

JURK

Juridisk rådgivning for kvinner

Wages and holiday pay

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PREFACE

This pamphlet is published by Legal Counselling for Women (JURK). JURK is a student-run legal aid initiative that provides free legal advice to anyone who defines themselves as a woman.

JURK reserves the right to make changes to the rules described in this pamphlet, following publication.

We would like to thank the many other employees at JURK for their valuable input for this pamphlet.

The pamphlet was revised in the autumn of 2022 by JURK's employment law group.

JURK (Legal Counselling for Women) provides free legal advice to anyone who define themselves as women. You can find more information about us online: www.jurk.no

You can also call us (22 84 29 50) or visit us at our office:
Skippergata 23, 0154 Oslo.

You can also submit your case to us electronically at any time. You can do so online (www.jurk.no) → "Send oss din sak"

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1. Introduction

1.1. Purpose of the pamphlet

The aim of this pamphlet is to give a concise account of legal questions relevant to an employee's claim regarding wages and holiday pay. The purpose of the pamphlet is to make the reader aware of an employee's options if an employer does not pay out wages and holiday pay to which she believes she is entitled. In that context, the pamphlet addresses the basis on which an employer may deduct money from an employee's wages and holiday pay.

The pamphlet assumes that the failure to pay wages or holiday pay is not only the result of a misunderstanding between the employee and the employer, or errors in the payment system.

The trade union and employee representative in the workplace should be able to help the employee if she does not want to, or is unable to, recover the money herself.

Finally, we will inform you about the rules that apply if an employee is paid too much wages and holiday pay by an employer.

2. WHEN AN EMPLOYER FAILS TO PAY WAGES

2.1. The employer agrees with the wage claim

2.1.1. Introduction

Below we explain what an employee can do when she is not paid the wages to which she is entitled. In the first instance, we look at the case when an employer *does not* dispute the wage claim. When the employer does not dispute the wage claim, it means that the employer agrees that you are entitled to the unpaid wages.

2.1.2. Procedure

Section 5-2 of the Dispute Act

If wages are not paid, the employee should immediately submit a written request to the employer asking that the wages be paid without delay. Such a request should be sent by certified mail. When a letter is sent as certified, the recipient is required to pick up the letter at a post office, and the time of collection will be recorded.

Section 2 of the Interest on Overdue Payments Act

If the wages have not been paid on time, interest will accrue on the amount due until full payment is made. The amount of the overdue interest is adjusted twice a year, and is currently 9.25 percent (as of July 2022). You can calculate the late interest rate on the government's website, using the government's overdue interest rate calculator (forsinkelsesrentekalkulator).

The written claim to the employer is called a so-called "claim for payment on demand" (påkrav) and may look like this:

Date/location

Workplace AS
Address
Postal code and city

Wage claim

I hereby demand payment for work performed during the period from ... until..., at the rate of NOK, paid to the Undersigned without delay, to bank account number... – no later than within three weeks of receiving this letter.

If the amount is not paid in a timely manner, I will consider pursuing the matter through legal means. You will also be charged interest on the overdue payment and additional legal costs.

This letter is to be regarded as a claim for payment on demand and a Notice of Dispute pursuant to Section 5-2 of the Norwegian Dispute Act.

Yours truly,
Kari Holm

If you wish to receive our Claim for Payment on Demand Template, please contact JURK.

2.1.3. To the Conciliation Board

If the employer does not pay after the written Claim has been submitted, the case can be appealed to the Norwegian Conciliation Board.

The Conciliation Board is a dispute resolution agency

The Conciliation Board shall in principle function as a dispute-resolving agency by the parties agreeing on the claim. A ruling or settlement by the Conciliation Board serves as the basis for recovery against the employer. This means that the employer must pay the wages. Once you have received the confirmation on enforceable recovery of your wages, the state enforcement officer will arrange for you to receive your wages from the employer.

Appeals to the Conciliation Board

If an employee wishes to appeal the matter to the Conciliation Board, she must submit a conciliation appeal (forlikssklage) to the Board. You can find the appeal form and information on how to fill this out on the Norwegian police website. The Conciliation Board and the enforcement officer have a duty to provide you with advice on such matters.

Do conciliation proceedings cost money?

When a conciliation appeal is filed, a small fee must be paid for the case to be heard. As of September 2022, this amounted to NOK 1345 (stated on the police website). You will not get this money back if you choose to withdraw the submitted appeal, or if the Conciliation Board rejects the case.

2.2. When the employer disagrees with the wage claim

2.2.1. Introduction

Below we explain what an employee can do when she is not paid the wages to which she is entitled, in cases where the employer *objects to* the wage claim.

For example, one problem can be that the employee and employer fail to agree on whether the employee is entitled to wages and/or the amount of the wages.

2.2.2. Procedure

The employee must first file a wage claim (påkrav) against the employer as described in Point 2.1.2 above. If the wage claim is unclear, the Conciliation Board will work to resolve the conflict – compared to a situation where the wage claim is obvious to the employee and employer. Read more about the Conciliation Board in Point 2.1.3. The parties must therefore be prepared to negotiate a solution. This means that the employee risks not being paid the entire wage claim.

Negotiation strategy

It is always advantageous to be well prepared and to argue factually in the Conciliation Court. It is also important that the employee justifies her claim to the Board and tries to prove what has actually been agreed between her and the employer. It is therefore advisable that the employee brings documents with her (employment contract, time sheets and other relevant files) that can prove/substantiate the wage claim.

If there is no employment contract, one can refer to what is customary to pay in wages to employees at the same or similar workplaces in a similar position.

2.2.3. Rulings by the Conciliation Board

Sections 6-10 and 6-12 of the Dispute Act

In some cases, the Conciliation Board may be required to pass judgment if the negotiations in Conciliation Court are not successful. Judgment shall be pronounced within one week after the case has been heard.

2.2.4. Litigation before the courts

**Section 6-14 of
the Dispute Act**

The ruling rendered by the Conciliation Board may be reviewed by legal action or appeal to a district court. If the wage claim is small, a lawsuit may cost more in terms of money and energy than the employee will be able to get in terms of wages at a final ruling by the district court. There is no guarantee that a case will be upheld if you first take the case to court. It may be an advantage to seek legal assistance to get advice on what to do in such a situation.

2.3. The employer goes bankrupt

JURK does not work with bankruptcy law. We therefore only offer a brief introduction to the topic below.

In some cases, an employer may refuse to pay wages because of bankruptcy or imminent bankruptcy. In such cases, the employer does not have the money to pay wages.

This is referred to as an employer's inability to pay.

It can be difficult to know exactly when an employer is about to go bankrupt because the road to bankruptcy is a gradual process. You can obtain information about bankruptcies by contacting the Brønnøysund Register Centre.

It is important that the employee reacts quickly and tries to recover his wage claim when the employer is nearing bankruptcy. Nor should employees wait for other creditors to react or for the employer to file for bankruptcy. A creditor is one who is entitled to receive money from the employer.

**The employee
can file to
enforce
bankruptcy on
the employer**

If the employee is not paid wages, and the employer has not yet been declared bankrupt, it may be appropriate for the employee to file for bankruptcy of the employer. If you have any questions about this, you can contact the

Norwegian Advisory Council on Bankruptcy for guidance on the process.

2.3.1. The wage guarantee scheme

**Section 1 of the
Wage Guarantee
Act**

If the employer is declared bankrupt, the wages may, on certain conditions, be paid through the Wage Guarantee Scheme.

The Wage Guarantee Scheme is a government scheme designed to guarantee that employees are paid wages, holiday pay and other remuneration that are due from working for a certain period if their employer goes bankrupt. This means that if the employer cannot pay wages and holiday pay to its employees due to bankruptcy, the state must pay this, subject to certain conditions.

You can find more information about the Wage Guarantee Scheme on NAV's website.

Agencies you can contact for more information about bankruptcy:

Norwegian Advisory Council on Bankruptcy:
www.konkursradet.no

Labour Inspection Authority: www.arbeidstilsynet.no

Courts of law: www.domstol.no

The Brønnøysund Register: www.brreg.no

Norwegian acts, regulations and legal documents online (Lovdata): www.lovdata.no

Norwegian Labour and Welfare Administration (NAV):
www.nav.no

3. EMPLOYEE'S RIGHT TO HOLIDAY PAY

3.1. Introduction

- Holiday Act** In principle, employees are not entitled to wages when on vacation. Holiday pay is therefore intended to compensate for the loss of wages during the vacation and holidays. An employee is entitled to holiday pay that was earned in the preceding calendar year (the year of earning). This constitutes the basis for holiday pay. This therefore assumes that you are considered an employee pursuant to the Holiday Act.
- Section 10(2)** According to the Holiday Act, holiday pay amounts to 10.2 percent of the income paid in the year of its earning. This is a minimum requirement.
- Section 11(1)** The general rule is that holiday pay is paid on the last regular payday before the holiday. An employee may nevertheless demand payment of holiday pay at the latest one week before the beginning of the holiday.
- Section 11(3)** If the employee plans to quit her job, she is entitled to all earned holiday pay, which is to be paid on the last regular pay day before resignation. In some cases, however, the employee and employer agree that holiday pay will be paid the following year.
- Section 11(9)** You are allowed to waive these rules for payment within the terms of a collective wage agreement. In many companies, holiday pay is distributed in June, and some employers pay more than the 10.2% basis for holiday pay.

3.2. When the employer fails to pay holiday pay

Demand claims for holiday pay

If the employer has not paid holiday pay, you can claim it in the same way as you would claim outstanding wages. Read about the collection process under point 2. The claim will then be a claim for holiday pay instead of a claim for wages.

If the employee is not paid holiday pay after submitting the claim, she may contact the Labour Inspection Authority or seek legal guidance before the case is brought before the Conciliation Board. This applies especially if the employee is uncertain about her rights under the Holiday Act.

4. DEDUCTIONS FROM A WORKERS' WAGES AND HOLIDAY PAY

4.1. Introduction

Section 14-15 of the Working Environment Act

There are times when an employer thinks the employee owes the employer money. In such cases, the employer may wish to deduct this money from the employee's wages.

The general rule, however, is that an employer cannot make deductions from an employee's wages and holiday pay.

The main reason for this is the employee's need for predictability. Employees must be able to anticipate their income in order to pay necessary expenses.

Pursuant to Section 14-15(3) of the Working Environment Act, an employer may nevertheless make deductions from an employee's wages and holiday pay in

certain situations. You can read more about these situations below.

If the employer has a legitimate claim but still does not meet the conditions for making deductions from an employee's wages, the employer must collect the money by other means. You can read more about this under point 5.

4.2. When can an employer make deductions from wages and holiday pay?

When the law allows deductions

a) An employer may make deductions from an employee's wages and holiday pay if an act or regulation provides for this. The most practical example of this is tax deductions. Child support is another example.

Deductible to occupational pension schemes

b) The employer may deduct the employee's obligatory contribution to occupational pension schemes, including the Company Pension Schemes Act, the Defined Contribution Pension Act and public occupational pension schemes.

Written agreement

c) If a written agreement has been drawn up in advance between the employee and the employer agreeing that deductions may be made, the employer may make deductions from wages. An oral agreement is not enough. Before a deduction can be made, the employee must have consented by agreement for the specific deduction to be made. Some employment contracts include a general right to make such deductions. A general provision in an employment contract is unlikely to give the employer the right to make deductions from wages.

Trade union dues etc.

d) Union dues may be deducted from the wages if provided for in a collective bargaining agreement. This includes payments to collective insurance funds linked to trade union membership, or contributions to the Information and Development Fund, or to the Low-Income Fund.

The employee is responsible for compensation and acknowledges this

e) If the employee is responsible for the company's losses, the employer may in some cases make deductions from wages to cover such a loss.

In that case, the employee must have caused the loss by gross negligence or wilful action. This will not include cases where the employee has only been careless. The employee must have intentionally inflicted the loss or obviously acted irresponsibly. In other words, it will require a high degree of negligence to deduct from an employee's wages or holiday pay for such actions.

Written acknowledgment

The employee must also either have acknowledged liability in writing, wrongfully resigned from her position, or there must be a court ruling on liability. Acknowledging in writing means admitting in writing that you are liable for damages.

In other words, employees may be liable for damages to their employer without the employer necessarily having the right to deduct wages and holiday pay.

The employee resigns from her position without being entitled to do so

If the employee unlawfully resigns from her position, deductions may also be made from the employee's wages and holiday pay. In practice, the fact that the employee unlawfully resigns from her position means that she leaves before the dismissal period has expired. The employer may then deduct from wages and holiday pay due to the extra costs related to the unlawful resignation. However, expenses related to advertising the position are excluded from this, because the employer would nevertheless have incurred these expenses when an employee leaves at the end of the designated dismissal period.

Rulings on liability for damages

If a court of law etc rules that the employee is liable for damages to the employer, the employer may make deductions from wages for that purpose.

Discussions with employees and union representatives

Before making deductions from wages due to the circumstances mentioned under (e), the employer must discuss the reasons for the deduction with the employee and employee representatives unless the employee does not wish to do so.

Section 14-15(5) of the Working Environment Act

Strike or lock-out

f) An employee will sometimes receive regular pay even though she has been absent from work due to strike (walkout) or lock-out. The employer can then make

deductions from wages if it has not been possible to take the absence into account when paying wages.

4.3. Limits on the amount of a deduction

**Section 14-15(4)
of the Working
Environment
Act**

There are limits to how much an employer may deduct from an employee's wages and holiday pay pursuant to letter (c), (e) and (f). The employee must have enough money to cover reasonable living expenses for herself and her family. For example, some workers have high expenses due to childcare/dependency obligations and loans, so the deduction must be spread over several months. A discretionary and individual assessment of the employee's life situation must be made before deductions are made from wages and/or holiday pay.

4.4. Informing the employee that a deduction has been made

**Section 14-15(6)
of the Working
Environment
Act**

The employer must provide written information about any deductions made from an employee's wages and holiday pay upon payment, or immediately thereafter.

4.5. How to react to illegal deductions

If the employee believes a deduction from wages is illegal or has been notified of deductions from wages, she should contact the Labour Inspection Authority, a union representative, her trade union or a lawyer.

You can also contact JURK if you believe an illegal deduction has been made from your wages.

4.6. Consequences of illegal deductions

If the employer violates the rules on wage deductions, the employer may be held liable pursuant to Section 19-1 of the Working Environment Act.

5. REPAYMENT OF OVERPAID WAGES AND HOLIDAY PAY

5.1. Introduction

If the employee has been paid more wages or holiday pay than she is entitled to, and the employer cannot make a deduction pursuant to Section 14-15 of the Working Environment Act, the employee may still have to repay the amount in accordance with other rules.

The rules governing repayment are not stated in the Act, but follow from long-standing legal practice in the courts. A comprehensive assessment must be made as to whether the employee should repay the amount or whether she can keep it. A solution is decided after an assessment of all arguments for and against.

JURK offers advice below on relevant issues when assessing whether the employee must repay or not.

5.2. Factors for and against repayment

5.2.1. Knowledge of the incorrect payment

If an employee understood or should have understood that the payment was due to an error, this would indicate that the employer can claim repayment. If, on the other hand, the employer understood or should have understood that the payment was due to an error, this will speak against repayment.

5.2.2. Payment reservations

If the employee is uncertain whether the payment is correct or not, she may make reservation against repayment for a specific payment. This would be an indication that the employer can claim the money repaid if it turns out that the amount was incorrectly paid.

It should be stated in writing, e.g. on a payslip, that the employer will claim the amount repaid if it turns out that the amount is incorrect.

5.2.3. The amount of the payment

If the amount is well above what the employee is normally paid in wages, this may be a factor in favour of repayment. The reason for this is that the employee should then have understood that it was an incorrect payment and that the money can be reclaimed.

Conversely, it is more difficult for an employee to understand that the payment was incorrect when the amounts are small. This also applies when small amounts have been incorrectly paid over a long period of time, even though they together constitute a larger amount.

5.2.4. Who is to blame for the error?

If it is primarily the employer who can be blamed for having paid too much in wages and/or holiday pay, this is a factor that would indicate that the incorrectly paid amount should not be repaid.

If the error can primarily be blamed on the employee, the opposite may be the result. This may be the case e.g. if

the incorrect payment is due to misunderstandings related to the employee's completion of time sheets, so that more hours are reported than she has actually worked.

5.2.5. Professionalism of the parties

The employer is the professional party in an employment relationship. The employer is also the one who in most cases is responsible for the wage calculation system and has knowledge of what the employee should receive in wages. It may then be most reasonable for the employer to be blamed for the error that has occurred.

5.2.6. The amount has been used up

Wages and holiday pay are mainly used up over time, and there will therefore often be little or nothing left of the incorrectly paid amount after a certain period of time has passed. If the incorrectly paid money is used on living expenses, this argues for allowing the employee to keep the amount.

5.2.7. The time aspect and the employee's adjustment

If a long time has elapsed from when the erroneous payment occurred until it was discovered, this may indicate that the incorrectly paid amount should not be repaid. The reason here is primarily that the employee has often complied with what is written in the salary account.

If a long time has elapsed from when the employer discovered or should have discovered the error until the employer demands repayment of the incorrectly paid amount, this would indicate that the amount does not need to be repaid.

5.3. Statute of limitations

If a long time has elapsed from when the erroneous payment occurred until the employer demands repayment, the claim may have become obsolete. The fact that a monetary claim expires means that the employer cannot demand repayment.

Main rule of the three-year deadline

The general rule is that an employer cannot claim repayment of incorrectly paid wages or holiday pay after three years have elapsed since repayment could have been claimed at the earliest. This follows from Sections 2 and 3(1) of the Limitation Period for Claims Act.

JURK would note that in a few cases the employer may claim repayment of incorrectly paid amounts even if more than three years have elapsed. This follows from Sections 10 of the Limitation Period for Claims Act.

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