

1 **WAGE WITHHOLDING FOR EMPLOYEE**
2 **CONTRIBUTIONS**

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Wayne L. Niederhauser**

6 House Sponsor: David Clark

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies provisions related to the payment of wages to address when wages can
11 be withheld or diverted.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ permits the automatic withholding of wages as a contribution to a retirement plan if
- 15 certain conditions are met; and
- 16 ▶ makes technical and conforming changes.

17 **Monies Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **34-28-3**, as last amended by Laws of Utah 1998, Chapter 395

25 *Be it enacted by the Legislature of the state of Utah:*

26 Section 1. Section **34-28-3** is amended to read:

27 **34-28-3. Regular paydays -- Currency or negotiable checks required -- Deposit in**
28 **financial institution -- Statement of total deductions -- Unlawful withholding or diversion**
29 **of wages.**

30 (1) (a) An employer shall pay the wages earned by an employee at regular intervals, but
31 in periods no longer than semimonthly on days to be designated in advance by the employer as
32 the regular payday.

33 (b) An employer shall pay for services rendered during ~~each~~ a pay period within ten
34 days after the close of that pay period.

35 (c) If a payday falls on a Saturday, Sunday, or legal holiday, an employer shall pay
36 wages earned during the pay period on the day preceding the Saturday, Sunday, or legal
37 holiday.

38 (d) If an employer hires ~~employees~~ an employee on a yearly salary basis, the employer
39 may pay ~~an~~ the employee on a monthly basis by paying on or before the seventh of the month
40 following the month for which services ~~were~~ are rendered.

41 (e) ~~All wages~~ Wages shall be paid in full to ~~the~~ an employee:

42 (i) in lawful money of the United States;

43 (ii) by ~~checks or drafts~~ a check or draft on a depository institution, as defined in
44 Section 7-1-103, that is convertible into cash on demand at full face value; or

45 (iii) by electronic transfer to the depository institution designated by the employee.

46 (2) ~~A person, firm, corporation, agent, or officer~~ An employer may not issue in
47 payment of wages due or as an advance on wages to be earned for services performed or to be
48 performed within this state ~~any~~ an order, check, or draft unless:

49 (a) it is negotiable and payable in cash, on demand, without discount, at a depository
50 institution; and

51 (b) the name and address of the depository institution appears on the instrument.

52 (3) (a) Except as provided in Subsection (3)(b), an employee may refuse to have the
53 employee's wages deposited by electronic transfer under Subsection (1)(e)(iii) by filing a written
54 request with the employer.

55 (b) An employee may not refuse to have the employee's wages deposited by electronic
56 transfer under Subsection (3)(a) if:

57 (i) for the calendar year preceding the ~~pay-period~~ pay period for which the employee

58 is being paid, the employer's federal employment tax deposits [~~were~~] are equal to or in excess of
59 \$250,000; and

60 (ii) at least two-thirds of the employees of the employer have their wages deposited by
61 electronic transfer.

62 (c) An employer may not designate a particular depository institution for the exclusive
63 payment or deposit of a check or draft for wages.

64 (4) If [~~any~~] a deduction is made from the wages paid, the employer shall, on each
65 regular payday, furnish the employee with a statement showing the total amount of each
66 deduction.

67 (5) [~~It is unlawful for an~~] An employer [~~to~~] may not withhold or divert part of an
68 employee's wages unless:

69 (a) the employer is required to withhold or divert the wages by:

70 (i) court order; or

71 (ii) state or federal law;

72 (b) the employee expressly authorizes the deduction in writing; [~~or~~]

73 (c) the employer presents evidence that in the opinion of [~~the~~] a hearing officer or [~~the~~]
74 an administrative law judge would warrant an offset[-]; or

75 (d) subject to Subsection (7), the employer withholds or diverts the wages:

76 (i) as a contribution of the employee under a contract or plan that is:

77 (A) described in Section 401(k), 403(b), 408, 408A, or 457, Internal Revenue Code;

78 and

79 (B) established by the employer; and

80 (ii) the contract or plan described in Subsection (5)(d)(i) provides that an employee's
81 compensation is reduced by a specified contribution:

82 (A) under the contract or plan; and

83 (B) that is made for the employee unless the employee affirmatively elects:

84 (I) to not have a reduction made as a contribution by the employee under the contract
85 or plan; or

86 (II) to have a different amount be contributed by the employee under the contract or
87 plan.

88 (6) [~~It is unlawful for an employer to~~] An employer may not require an employee to
89 rebate, refund, offset, or return [~~any~~] a part of the wage, salary, or compensation to be paid to
90 the employee except as provided in Subsection (5).

91 (7) (a) An employer shall notify an employee in writing of the right to make an election
92 under Subsection (5)(d).

93 (b) An employee may make an election described in Subsection (5)(d) at any time by
94 providing the employer written notice of the election.

95 (c) An employer shall modify or terminate the withholding or diversion described in
96 Subsection (5)(d) beginning with a pay period that begins no later than 30 days following the
97 day on which the employee provides the employer the written notice described in Subsection
98 (7)(b).

99 [~~(7)~~] (8) An employer is not prohibited from pursuing legitimate claims of damages,
100 offsets, or recoupments in a civil action against an employee.