OVERPAYMENT OF SALARY

When businesses are operating computerised payroll systems, sometimes occasional errors can occur. This may be an overpayment of basic pay, overtime or commission or receiving sick or holiday pay to which the recipient is not entitled. In some situations, the wrongfully paid funds could be retained by the employee knowingly or unknowingly. Thus, the question arises over the legality of such circumstances and what offence is being committed.

Overpayments can arise as a result of a mistake of fact, for example: incorrect details inserted on to the administrative paperwork or an incorrect figure or sum of money has been input into the payroll system. Overpayments can also occur as a result of the employee intentionally misrepresenting facts or relevant data.

Identifying overpayments

If the employee is still in employment when an overpayment has been identified, the employer is entitled to recover the overpayment from the employee through the individual’s salary. Section 14 of the Employments Rights Act 1996, enables employers to make a deduction from the employee’s salary where the purpose of the deduction is the reimbursement of an overpayment of wages or expense. The employee should be notified at the earliest opportunity and the recovery arrangements should be made in a fair and reasonable manner.

If the employee has left the organisation’s employment and there is provision in the employment contract to collect any amounts outstanding, the organisation can make deductions from the final salary payments and/or invoice the former employee. However, if there is no contractual provision, the overpayment becomes a civil debt and difficulties can be experienced in recovering the debt if the ex-employee refuses to cooperate.

It is a criminal offence under the Theft Act 1968 to retain monies (credit) knowing that there is no entitlement to that money. However, before pursing this route, organisations should consider whether there is strong evidence to prove that the employee has acted dishonestly. Consideration should also be given to whether it would be in the public interest to pursue criminal action.

Civil recovery is another route available to organisations to recover overpayments of salary. Please contact your Local Counter Fraud Specialist (LCFS) for further details as to how we can assist you in recovering these debts.

Preventative measures

In order to take measures to prevent an overpayment occurring, it is necessary to reduce the possibilities for the occurrence in the first instance. The main reason for overpayments occurring within organisations is where managers and supervisors submit notification information late i.e. late termination notices, change of circumstances after the effective date or late submission of termination forms.

It is of utmost importance that any change notifications are submitted in a timely manner to enable the required action to be taken and ensure that over/underpayments do not arise as a consequence of information being provided late.

The organisation should have a policy in place which is designed to outline the process for recovery of any overpayments (or payment of any underpayments) and which aims to reduce the related financial risk. Furthermore, it is deemed to be best practice that all change of circumstances forms should include a statement which advises the employee that if, as a result of the change of circumstances one is over/under paid, these will be recovered/rectified in line with the policy in place.

If you require any further information regarding overpayments of salary in particular assistance with recovery or implementing preventative measure please contact your LCFS.