

SALARY AND WAGE OVERPAYMENT RECOVERY

Legal Requirements:

Under subsection 78-12 (e), HRS, the disbursing officer must determine if there has been an overpayment of salary or wages. If there has been an overpayment, the disbursing officer must notify the employee in writing. The employee has a right to a hearing to determine if such indebtedness is owed to the State. The employee must request a hearing within 15 calendar days, as required by subsection 78-12 (c), after receipt of the notice of the indebtedness. If the employee fails to respond, the employee is deemed to have waived the right to a hearing.

Under subsection 78-12 (f), HRS, the disbursing officer must commence immediate recovery of the indebtedness regardless of whether the employee has filed a grievance or request for a hearing to contest the indebtedness.

Under subsection 78-12 (g), HRS, if the determination of indebtedness is contested and the indebtedness was found to be incorrect, any moneys paid or deducted under subsection (e) in excess of the correct amount will be refunded with interest at the rate required under Section 103-10, HRS.

Under subsection 78-12 (h), HRS, if an employee is entitled to contest the determination of indebtedness under a collective bargaining grievance procedure, that procedure shall be used in lieu of a hearing under subsection 78-12(e), HRS. Overpayment recovery procedures contained in a collective bargaining agreement may not be inconsistent with the procedures contained in subsections 78-12(f) and (g), HRS.

Policy:

1. The disbursing officer must begin immediate recovery of indebtedness. Amount to be recovered from "any subsequent periodic payment normally due the employee" is determined by the amount of the indebtedness.
 - i) If the indebtedness is less than or equal to \$1,000, the minimum amount to be initially deducted is \$25 per pay period. The employer and employee may subsequently agree to a greater deduction amount per pay period.
 - ii) If the indebtedness is greater than \$1,000, the minimum amount to be initially deducted is \$100 per pay period. The maximum amount to be deducted is one-quarter of the salary, wages, or compensation due the employee per pay period. The employer and employee may subsequently agree to an amount greater than \$100 but no greater than one-quarter of the employee's salary, wages, and or compensation per pay period.

2. The disbursing officer must provide written notification to the employee of the indebtedness due the State and, if applicable, a copy of the notification should be sent to the appropriate union.
 - i) The employee and appointing authority may then agree to offset any remaining amount of indebtedness by applying the current value of appropriate leave or compensatory time credits posted in the employee's respective accounts as balances that would otherwise be payable in cash upon separation from service.
3. The employing department must schedule a hearing with its designated personnel who serve as salary overpayment hearings officers if the employee has requested a hearing within the fifteen calendar days after receipt of notice. If it is found that the indebtedness is incorrect, any moneys repaid or deducted in excess of the correct amount will be promptly refunded with interest to be calculated as specified by Section 103-10, HRS. For an employee who is entitled to contest the determination of indebtedness under a collective bargaining grievance procedure, the employee shall use the grievance procedure in lieu of a hearing and shall be subject to timelines noted in the grievance procedure.

Procedures:

The General Statutory Deduction Procedures described in Section 320: Statutory Deductions of Volume III, State of Hawaii Accounting Manual, are to be followed in processing and submitting the forms for the overpayment deduction. Additional procedures are detailed below:

1. Initiating Immediate Overpayment Recovery

- i) If the overpayment (OP) is less than or equal to \$1,000 and
 - (a) the OP is for the current calendar year and can be recovered in full by the last pay day of the calendar year, the department, upon agreement with the employee, may deduct any amount up to the total amount of the indebtedness on the next regular/fringe Payroll Change Schedule, SAFORM D-94, with any remaining amounts to be deducted on subsequent SAFORM D-94s. The minimum amount to be initially deducted is \$25 per pay period.
 - (b) the OP is for the current calendar year and cannot be recovered in full by the last pay day of the calendar year or the OP is for the prior calendar year, the department is to submit a Salary Assignment/Cancellation, SAFORM D-60 (Exhibit E) with Assignment Type Code = "OP" (Salary Overpayment Recovery) to initiate the periodic payroll deductions. The process triggers the Payroll System to generate checks payable to the department. The checks are forwarded to the departments for deposit into a Trust

Account. Departments are to accumulate all of the periodic deductions until the full amount of the overpayment is recovered. The minimum amount to be deducted is \$25 per pay period.

- ii) If the OP is greater than \$1,000, the department is to submit a SAFORM D-60 (Exhibit F) with Assignment Type Code = "OP" (Salary Overpayment Recovery) to deduct the amount agreed upon by the employer and employee until the OP is repaid in full. The minimum amount to be initially deducted is established by law at \$100 per pay period. (See 1 (i) (b) for explanation of deduction process.)

2. Notification of Salary or Wage Overpayment

- i) The following documents should be given to the employee in person. If the documents cannot be given to the employee in person, the documents should be mailed to the employee's residence by certified mail. The employee's Union should also be provided with copies of Exhibit A-1 or A-2 and Exhibit B.

(a) Exhibit A-1	" <u>Letter of Notification</u> " which informs the employee of the overpayment which is less than or equal to \$1,000 and the employee's right to request a hearing under Chapter 91, HRS, or to file a grievance. The minimum amount to be deducted is \$25 per pay day unless a higher amount is subsequently negotiated with the employee.
(b) Exhibit A-2	" <u>Letter of Notification</u> " which informs the employee of the overpayment which is greater than \$1,000 and the employee's right to request a hearing under Chapter 91, HRS, or to file a grievance. The minimum amount to be deducted is \$100 per pay day unless a higher amount is subsequently negotiated with the employee.
(c) Exhibit B	" <u>Overpayment Worksheet</u> " which shows the details of the overpayment.
(d) Exhibit C	" <u>Response to Salary or Wage Overpayment Notice</u> " which allows the employee to request a hearing or provide notice that the employee will file a grievance. This notice also allows the employee to request that vacation or compensatory time credits be used to offset the overpayment. The department should complete the "TO", "FROM", and "SUBJECT", and amount of the overpayment for the employee.

- ii) If these documents are mailed to the employee, they should be sent by Certified Mail. The responsible department officer should fill out Exhibit D titled, "Delivery Certification or 15-Day Notification Period" to identify the method the documents were delivered to the employee, the time of delivery, and the calculation of the 15 calendar day notice period.
- iii) The start of the 15 calendar days in which the employee must submit the "Response to Salary or Wage Overpayment Notice" begins with the next day after the date the employee was either handed the above documents in person or received delivery of the documents by mail as shown on the Certificate of Delivery.
- iv) Do not count the day of delivery as the first day of the 15 calendar day notice period. The end of the 15 calendar day notice period will be the close of business on the 15th calendar day. If, however, the 15th calendar day falls on a state holiday or a weekend, the end of the 15 calendar day notice period will be the close of business on the next working day.

3. Response to Salary or Wage Overpayment Notification

- i) If the department does not receive the "Response to Salary or Wage Overpayment Notification" from the employee after the end of the 15 calendar day notice period, the department shall continue to withhold the amount currently being withheld from the employee's salary, wages, or compensation due to the employee until the indebtedness is repaid in full.
- ii) If the department receives the "Response to Salary or Wage Overpayment Notification" prior to the end of the 15 calendar day notice period and the employee requests a hearing, the department should schedule a hearing with its designated salary overpayment hearings officer. The employee should be given notice of the hearing in writing, pursuant to Chapter 91 of the HRS. The amount currently being withheld from the employee's salary, wages, or compensation shall continue to be withheld until the decision of the hearing is rendered. If it is determined that an overpayment amount is still owed, the employer and employee shall then agree to an amount to be deducted per pay period but not less than the minimum established. If an agreement cannot be reached, the amount deducted, in the case of indebtedness equal to or greater than \$1,000, is one-quarter of the salary, wages, or compensation due to the employee.
- iii) If the department receives the "Response to Salary or Wage Overpayment Notification" prior to the end of the 15 calendar day notice period and the employee indicates s/he will file a grievance, inform the employee that the amount currently being withheld from the employee's salary, wages, or compensation shall continue to be withheld until the grievance decision is rendered. If it is determined that an overpayment amount is still owed, the employer and employee shall then agree to an amount to be deducted per pay

period but not less than the minimums established. If an agreement cannot be reached, the amount deducted, in the case of indebtedness equal to or greater than \$1,000, is one-quarter of the salary, wages, or compensation due to the employee.

- iv) If the department receives the "Response to Salary or Wage Overpayment Notification" prior to the end of the 15 calendar day notice period and the employee requests a change in the method of reimbursement or a change in the amount being withheld, the department may:
 - (a) Accept immediate and full repayment of the OP balance by cash or check payable to Director of Finance, State of Hawaii.
 - (b) Come to an agreement with the employee on a greater dollar amount to be deducted from subsequent paychecks. (Note: For indebtedness less than or equal to \$1,000, the amount to be deducted shall be greater than the \$25 per pay period currently being deducted. For indebtedness greater than \$1,000, the amount to be deducted shall be greater than the \$100 per pay period currently being deducted.)
 - (c) Come to an agreement to offset the remaining amount of indebtedness by applying the current value of appropriate leave or compensatory time credits posted in the employee's respective accounts as balances that would otherwise be payable in cash upon separation from service. Exhibit G titled, "Agreement to Apply Vacation and/or Compensatory Time Off Credits Value to Repay Salary or Wage Overpayment" should be completed by the department and signed by the employee.

4. Processing of Overpayments Recovered

- i) Full Payment by Cash or Check
 - (a) If the employee pays the remaining balance by cash or check (payable to Director of Finance, State of Hawaii), prepare a Treasury Deposit Receipt, SAFORM B-13 and Notification for Payroll Adjustment, SAFORM D-70 (and Employer's Share of Contribution Adjustment Sheet, SAFORM D-71, if applicable). Submit these forms with the cash or check to DAGS, Central Payroll.
- ii) Deductions through Salary Assignment/Cancellation, SAFORM D-60
 - (a) Refer to vendor code listing for each department's pre-assigned OP code. If a department does not have a pre-assigned code, a written request must be submitted to the Comptroller stating the purpose of the account is to receive and account for periodic repayments of salary overpayments.

- (b) Upon full recovery of the overpayment, the department prepares a Summary Warrant Voucher to generate a check from the Trust Account payable to the Director of Finance, State of Hawaii for the total amount of the overpayment. The department also prepares a SAFORM B-13 and SAFORM D-70 (and SAFORM D-71, if applicable) and submits these forms with the check to Central Payroll.
- iii) Deductions through Payroll Change Schedule, SAFORM D-94 (for current salary or wage overpayment recovered in the same calendar year)
 - (a) Deductions through the Payroll Change Schedule, SAFORM D-94 are adjustments to the current year-to-date earnings, therefore no checks are generated or need to be processed. The SAFORM B-13, SAFORM D-70, and SAFORM D-71 do not have to be prepared by the departments.
 - (b) Each department is responsible for monitoring the repayments of its employees to determine when the full amount is recovered.
- iv) Application of appropriate leave or compensatory time credits to pay off overpayment.
 - (a) Departmental personnel staff obtains from the employee a completed and signed "Agreement to Apply Vacation and/or Compensatory Time Off Credits Value to Repay Salary or Wage Overpayment" (Exhibit G)
 - (b) Prepare a summary warrant voucher (MBP 462 or SAForm C-08) made payable to the Director of Finance for the gross amount of the employee designated vacation credits and/or compensatory time credits to be used. A complete set of the summary warrant voucher should be sent to the Employees Retirement System.
 - (c) Report the gross amount of the accumulated vacation and/or compensatory time credits on the payroll change schedule as "wages in kind" coded type "T".
 - (d) Prepare a payroll adjustment "Code 3" on the "Notification of Payroll Adjustment" (State Accounting Form D-70) to withhold retirement contributions from those employees who are contributory members of the Employees' Retirement System. This adjustment must be input in the same payroll period that the "wages in kind" is reported.
 - (e) Upon receipt of the Director of Finance check, follow the current overpayment recovery procedures:

- 1) Prepare a treasury deposit receipt (State Accounting Form B-13) to deposit the check into the payroll clearing account.
 - 2) Prepare a "Notification of Payroll Adjustment" (State Accounting Form D-70) to record the repayment of the salary overpayment.
 - 3) Send the treasury deposit slip, the payroll adjustment form, and if applicable, the "Employer's Share of Contribution Adjustment Sheet" (State Accounting Form D-71) to the Central Payroll Section of the DAGS' Accounting Division.
5. In those cases where an employee terminates employment and transfers to another department, the losing department must notify the receiving department of the existing salary overpayment which must be deducted from the employee's pay.
6. In those cases where an employee terminates State employment:
- a) Any vacation pay or compensatory time pay due the employee should be adjusted by deducting the remaining overpayment balance prior to any vacation/compensatory time payment to the terminated employee. Any remaining salary overpayment balance should be immediately collected.
 - b) If no vacation pay or compensatory time pay is due the employee, the remaining salary overpayment balance should be immediately collected.
 - c) If the former employee refuses to pay, the department should contact the Department of Attorney General's Collection Unit to begin the collection process at the former employee's new employment.