



25.80

Salary Overpayment Recoveries

25.80.10

July 1, 2012

Definitions

Overpayment, as used in RCW 49.48.210, means a payment of wages for a pay period that is greater than the amount earned for a pay period.

Net overpayment, for the purposes of this section, means the amount of overpayment made to an employee, less the employee share of Social Security and Medicare payroll taxes.

Involuntary wage deduction means a wage deduction the agency imposes through the procedures detailed in Subsection 25.80.50.

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Recovery methods

Debts due the state for overpayment of wages may be recovered by the agency in several ways:

- 1) The employee can agree to pay back the overpayment through a voluntary wage deduction (or, by cash or personal check);
- 2) The agency can assign the debt to a collection agency;
- 3) The agency can engage in an involuntary wage action; or
- 4) The agency can bring an action against the employee in court.

If the overpayment involves an employee covered by a collective bargaining agreement, the recovery methods in the collective bargaining agreement should be followed.

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Preliminary overpayment procedures – represented employees

When an agency determines that an employee covered by a collective bargaining agreement has been overpaid wages, the agency is to provide written notice to the employee. The notice should include the amount of the overpayment, the basis for the claim, and the rights of the employee under the collective bargaining agreement.

For a sample notice, refer to the Office of Financial Management’s Payroll Resources at website at: <http://www.ofm.wa.gov/resources/payroll.asp>.

Any dispute relating to the occurrence or amount of the overpayment shall be resolved using the procedures in the collective bargaining agreement.

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Recouping an overpayment through a payroll deduction – represented employees

If the final result of an overpayment resolution process prescribed by a collective bargaining agreement is that an overpayment has occurred, the payroll deduction to repay the overpayment shall happen over the period prescribed in the collective bargaining agreement.

The agency and employee can agree to a term that is more or less than the term of the overpayment provided in the collective bargaining agreement; however, the agency cannot deduct more than the amount provided by the agreement in any pay period without prior consent of the employee. Deductions from wages shall continue until the entire overpayment debt is retired.

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Preliminary overpayment procedures – non-represented employees

When the agency believes that a wage overpayment has occurred involving an employee not covered by a collective bargaining agreement, it should collect information and have a preliminary discussion with the employee about the overpayment. During this preliminary discussion, the agency should inform the employee about the availability of the administrative hearing process should the agency and employee be unable to agree that an overpayment has occurred.

If the agency and employee agree that an overpayment has occurred, the agency should attempt to reach agreement with the employee as to the amount of the overpayment, and how the employee will pay it back.

An agency and employee may agree to terms that are acceptable to both parties. If the employee agrees to reimburse the agency by payroll deduction, a signed written authorization must be obtained before commencing deductions from the employee's payroll. Or, an ex-employee and agency could agree that the ex-employee will reimburse the state for the overpayment by making a specific number of payments over a certain amount of time. Any repayment agreement should be memorialized in writing and signed by both parties with a copy provided to each.

If the agency and employee fail to come to an agreement or the employee begins a repayment process but does not complete it, the agency may then use a collection agency or involuntary wage deduction following the due process requirements in Subsections 25.80.40 or 25.80.50.

At this point, it is important that the agency consider the overpayment amount and estimated costs to obtain a recovery for each remedy option available. If the agency has any questions concerning legal rights and responsibilities, the questions should be directed to the agency's assigned Assistant Attorney General.

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Use of collection agencies to recoup a wage overpayment – non-represented employees

RCW 19.16.500 allows state agencies to contract with licensed collection agencies to collect a public debt on behalf of the state. However, no wage overpayment recovery can be assigned to a collection agency except under the following circumstances:

- The agency was not successful in obtaining an agreement for the recovery of an overpayment during the preliminary actions described in Subsection 25.80.30 and the employee has failed to ask for additional review of the agency's decision.
- The agency has followed the due process procedures listed below:
 - The agency has attempted to notify the employee that a debt is owed. The best method by which an agency can do this is to personally hand the employee a letter detailing the overpayment that has occurred.

- The agency has notified the employee that the debt may be turned over to a collection agency for collection if the debt is not paid and no request for review or administrative hearing is made by the employee. This statement should probably be included in a letter that the agency gives the employee.

- Thirty (30) days have elapsed since the employee was notified of the debt or decision, whichever is later.

Refer to Subsection 85.54.50.d regarding use of collection agencies.

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Overpayment recoveries – dispute resolution process – non-represented employees

This process should only be utilized when the agency has not been successful in obtaining recovery of an overpayment during the preliminary actions described in Subsection 25.80.30.

When an agency determines that an employee has been overpaid wages or salary, the agency must provide the employee with written notice that the overpayment occurred, the amount of the overpayment, and that the employee has twenty calendar days from the date he or she received the notice within which to repay the overpayment.

For a sample notice, refer to the Office of Financial Management’s Payroll Resources website at: <http://www.ofm.wa.gov/resources/payroll.asp>.

25.80.50.a

The notice can be served upon the employee in the manner in which a summons in a civil case is served (the notice is hand delivered to the employee) or it can be mailed to the employee by certified mail, return receipt requested, to his or her last known address.

Because the twenty calendar day time period does not start running until the employee “receives” the notice, even if the agency mails the notice, it is in the best interest of the agency to also hand deliver the notice to the employee. This would preclude the employee from not “receiving” the notice by not accepting delivery by mail. If the agency hands the notice to the employee, it should complete the Certificate of Service form and maintain it in the employee’s file. If the matter goes to an adjudicative hearing (see later), the Certificate will be needed to prove the employee received proper notice.

25.80.50.b Within the twenty calendar day period following receipt of the notice, the employee may request that the agency review its finding that an overpayment has occurred. The employee can do this in person or through the submission of written documentation.

If the employee does not make the review request within the twenty calendar day period, the agency may begin to recoup the overpayment through involuntary deductions from the employee's wages. Refer to Subsection 25.80.55 for restrictions on amounts to be deducted.

25.80.50.c When the agency receives an employee's request for a review within the twenty calendar day period, it shall review the overpayment assessment as well as the reasons for the employee's challenge to the overpayment. Once the agency has completed its review, it shall notify the employee in writing of the agency's decision. There is no time limit on the agency's review of the request, but the longer it takes the agency to conduct the review, the longer it will be before the issue is resolved. The review decision must be sent to the employee by certified mail, return receipt requested. The agency should also personally hand the review decision to the employee.

For a sample agency review decision, refer to the Office of Financial Management's Payroll Resources website at:
<http://www.ofm.wa.gov/resources/payroll.asp>.

25.80.50.d If the employee is dissatisfied with the agency's review decision, the employee may, as described in WAC 82-04, apply for an adjudicative proceeding under Chapter 34.05 RCW, the Administrative Procedures Act.

The application for the adjudicative proceeding must be served on and received by the agency within twenty-eight calendar days of the employee receiving the agency's review decision. The employee must serve the employer by certified mail, return receipt requested. If the employee does not apply for the adjudicative proceeding within the twenty-eight day period, the agency may begin involuntary deductions to recoup the overpayment.

If the agency determines that the cost to the agency of the adjudicative hearing exceeds the overpayment amount to be recouped, it can agree with the employee to "write off" the overpayment and, in so doing, extinguish the debt.

The agency should agree to do this only if the employee agrees to dismiss his or her request for an adjudicative hearing. If the agency reaches this agreement with the employee, it cannot then refer the debt to a collection agency.

Note: Once the adjudicatory process has begun, the agency cannot assign the debt to a collection agency unless the employee agrees. The agency cannot terminate the adjudicatory process short of “writing off” the debt.

25.80.50.e If the employee does request an adjudicative hearing after the agency review decision, the agency must wait for the ruling of the administrative law judge before proceeding with the recoupment process through involuntary deductions.

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Recouping an overpayment through a payroll deduction – non-represented employees

If an adjudicative hearing is conducted and the administrative law judge finds that an overpayment has occurred, the payroll deduction to repay the overpayment shall not exceed 5% of the employee’s disposable earnings in a pay period.

The agency and employee can agree to an amount that is more or less than the 5%; however, the agency cannot deduct more than 5% of the employee’s disposable earnings each pay period without prior consent of the employee. Deductions from wages shall continue until the entire overpayment debt is retired.

Note: Calculate disposable earnings by using the same formula that is used to determine disposable earnings for garnishments. Refer to Subsection 25.60.50.

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Recouping an overpayment through a lawsuit – non-represented employees

If the agency is unable to recoup the overpayment using the other methods listed above, the agency can sue the employee to recover the overpayment. Consult the agency’s assistant attorney general if this appears to be the only option.

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Employee transfers between state agencies – represented and non-represented employees

If an employee elects to leave employment with one state agency to accept employment with another state agency, the losing agency shall carry the balance of the overpayment receivable in the State Payroll Revolving Account, Account 035, Salaries and Fringe Benefits Receivable, General

Ledger code 1324. The losing agency shall provide notification to the employee of the current *net balance* of the overpayment, as defined in Subsection 25.80.10, and provide the employee the opportunity to renegotiate the repayment arrangement.

The gaining agency accepting a payroll deduction arrangement shall collect the overpayment as a net payroll deduction in accordance with the arrangement. There is no payroll tax effect in the gaining agency. The losing agency is responsible to file corrected payroll tax reports and recoup agency payroll tax costs.

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Employee termination from state with balance owing – represented and non-represented employees

Per RCW 49.48.200, any overpayment amount still outstanding at termination shall be deducted from the earnings of the final pay period.

If the final earnings do not permit recovery of the total amount owed, the agency may follow the requirements of Subsection 25.80.40 and turn the debt over to a collection agency.

If overpayment is discovered after the employee leaves the state's employ, the agency that overpaid the employee may, following the due process procedures in Subsection 25.80.40, turn the debt over to a collection agency.

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Interest on past due salary overpayment receivables – represented and non-represented employees

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For represented employees, a salary overpayment shall be considered past due on the later of:

- The date 30 calendar days after the end of the grievance period defined in the collective bargaining agreement which applies to the represented employee; or
- The date 30 calendar days after the employee fails to pay a scheduled payment as agreed by the employee and the agency in accordance with the collective bargaining agreement which applies to the represented employee, provided that the overpayment shall not be considered past due while a grievance is being resolved.

25.80.90.b For non-represented employees, a salary overpayment shall be considered past due on the later of:

- The date 30 calendar days after the employee fails to pay a scheduled payment as agreed in writing by the employee and the agency; or
- The date 30 calendar days after the end of the period allowed the employee in Subsection 25.80.50.d for adjudicative hearing request following an adverse agency review, provided that the overpayment shall not be considered past due while an adjudicative hearing is pending resolution.

25.80.90.c RCW 43.17.240 requires that interest of one percent per month be charged on past due receivables including receivables originating from uncollected salary overpayments. Exceptions are provided when one of the following conditions are met:

- Charging interest conflicts with the provisions of a contract, or with any other law.
- The debit is to be paid by other governmental units.
- The debt became due prior to July 28, 1991.
- The debt falls within one of the waiver exemption categories in WAC 82-06-010.

For purposes of determining when a salary overpayment is due, the debt is considered due when the employee is notified of the overpayment, notified of the agency review determination in accordance with RCW 49.48.210, or the determination by the administrative law judge in accordance with RCW 49.48.210, whichever event is later.

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Agency internal control system to prevent overpayments – represented and non-represented employees

All agencies are to maintain an effective system of internal controls to prevent salary and wage overpayments as much as possible.

All employees and all agency staff who affect the pay process in an agency including those who approve payroll, enter time, work with personnel actions, calculate payroll, produce payroll, or distribute payroll are responsible to assist in achieving an overall effective system of control to produce accurate timely payrolls.