

### **13 NCAC 12 .0305 AUTHORIZATION FOR WITHHOLDING OF WAGES**

- (a) When an authorization is required by the Act, the monetary limitations and time requirements specified in G.S. 95-25.8 of the Wage and Hour Act apply and shall not be waived.
- (b) Deductions for the convenience of the employee, as that term is used in G.S. 95-25.8, include savings plans, credit union installments, savings bonds, union or club dues, uniform rental or cleaning not required by the employer, parking and charitable contributions.
- (c) A "reasonable opportunity to withdraw," as that term is used in G.S. 95-25.8(a), shall be at least three calendar days from the date of the employer's notice of the actual amount to be deducted or the employee's written notice of withdrawal of the authorization.
- (d) In accordance with G.S. 95-25.8(d), advances of wages to the employee or to a third party at the employee's request are considered to be prepayment of wages. A dated receipt, signed by the employee, for the advance of wages, shall be sufficient to show that the advance was requested and made.
- (e) Loans from an employer to an employee that are considered to be an advance of wages pursuant to G.S. 95-25.8(d) may include credit advanced for purchasing from the employer items not primarily for the benefit of the employer and personal usage of the employer's property when designated for business use only. Personal loans from a supervisor to a subordinate or loans made by third parties to an employee with payroll deduction arrangements are not an advance of wages.
- (f) If an employer underpays wages to an employee as a result of a miscalculation of wages or other bona fide error, the employer shall pay any such underpayment owed as soon as possible upon the discovery of the error and no later than the next regularly scheduled pay day, along with accrued interest at the legal rate set forth in G.S. 24-1 from the date the wages first became due.
- (g) Authorizations for deductions that are not permitted by law are invalid. For example:
- (1) G.S. 97-21 invalidates agreements by an employee to pay any portion of a premium paid by his or her employer to a workers' compensation insurance carrier;
  - (2) 13 NCAC 07F .0101(a)(2) requires the employer to provide, at no cost to the employee, all personal protective equipment which the employee does not wear off the jobsite for use off the job.

If an employer withholds or diverts wages for purposes not permitted by law, the employer shall be in violation of G.S. 95-25.6 or G.S. 95-25.7, or both, even if the employee authorizes the withholding in writing pursuant to G.S. 95-25.8(a), because that authorization is invalid.

- (h) An employer may obtain a written authorization pursuant to G.S. 95-25.8(a) and include in the authorization a provision for deducting the balance of the unpaid amount from the employee's paycheck in the event the employee separates before the full amount has been collected. If the employer obtains such an authorization, the employer may deduct as much of the balance possible from the final paycheck without having to give the employee notice of the amount and a reasonable opportunity to withdraw his or her authorization as required by G.S. 95-25.8(a), subject to the withholding limitations of G.S. 95-25.8(b).
- (i) A wage credit in the form of tips in accordance with Rule .0303 of this Section, or the reasonable costs of meals, lodging or other facilities in accordance with Rule .0301 of this Section, is not a withholding of wages and does not require written authorization pursuant to G.S. 95-25.8(a).

*History Note: Authority G.S. 95-25.8; 95-25.11; 95-25.13; 95-25.19; Eff. November 1, 1980; Legislative Objection Lodged Eff. March 27, 1981; Amended Eff. January 1, 2007; April 1, 1999; February 1, 1982; Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*