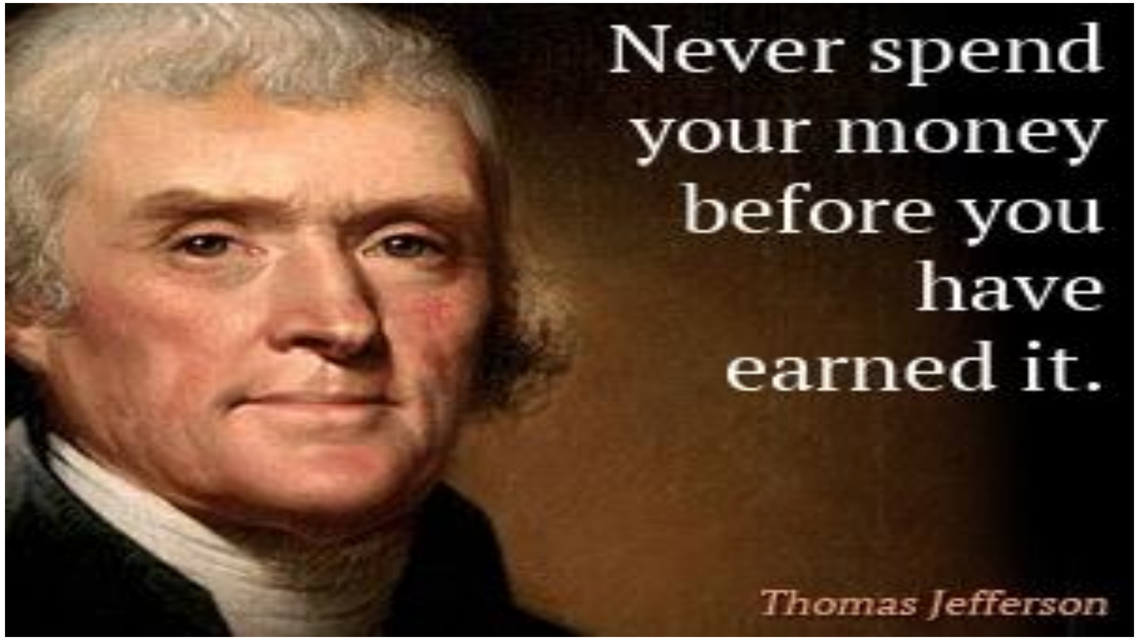
UNDERSTANDING OVERPAYMENTS AND REPAYMENTS


Never spend
your money
before you
have
earned it.
Thomas Jefferson

** Current Year **

Overpayments

Repayments

Salary Advances

** Prior Year **

Overpayments

Repayments

Salary Advances

WHY DO YOU WE HAVE OVERPAYMENTS?

Reasons for Overpayments

- Late termination notifications
- Leave of absence related errors
- Incorrect pay rates

Reasons for Overpayments

Late notification of status changes (change to FTE, exempt status change, etc.)

Incorrect bonus payments

Timesheet Errors / Missing Timesheets

- **Are there more?**

POLLING QUESTION #1

Current Year Repayment

Employee repays the overpayment during the same year

- Repays the net
- Wages are adjusted and excluded from the employee’s income in the current year.

Current Year Repayment

Example

	2022 Payments	2022 Repayment	2022 Net Payments	2022 Form W-2
Federal Wages	$25,000.00	$5,000.00	$20,000.00	$20,000.00
Social Security Wages	$25,000.00	$5,000.00	$20,000.00	$20,000.00
Medicare Wages	$25,000.00	$5,000.00	$20,000.00	$20,000.00
FIT Withheld	$5,902.50	$1,250.00	$4,652.50	$4,652.50
Soc Sec Tax Withheld	$3,100.00	$310.00	$2,790.00	$2,790.00
Medicare Tax Withheld	$725.00	$72.50	$652.50	$652.50
Net Pay	$15,272.50	$3,367.50	$11,905.00	

Current Year Repayment

- Same Quarter repayments
  - Do you collect gross or net?
  - Do we need a 941-X?
  - Will we need a W2-C?

Current Year Repayment

<u>Different Quarter-Same year</u>

- Do you collect gross or net?
- Do we need a 941-X?
- Will we need a W2-C?

Prior Year Repayment

Repayment in subsequent year

- Do you collect gross or net?
- Do we need a 941-X?
- Will we need a W2-C?

POLLING QUESTION #2

Prior Year Repayment

Federal Income Tax

- The repayment cannot be excluded from the employee's income in the year the employee repays the advance or overpayment, or for any year.

Prior Year Repayment

Federal Tax

- The employee may be able to take a deduction from income or a tax credit on his or her personal tax return for the repayment, subject to certain restrictions.

Prior Year Repayment

- The employee's federal taxable earnings and income tax reported on Form W-2 are unaffected for the year of repayment
- The employer must file Form W-2c with the SSA to correct only social security and Medicare wages and taxes, and furnish a copy to the employee
- Do not correct any Additional Medicare Tax withheld on the repaid wages on Form W-2c

Prior Year Repayment

Social Security and Medicare Taxes

- Obtain a written statement from the employee

Social Security and Medicare Refund

Repayment Letter

April 14, 2022

Mickey Mouse
123 Disney Way
Orlando, FL 12345

Hello Mickey Mouse,

Please note you are receiving this letter because {insert reason for repayment (repayment of tuition because you did not stay required time)}. We must recover these wages per company policy.

Please see the attached details regarding the regarding the repayment amount. The total amount be be repaid is (enter repayment amount due). To repay please complete the attached credit card authorization form or make a check payable to the company and send it to the following address:

Disney Wonders
123 Disney Way
Orlando, FL 12345

Please note that when repayments of wages from a prior year, we can provide you with a credit for the Social Security and Medicare taxes withheld on those wages. When doing so we will require you to sign and return the confirmation form that is attached stating that you will not attempt to claim a refund or credit of the over collected Social Security and Medicare taxes attached to this adjustment for tax year (prior year).

Social Security and Medicare Refund

Written Statement

Please return your payment with this letter having signed and dated the statement below:

I confirm that I have not made any previous claims and will not make any future claims for refund or credit of the amount of the over-collected Social Security and Medicare taxes associated with the adjustments to my taxable Social Security and Medicare earnings for tax year {prior year}.

Andrea Associate

Signature ______________________________

Date ______________________________

Prior Year Repayment

Example

	2021 Payments	2022 Payments	2022 Repayment	2021 Form W-2c	2021 Form 941-X
Federal Wages	$19,000.00	$9,000.00	$1,000.00	N/A	N/A
Social Security Wages	$19,000.00	$9,000.00	$1,000.00	($1,000.00)	($1,000.00)
Medicare Wages	$19,000.00	$9,000.00	$1,000.00	($1,000.00)	($1,000.00)
FIT Withheld	$3,450.00	$1,595.00	$0.00	N/A	N/A
Soc Sec Tax Withheld	$1,178.00	$558.00	$0.00	($62.00)	($620.00)
Medicare Tax Withheld	$275.50	$130.50	$0.00	($14.50)	($145.00)
Net Pay	$14,096.50	$6,716.50	$1,000.00		

Prior Year Repayment

Summation

Repayments made in a subsequent calendar year from the one in which the overpayment occurred

- Only recover social security and Medicare taxes depending on limit restrictions
- File Form W-2c with the Social Security Administration to correct only the Social Security and Medicare taxable wages and withholdings
- File Form 941-X to correct the social security and Medicare wages and taxes for the period during which the wages or compensation was originally paid. This is where we will get back both the employee and employer overpaid Social Security and Medicare taxes back

Federal Unemployment Tax

Employer's may be able to claim a refund of overpaid FUTA after the employee repays the advance or overpayment if, after the repayment, the employee earned less than $7,000

If employee earnings exceed $7,000 after considering the repayment, the employer is liable for the maximum amount of FUTA tax so the employer would not receive any refund

EMPLOYEE LOANS AND ADVANCES

POLLING QUESTION #3

Loans

Interest Free and Below Market Interest Rate Loan

- If the employer forgives the debt, or for any other reason the employee is not expected to repay the loan, the entire balance of the loan becomes income subject to federal income tax withholding and social security, Medicare, and FUTA taxes in the year the loan is forgiven

Loans

Interest Free and Below Market Interest Rate Loan

- Loan at an interest rate less than the current applicable federal rate (AFR)
  - The AFR is established monthly and published by the IRS each month in the Internal Revenue Bulletin
- Greater than $10,000
  - The difference between the interest paid and the interest that would be paid under the AFR is considered additional compensation to the employee (imputed interest)

Loans

Interest Free and Below Market Interest Rate Loan are subject to:

- Social Security, Medicare, and FUTA taxes
- Not subject to federal income tax withholding, **but** must be reported on the employee's Form W-2

Advances and Overpayments

- Included in income when received
- Subject to federal income tax withholding and social security, Medicare, and FUTA taxes at the time paid
- Tax treatment of repaid advances or overpayments depends on the type of tax involved and when the employee repays the employer

Federal & State Rules and Regulations on Payroll Deductions

Payroll Deductions

Wage and Hour Division Field Operations Handbook

- **Section 30c10** – Voluntary assignment of wages, loans, and advances

  (b) Loans and cash advances made by an employer may be deducted from the employee's wages even where the deduction cuts into the minimum wage or overtime due under FLSA

  (c) When employees are granted leave prior to an anniversary date or date of entitlement with the understanding it is considered an advance and the employee quits you can recoup the vacation even if it takes the payment below minimum wage

Payroll Deductions

California

California Labor Code Section 221

- Private employers are not allowed to unilaterally take back overpaid wages

- Court Case: Barnhill v. Saunders (1981)

Payroll Deductions

California

Division of Labor Standards Enforcement (DLSE) said that a deduction for previous overpayment of wages is <u>NOT</u> unlawful when:

- The employee provides permission in writing for this deduction and consent must be freely given.
- There is no deduction from the final paycheck
- After making the deduction there is no less than the minimum wage for all hours worked in the pay period

Payroll Deductions

New York

Labor Law Section 193- Deductions from wages

This law dictates that employers are prohibited from making any deductions from wages EXCEPT those which "are made in accordance with the provisions of any or any rule or regulation issued by any government agency"

Or

"Are expressly authorized in writing by the employee and are for the benefit of the employee".

Payroll Deductions

New York

Labor Law Section 193, subdivision1(c)

Permits an employer to make deductions from an employee's wages for "an overpayment of wages where such overpayment is due to a mathematical or other clerical error by the employer."

Such deductions are only permitted as follows:

(a) *Timing and Duration*

- The employer may only recover such overpayments as were made in the eight (8) weeks prior to the issuance of the notice
- The employer may make deductions to recover overpayments for a period of six (6) years from the original overpayment

Payroll Deductions

Labor Law Section 193, subdivision1(c) -continued

(b) *Frequency*

- The employer shall recover overpayments by wage deduction no more frequently than once per wage payment

(c) *Method of Recovery*

- Overpayments may be recovered through wage deduction or by separate transaction, as long as the procedures of sections 195-5.1(a) and (d) through (i) are followed

Payroll Deductions

New York

Labor Law Section 193, subdivision1(c) –continued

(d) Limitations on the Periodic Amount of Recovery

- In such cases where the entire overpayment is less than or equal to the net wages earned after other permissible deductions in the next wage payment, the employer may recover the entire amount of such overpayment in that next wage payment
- Where the recovery of an overpayment exceeds the net wages after other permissible deductions in the immediately subsequent wage payment, the recovery may not exceed 12.5% of the gross wages earned in that wage payment nor shall such deduction reduce the effective hourly wage below the statutory state minimum hourly wage

Payroll Deductions

New York

Labor Law Section 193, subdivision1(c) –continued

(e) Notice of Intent

- A notice of intent to make deductions for inadvertent overpayment of wages must at a minimum include:
  - The amount of wages overpaid, both in total and broken down by pay period
  - The total amount of the overpayment to be deducted
  - The date on which each deduction will be made and the amount to be deducted on each date
  - Provide notice to the employee that he or she may contest the overpayment, provide the date by which the employee must contest, and include the procedure by which the employee may contest the overpayment and/or terms of recovery, or provide a reference to where such procedure can be located

Payroll Deductions

New York

Labor Law Section 193, subdivision1(c) –continued

(f) Procedure

- The employer shall implement a procedure by which the employee may dispute the overpayment and terms of recovery, and/or seek a delay in the recovery of such overpayment
- The failure of an employer to afford this process to the employee will create the presumption that the contested deduction was impermissible

Payroll Deductions

Washington

Regulation WAC 296-126-030

Adjustments for Overpayments

- The employer has ninety days from the initial overpayment to detect and implement a plan with the employee to collect the overpayment
- If the overpayment is not detected within the ninety-day period, the employer cannot adjust an employee's current or future wages to recoup the overpayment
- Recouping of overpayments is limited to the ninety-day detection period

Payroll Deductions

Washington

Adjustments for Overpayments

- The employer must provide advance written notice to the employee before any adjustment is made
- The notice must include the terms under which the overpayment will be recouped
  - For example: One adjustment or a series of adjustments
- The employer must provide documentation of the overpayment to the affected employee or employees

Payroll Deductions

Washington

Adjustments for Overpayments

- The employer must identify and record all wage adjustments openly and clearly in employee payroll records
- Regardless of the provisions of this section, if appropriate, employers retain the right of private legal action to recover an overpayment from an employee

Payroll Deductions

Virginia

§ 40.1-29 of the Code of Virginia

Virginia Payment of Wage Law
The law prohibits employers from making deductions, other than for taxes or other items required by law such as garnishments, without first securing the employee's written authorization to do so

Payroll Deductions

Maryland

Labor and Employment §3–503

- An employer may not make a deduction from the wage of an employee unless the deduction is:
  - Ordered by a court of competent jurisdiction
  - Authorized expressly in writing by the employee
  - Allowed by the Commissioner because the employee has received full consideration for the deduction
  - Otherwise made in accordance with any law or any rule or regulation issued by a governmental unit.

Thank you and Happy Birthday Hampton Roads Chapter!

Linda Dailey, CPP
Linda.daileycpp@gmail.com