
Recovery of Wage Overpayments by School Employers

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There have been two big changes in the last two legislative sessions regarding school districts' recovery of wage overpayments under the Education Code. In 2022, Assembly Bill (AB) 185 established Education Code section 44042.5, allowing school districts to recover wage overpayments when certain procedures were followed. In 2023, Senate Bill (SB) 141 amended Education Code section 44042.5 by limiting employers' ability to deduct overpaid wages from employees without a written agreement and establishing, among other things, a formal procedure for school employers to recover overpaid wages from school employees.

Overview of Education Code Section 44042.5

Prior to AB 185, school employers (which includes school districts, county offices of education, and charter schools) had limited recourse to recover wage overpayments from employees. If an employee did not voluntarily consent to a repayment plan, school employers had to initiate legal action to recover overpaid wages.

In 2022, Governor Newsom signed AB 185, an education trailer bill that created Education Code section 44042.5 and became effective immediately. Under AB 185, employers were allowed to recoup overpaid wages after providing notice to the employee and allowing them to respond, even if the employee failed to consent to the repayment of the overpaid wages. This was a significant change in law, making it faster and less expensive to recoup overpayments.

This was a short-lived change, however, as the Legislature amended the law less than a year later, with changes effective July 10, 2023. The 2023 version still requires notice that wage overpayment has occurred and time for the employee to respond. If the employee does not dispute the existence or amount of the overpayment, the parties can either agree upon a repayment plan or the school employer may, after 30 days, begin "installment payments through payroll deduction covering at least the same number of pay periods in which the error occurred."

If, however, the employee disputes the existence or amount of the overpayment, the school employer must "initiate a legal action and obtain a court order or a binding arbitration decision validating the claimed overpayment amount." The "binding arbitration" option is available only if it is contained in a memorandum of understanding or collective bargaining agreement with an exclusive representative (i.e., the employee's union).

If the school employee is separated from employment before full repayment, the school employer may recover any remaining overpayment by withholding the outstanding recoupment amount from any money that would be paid to the employee upon separation. Thereafter, the school employer has the right to exercise any and all legal means to recover any outstanding balance owed. However, school employers must initiate legal action within three years from the date of overpayment.

Under the law, if an agreement with the employee union was in effect on July 31, 2022, with an existing overpayment collection process that conflicts with the new law, such agreement will be controlling until the expiration or renewal of the agreement.

Takeaways

The ease in recouping wage overpayments granted to employers by AB 185 has been limited by SB 141. Public school employers should consider reviewing their collective bargaining agreements to determine whether any updates are necessary.

If you have any questions regarding Education Code section 44042.5, please contact the authors of this Client News Brief or any attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcasts](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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