

BONUSES

Clawing back bonuses— what employers need to know

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Many readers likely remember the national frenzy that occurred last fall when the California National Guard attempted to “claw back” bonuses paid to nearly 10,000 soldiers. Although those efforts to recoup unearned bonuses were subsequently halted by the secretary of defense, the incident raised national awareness of the scope of an employer’s ability to recover bonuses already paid to employees.

Clawback provisions

Employers may recoup bonuses through the appropriate use and implementation of “clawback” provisions. Clawback provisions are contractual tools that allow an employer to recover money that has already been disbursed to its employees under certain circumstances, such as fraud or accounting errors.

Clawback provisions are also commonly used in conjunction with signing and/or retention bonuses. In that case, the provision states that if an employee leaves the company before a specified period, he must pay back the bonus. When implementing clawback provisions, you must clearly state the terms in writing and make sure that both parties sign the agreement before the disbursement of the funds.

What Texas employers need to know

Although clawback provisions are becoming increasingly popular, whenever an employer seeks to recover funds already paid to employees, there may be potential issues. Different states vary with regard to the enforceability of these provisions. Therefore, you should consult with an attorney before implementing them.

Under the Texas Payday Law, all deductions—other than payroll taxes, court-ordered garnishments, and other legally required deductions—must be both lawful and specifically authorized in writing by the employee. Therefore, you should ensure that you have a “wage deduction authorization agreement” and a “wage overpayment/underpayment policy” that are signed by each employee and are consistent with the Texas Workforce Commission’s guidelines, which can be found on the commission’s website at www.twc.state.tx.us.

Incorporating these two policies will allow you to take deductions and correct mistakes associated with payroll errors. Thus, it’s recommended that you have these policies in place before implementing clawback provisions.

Bottom line

If done correctly, clawback provisions can help protect you from costly mistakes. This is a perfect time for you to review your bonus compensation policies and see if any updates are needed in order to comply with all legal requirements.

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