

Unauthorized Deductions From An Employee's Wages May Amount To Constructive Dismissal



It is generally understood that employers are required by law to make certain deductions from employees' wages, including for income tax, employment insurance premiums, Canada Pension Plan contributions, union dues or other amounts authorized by a collective agreement. Where authorized by employees, employers may also make deductions for health, dental or disability group insurance plans and payroll savings plans, as these provide a direct benefit to employees.

Aside from these exceptions, employment standards legislation across Canada generally prohibits employers from unilaterally deducting money from employee paychecks. In particular, an employer is prohibited from deducting money from an employee's wages to recover a business loss caused by an act or omission of the employee. In some provinces, this is the law even if the employee consents to the deduction. The purpose of this law is to ensure that employees are paid for the services they provide.

The recent decision of the British Columbia Supreme Court in [*Rothberger v. Concord Excavating & Contracting Ltd.*, 2015 BCSC 729](#), addresses the issue of unauthorized deductions and sends a message to employers that these deductions may not only violate employment standards legislation, but may also be considered constructive dismissal.

In *Rothberger*, the plaintiff worked for the defendant as a seasonal excavator operator from 2001 to 2012. In the summer of 2012, equipment being operated by the plaintiff suffered damage, which resulted in delays and other costs to the defendant. Following a few instances of damage to the defendant's equipment, the defendant wrote a note on the plaintiff's pay slip, suggesting that if there was any further loss or damage to the defendant's equipment, a deduction would be made from the plaintiff's wages.

After receiving notification of the defendant's intention to deduct future costs from his pay, the plaintiff attempted to speak to the defendant's principal about the issue. However, the plaintiff's concerns were "brushed off" by the principal. Subsequently, the plaintiff learned that the defendant's intention to deduct business costs from his paycheck was prohibited under the B.C. *Employment Standards Act*. This discovery prompted the plaintiff to leave a copy of the relevant passage from the *Act* in the defendant's mailbox.

Shortly thereafter, the wife of the defendant's principal sent a threatening email to the plaintiff which made reference to a prior employee who had left the defendant's employ under "unhappy circumstances". The email also implied the defendant's legal counsel would get involved if the plaintiff complained further. As a result of receiving this email, the plaintiff walked off the job site and subsequently filed a lawsuit for constructive dismissal.

At trial, the plaintiff argued the note on his pay slip, coupled with the threatening email sent by the defendant's principal's wife, amounted to a change to the terms of his employment and a constructive dismissal. The defendant denied the plaintiff was constructively dismissed and took the position that the plaintiff quit his job with the defendant when he walked off the job site.

After considering the evidence, the Court found a clear intention on the part of the defendant to deduct future costs from the plaintiff's paycheck. The Court held that the note on the plaintiff's pay slip, suggesting future losses would result in a deduction from his paycheck of an unspecified amount, substantially affected the plaintiff's rights and constituted a material change to his employment contract. The Court also held the plaintiff was not required to remain in his position and await implementation of the defendant's intended course of action before treating the employment contract as at an end. In the end, the Court concluded the combined effect of the note on the plaintiff's pay slip and the defendant's subsequent uncivil manner in dealing with the plaintiff amounted to constructive dismissal, entitling the plaintiff to damages.

The decision in *Rothberger* underscores the message that an unauthorized deduction from an employee's paycheck may not only lead to a breach of applicable employment standards legislation, but may also give rise to a constructive dismissal claim against the employer. Employers should think twice before threatening or making any deductions from wages to recover business costs, including those associated with loss or damage to company property. An employer who believes it has a right to recover an amount from an employee is encouraged to seek legal advice to determine whether alternate means may exist to recover the amount owed.

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