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**In this issue: New Rules for Employee Wage Deductions
Stop Foreign Counterfeits of Your Products**

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New Rules for Employee Wage Deductions *By Dirk Bartram*

New rules now apply for employee wage deductions in the State of Washington. The rules, which were adopted by the State of Washington Department of Labor and Industries, went into effect on January 1, 2006.

Recouping Employer Overpayments

The new rules allow private sector employers to recoup wage overpayments to an employee in limited circumstances. An overpayment occurs when an employer pays an employee for more than the agreed-upon wage rate or more than the hours actually worked.

An employer can recover an overpayment from an employee's paycheck provided the overpayment was infrequent and inadvertent. The employer has 90 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 90 day period, the employer can't adjust an employee's current or future wages to recoup the overpayment. Recouping of overpayments is limited to the 90 day detection period.

The employer must provide advance written notice to the employee before any adjustment is made, and the notice must describe the plan for recouping the overpayment. The employer must also provide documentation of the overpayment to the employee and identify and record all wage deductions openly and clearly in employee payroll records. If an employer cannot recoup an overpayment under the new rules, the employer retains whatever rights it may have to recover the overpayment in a private legal action.

These new rules do not apply to public employers, who are governed by RCW Chapter 49.48.

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Limited Right to Recover Losses From Final Paycheck

The new rules also allow the employer to make deductions for the following, subject to significant restrictions:

- Acceptance of a bad check or credit card, if it can be shown that the employee accepted the check or credit card in violation of procedures previously made known to the employee;
- Cash shortage from a cash register, drawer or portable repository if it can be shown that the employee had sole access to the cash and participated in the cash accounting at the beginning and end of the shift;
- Cash shortage, failure of customer to pay, breakage or loss of equipment if it can be shown to be caused by "a dishonest or willful act" of the employee;
- Employee theft if it can be shown that the employee intended to deprive and the employer filed a police report.

The deductions are allowed only from the worker's final paycheck and only for incidents that occurred during the final pay period. Moreover, they may not reduce the worker's final check below the applicable minimum wage. The business has the burden of proving that workers were informed of company policies regarding these deductions. The State of Washington Department of Labor and Industries recommends that the business put all such policies in writing and obtain written acknowledgement that the worker has read and understood the policies. The employer must identify and record all wage deductions openly and clearly in employee payroll records.

Where the New Rules May Be Found

The new rules permit other limited deductions from the final paycheck or during employment. Employers should not make any deduction without carefully following the rules. The rules are in WAC 296-126-025 and WAC 296-126-028, which may be found at:

<http://www.lni.wa.gov/WorkplaceRights/Rules/WAC296-126/296-126-025.asp>

<http://apps.leg.wa.gov/WAC/default.aspx?cite=296-126-028>

Stop Foreign Counterfeits of Your Products

By Dirk Bartram

Introduction

Counterfeiters have invaded U.S. markets. Software, CDs, DVDs, games, clothing, tools, parts, jewelry, toys and many other

products have all been counterfeited. The money lost by US businesses due to counterfeits or other forms of infringement is estimated to be between \$100 billion to \$250 billion per year.

Small and mid-size businesses often don't realize that US Customs can help protect them from counterfeits. This article briefly describes the protection and how to get it.

What can be protected

Any product with a U.S. registered trademark or copyright can be protected by U.S. Customs. A trademark is any symbol that identifies a particular product from a particular company. A trademark can be a word, tagline, color, design or even a sound. Trademark rights in the United States are created when the mark is actually used in commerce.

Copyrights do not serve to identify a product or service like trademarks, but are exclusive rights to "original works of authorship." Copyrights can be held in software, games, toys, music, books, movies, jewelry, fabric patterns and a vast array of other products that incorporate creativity and that are not purely functional. Copyrights protect against unauthorized reproduction and distribution of original works and arise upon creation of the work

If you record your registered trademarks and copyrights with U.S. Customs, counterfeit products that bear those trademarks or copyrights can be detained and seized. As an example, take a U.S. business that sells a toy figure registered with the U.S. Copyright Office. If the business records those copyrights with U.S. Customs, agents are authorized to detain any imports that they believe infringe the toy figure. Customs will often make such detentions based on allegations of the U.S. copyright owner. Imports can be detained before Customs makes a final decision concerning infringement and may remain in the custody of Customs for months pending the infringement decision.

How to Obtain Customs Protection

To obtain this protection, your business must get a federal registration of the trademark or copyrights it wishes to protect. Trademarks are registered with the U.S. Patent and Trademark Office, while copyrights are registered with the U.S. Copyright Office. Trademark registrations can take a year or more to get, and copyright registrations often take 4-6 months. The registration application process--especially trademark applications--can be technical and may require the assistance of an attorney experienced in intellectual property law.

After you obtain your U.S. registration, record it with the U.S. Customs Office. Instructions and forms for recording can be found at http://cbp.gov/xp/cgov/import/commercial_enforcement/ipr/. U.S. Customs will charge a fee of \$190 for each recorded trademark and service mark.

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- *Why Trade Secret Protection is Vital*
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