

# Employee Separation Issues for Business Managers

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## Employee Separation Issues

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- 1. Separation Checklist**
- 2. Wage Setoff**
- 3. Records Retention**

## Separation Checklist

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### Handout:

### #1 – Internal documentation



## Separation Checklist

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### #2 – Leave pay due

- PTO: Paid
- Vacation: Paid
- Sick leave: Not Paid

# Separation Checklist

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## Wage Payment Act

“If an employee establishes a claim and secures judgment on the claim, such employee **shall be** entitled to recover (a) the **full amount of the judgment and all costs of such suit** and (b) if such employee has employed an attorney in the case, an amount for **attorney's fees** assessed by the court, which fees shall not be less than twenty-five percent of the unpaid wages.” 48-1231

# Separation Checklist

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## COBRA

- Employer must notify plan administrator within 30 days of termination**

## Wage Setoff

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- 1. Can't unilaterally deduct from wages**
- 2. Need authority**

## Wage Setoff

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### **Authority: NWPCA**

Employer may “deduct, withhold, or divert a portion of an employee’s wages **only when** the employer is **required to or may do so by state or federal law** or by order of a court . . . or **by written agreement with the employee**”

# Wage Setoff

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## Authority: Written Agmt

- Contract?
- Itemized written document?

# Wage Setoff

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## Authority: Written Agmt

### ·AGREEMENT·TO·SETOFF·WAGES¶

→ ¶  
 → THIS AGREEMENT is entered into by and between \_\_\_\_\_ ("Employee")  
 and \_\_\_\_\_ Public Schools ("Employer"). In consideration of the agreements contained herein,  
 Employee and Employer agree as follows:¶

# Wage Setoff

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## Authority: FLSA

### - FLSA2004-19NA

- Recouping overpaid money
- Fire dept paid 75 hours vacation (only 32 hours owed)

## FLSA2004-19NA

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- “where an employer makes a loan or an advance of wages to an employee, the principal may be deducted from the employee’s earnings even if such deduction cuts into the minimum wage or overtime pay due the employee under the FLSA.”

# Wage Setoff

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## Authority: FLSA

### - FLSA2006-7

- Employer has two policies:
  - ❖ Exempt
  - ❖ Non-exempt

## FLSA2006-7

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- Exempt
  - ✓ Policy requires reimbursement for damage or loss of company equipment
  - ✓ Automatic deduction from salaries
  - ✓ WHD: fails the “salary basis” test

## FLSA2006-7

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### ○ Non- Exempt

- ✓ Policy requires deduction for damage or loss of company equipment
- ✓ Automatic deduction from wages
- ✓ WHD: allowed, so long as paid at least minimum wage and overtime

## Wage Setoff

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### Authority: Uniforms

***Klinghoffer*: docking must not put ee below min. wage**



## Records Retention

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**How long do you need to keep records?**



## Records Retention

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### **Schedule 10:**

- **Salary Report: 3 years**
- **Contracted salary of all persons**

## Records Retention

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### Schedule 10 :

- Retirement pay info: 5 years
  - Reports submitted to NPERS detailing employee's withholding
  - Deduction Remittance Reports
  - Adjustment Remittance Reports

## Records Retention

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### Schedule 24 :

- Defined benefit plan: 50 years after termination of employment
  - Defined benefit retirement plans

## Records Retention

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### Schedule 24:

- Direct Deposit Agreement: 4 years after termination of employment

## Records Retention

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### Schedule 24:

- Employee Payroll Deduction Agreement: 5 years after termination of employment

## Records Retention

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### Schedule 24:

- Employment History File: 50 years (D.B. plan); 10 years (D.C. plan); 10 years (no retirement)

## Records Retention

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### Schedule 24:

- Garnishments: 2 years after settlement of debts or termination of employment

## Records Retention

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### Schedule 24:

- Form I-9 and Employment Verification: 3 years after date of hire or 1 year after date of termination

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