means rarely, not occurring regularly, or not showing a pattern. Inadvertent means an error that was accidental, unintentional, or not deliberately done. The burden of proving the inadvertent error rests with the employer who made the error. The employer has ninety days from the initial overpayment to detect and implement a plan with the employee to collect the overpayment. If the overpayment is not detected within the ninety-day period, the employer cannot adjust an employee's current or future wages to recoup the overpayment. Recouping of overpayments is limited to the ninety-day detection period.

(5) In the case of employees covered by an unexpired collective bargaining agreement that expires on or after January 1, 2006, in which overpayments are included in the terms of the collective bargaining agreement, the effective date of this rule shall be the later of:

(a) The first day following expiration of the collective bargaining agreement; or

(b) The effective date of the revised collective bargaining agreement.

Helpful information:

The following are examples of when overpayments may or may not be allowed:

Example 1. Allowed. Overpayment of agreed wage rate: An employee was paid an agreed rate of ten dollars per hour but received a paycheck at the rate of eleven dollars per hour. The employer provided documentation of the overpayment to the affected employee and adjusted the employee's next paycheck for the amount overpaid in the previous pay period.

Example 2. Allowed. Overpayment for hours worked: An employee worked seventy-two hours in the pay period, but the employee was paid for eighty hours for that period. The employer provided documentation of the overpayment to the affected employee and adjusted the employee's next paycheck for the eight hours overpaid in the previous pay period.

Example 3. Not allowed. Overpayment not detected within ninety days of first occurrence: An employer agreed to pay an employee ten dollars per hour, but when the first check was received, the amount paid was paid at eleven dollars per hour. The employee may or may not have brought it to the attention of the employer. Six months later the employer detected the overpayments and adjusted the employee's wages in the next paycheck for the entire amount of the overpayment. This is not an allowable adjustment because it was not detected within ninety days from the first occurrence.

(6) The employer must provide advance written notice to the employee before any adjustment is made. The notice must include the terms under which the overpayment will be recouped. For example: One adjustment or a series of adjustments.

(7) The employer must provide documentation of the overpayment to the affected employee or employees.

(8) The employer must identify and record all wage adjustments openly and clearly in employee payroll records.

(9) Regardless of the provisions of this section, if appropriate, employers retain the right of private legal action to recover an overpayment from an employee.

(10) This regulation does not apply to public employers. See chapter 49.48 RCW, Wages—Payment—Collection.

[Statutory Authority: Chapter 49.12 RCW. WSR 10-04-092, § 296-126-030, filed 2/2/10, effective 3/15/10. Statutory Authority: Chapters 49.12, 49.46, 49.48, 49.52 RCW, and RCW 43.22.270. WSR 05-24-019, § 296-126-030, filed 11/29/05, effective 1/1/06.]