Association of Minnesota Counties

Addressing a Payroll Error – Overpayment of Wages

At some point in your public sector HR career, you may be faced with the discovery that an employee was incorrectly overpaid. You take the responsible management of public funds and fair treatment of employees seriously, so discerning an appropriate remedy is the next step. Understanding factors that support efforts to correct the overpayment, while also keeping limitations and the complexity of related elements in mind, will position you to navigate this situation.

Voluntarily Repay Indebtedness or Pursue a Court Order

Minnesota Statutes, Section 181.79 requires that an employee voluntarily authorize, in writing, a deduction to repay indebtedness … unless the employee is held liable in a court of competent jurisdiction for the indebtedness. It should be noted this particular statute applies to employees, but not former employees or retirees. The statute speaks to recouping the value of something where there has been "faulty workmanship, loss, theft, or damage," as stated in its title. The statute also applies in instances of "any other claimed indebtedness running from employee to employer." By an employee keeping an overpayment, it could be argued the employer may claim an indebtedness has arisen. In addition, amendments to Minnesota Statutes 181.032, effective July 1, 2019 (Minnesota Wage Theft Law) require that an employer provide notice to employees in writing of any changes to deductions that may be made from an employee's pay before the date of the change taking effect. Minnesota Wage Theft Law requirements should be taken into consideration when determining an appropriate resolution when an overpayment has occurred.

Duty to Report Unlawful Use of Public Funds

Take note that Minnesota Statutes, Section 609.456, Subd. 1 requires that whenever it is discovered there is "unlawful use of public funds or property, or misuse of public funds," the employee or officer shall promptly: 1) report to law enforcement and 2) report it in writing, in detail, to the state auditor. A simple paycheck overpayment resulting from a clerical error might not rise to the level of "unlawful use or misuse." However, depending on the situation at hand, it may be advisable to consult with legal counsel, such as the County Attorney's Office, to determine whether the situation should be reported.

Although an overpayment is deemed a civil matter, certain circumstances could rise to the level of a criminal matter. Law enforcement and/or the County Attorney may need to consider whether they will take additional action, potentially against an employee. Most overpayment circumstances won't rise to the level of a criminal matter; it's much more common to uncover an accounting error or mis-keyed number combined with an unintentional oversight that allowed the mistake to be processed.

The Attorney General's Office indicates that a simple overpayment might be just that. An employee receives funds, spends them, and the employee probably trusts that their employer is paying them appropriately. Those types of "equitable considerations" should be considered as the county determines the most fair and appropriate next steps.

Attempt to Collect Incorrectly Paid Funds

The State Auditor's Office would like to see, at minimum, an attempt to recoup an erroneous payment. Issuing a formal letter asking for the money to be repaid will demonstrate appropriate action by the county to collect the overpaid funds.

The State Auditor's Office has recognized that it might not be cost effective to pursue the matter in court. However, specific circumstances should be weighed by county decision makers to determine how far to press the issue. In order for a county to take action such as a garnishment from an employee's wages, or from wages with the individual's next employer, to recoup the money, the county would need to get a judgement from a court. The formulas of how much the employer can try to have withheld from wages or bank accounts can be complicated. The action can stay on the person's record for many years and could interfere with their ability to transfer or sell property. Evaluate the specific circumstances and determine how far is appropriate to press the issue. (The 2019 threshold for Conciliation Court is a maximum of $15,000.)

The allocation of public funds is generally governed by defined parameters. When faced with an employer error in favor of the employee, one acceptable option in the private sector may be to allow the employee to simply retain the additional benefit and move on. However, in public sector local government, the primary question becomes: *What authority does the county have* to overpay an employee's wages? If it was a mistake and is now known, *what authority does the county have* to _not_ attempt to collect the overpayment? When the overpayment amounts to more than a *de minimis* sum, in most cases the county should engage in efforts to correct the overpayment and collect back the erroneously paid public funds.

Specific Statute on Recouping Wages - But Applicable to State Employees Only

Minnesota Statutes, Section 16A.17, Subd. 8A addresses recouping overpayment of wages/pension. However, local government employers should be aware that this statute applies specifically *to state employees* rather than county or city staff.

Basis to Correct an Overpayment – Rules Applicable for Counties

However, there are other rules and constraints that apply to counties, which support the county employer's efforts to address and correct an overpayment:

- The overpayment is not likely an authorized expense under the county's personnel rules and regulations, compensation section. In fact, it is probably quite contrary to the county's compensation policy language.
- If the employee is covered by a collective bargaining agreement, the non-negotiated additional payment may be a violation of the collective bargaining agreement, which could give rise to a grievance. While the employee might not complain about an error in their favor, the employee's coworkers could lodge a complaint that one individual is unfairly receiving preferential treatment and was provided additional pay that is not authorized by the negotiated collective bargaining agreement.

- To continue providing the overpayment once known, such as in the case of an incorrectly entered higher hourly rate of pay that comes into play with each paycheck, is potentially an *unfair labor practice*, at least under Minnesota Statutes, Section 179A.13, Subd. 2, (2). Arguably, to not take proper steps to collect the overpayment could also potentially be viewed as an unfair labor practice.

Resolution Options and Methods for Collecting an Overpayment

The county will need to establish an agreement for repayment, in writing, and signed by the appropriate parties whether that be the employee or their exclusive representative. For a non-represented employee, this might take the form of a letter of agreement or written repayment plan that the employer discusses directly with the employee. Keep in mind that Minnesota's Wage Theft Law requires an employer to provide notice, in writing, in advance of any new or changed deduction occurring.

When the overpaid employee is in a position covered by a collective bargaining agreement, the county should consider whether the overpayment and plan for correction should be formally discussed with the union. In some cases, depending on the issue at hand and labor relations history, a discussion with the union may suffice along with working through the repayment plan with the employee to outline the adjustments in writing so that the affected employee knows what to expect. Alternatively, the county may wish to approach the union to obtain a memorandum of agreement (MOA) addressing the error, clearly laying out the terms for correction, and then provide the employee a copy of the correction MOA along with placing a copy in the personnel file as formal record of the correction adjustments.

Implementing a correction in full, to be applied in the employee's next paycheck is one option to bring a prompt and complete resolution. However, in some cases, immediately and directly recouping an overpayment may create a financial hardship for the employee, or this approach may be determined a less appropriate resolution for other reasons. Some alternatives for correcting an overpayment and/or incorrectly stated higher wage rate include:

- Track future pay increases but withhold applying them to the employee's wage until such time as the called-for increase surpasses the overpaid wage amount.
- Correct the overpayment through a series of adjustments to be carried out over an extended timeframe. Take into account the following:
    - Undoing an overpayment over time can be complex, in particular when considering benefits tied to the dollar amount of the employee's wage (such as the value of PTO cash-out, PERA contributions, long term disability premiums, and life insurance premiums).
    - It may not be possible to back out certain payments or benefit contributions (e.g., percentage of salary contribution to a health care savings plan).
    - Consider potential issues if the mistake and/or correction period spans two tax years.
- Consider whether similarly situated employees should appropriately be paid at the higher rate or provided the additional amount. Did the error occur due to unclear contract language, inconsistent practices, or rules that the employer's payroll system or methods

simply cannot effectively administer? If so, the county may want to consider negotiating an MOA or grievance settlement agreement clarifying the desired alternative pay provision with the union. When the overpaid amount is not viewed as the primary issue, resolution may turn to ensuring other similarly situated employees are treated similarly and that a manageable provision and process are achieved.

Additional Considerations – Benefits Contributions, Impact on Pay Equity

In correcting the wage overpayment, note that benefit contributions might also need to be corrected (e.g., PERA, FICA, etc.) since they tie to wages.

While it is unlikely that a local government entity's Pay Equity Report was so tight that one individual reported as earning a lower or higher wage would throw the county out of compliance, any potential impact on the organization's compliance status should be taken into account when an error involving employee compensation is discovered. It's worth a check, and the county may need to amend its report, especially if the incorrectly paid individual was a single incumbent.

Best Practices to Reduce Potential for Payroll Errors

There are certain laws, guidance, and best practices that can help avoid future errors related to employee compensation.

- Under Minnesota's Wage Theft Law, employers must provide written notice to employees about their employment status and terms of employment, including wages, hours, and benefits. Important factors affecting employee compensation are included as part of required notices both for new hires and every time those factors will change for current employees. Employers are required to notify employees in writing of any changes to the information in the required notice, before the date the change takes effect. Providing this information to employees positions them to better understand their compensation, and be able to verify their paycheck is accurate.
- Whenever wages will be updated, for example when a general adjustment is applied, when annual open enrollment elections are implemented, or when making modifications to payroll technology systems, there are likely to be numerous changes implemented at once. Advise employees ahead of time, and consider communicating a recommendation that employees carefully review their first couple of paychecks following largescale updates. Advise employees to verify accuracy, and also provide a point of contact in case something doesn't look right, or in case of questions. It's a good practice for everyone to review their own paycheck for accuracy. Encouraging employees to take these steps can also help catch any inadvertent errors promptly.
- Implement strong checks and balances in your county's methodology for processing, review, and verification of all payroll changes and routine processing, as well as changes to employee records typically maintained in a human resource information system (HRIS). Separate the duties of those who initiate payroll changes from those who implement and/or authorize the changes. Review and verify changes as part of payroll processing, to confirm all modifications made and pay issued were properly authorized. This review and verification should be completed by someone other than the person who enters or

processes the changes in the payroll system. Establishing internal accuracy controls and auditing methods is critical to ensure sound business practices and accurate management of employee compensation and financial records.