Office of the Commissioner
Department of Employee Relations

PERSL #1354

MEMO

DATE: May 14, 1999

TO: Agency Heads
Personnel Directors/Designees
Accounting Coordinators

FROM: Laurie Hansen, SEMA4 HR Manager
Employee Relations

Donald C. Smith, Acting Asst Commissioner
Finance

RE: Collection of Overpayments Made to State Employees--(REVISION to PERSL#1351)

Attached is a revised copy of the statewide policy and procedure, *Collection of Overpayments*. This policy and procedure has a new title along with additional procedures and points of clarification. The new policy differs from the old policy in the following areas:

- Workers compensation overpayments are not included in this policy and procedure. See Operating Policy and Procedure PAY0027 for correction of workers compensation overpayments.
- The collection of overpayments is limited by the garnishment rules outlined in M.S. 571.922 unless there is a signed repayment schedule to the contrary or the collection is coming from the proceeds of a severance, vacation or compensatory balance payoff.
- Agencies must immediately consult with the Employment Law Division of the Attorney General's Office and the DOER, Labor Relations Bureau if they receive notice from an employee for a contested case hearing. All three parties will be involved in deciding how to pursue the overpayment. It is critical that this consultation happens immediately upon the receipt of the notice from the employee. Otherwise, the state could forfeit their ability to collect.

Additional sample forms and a flow chart are included to aide you through the process. Feel free to modify the sample forms to fit your needs. Sample letter A is used to notify the employee of the overpayment. The purpose of this form is to communicate with the employee about the overpayment and attempt to get their consent to re-payment without having to send the setoff letter. Sample letter B is used to outline the specific terms of a repayment schedule. The purpose of this form is to list specific details regarding the begin date and the amount of funds that will be taken from the employees paycheck. The completed form must contain the employee signature. Use the flow chart as an aide to understanding the process.

If you have questions about this revised policy, you may contact Laurie Hansen, at 651/259-3620 or Don Smith, at 651/296-4061.

Collection of Overpayments

Objective

To promptly collect payroll overpayments and to account for the repayments accurately. Overpayments may include but not be limited to business expenses, leave accruals and dollars.

Policy

Agencies must collect all payroll overpayments. Overpayments cannot be settled using the grievance process unless approved by the DOER, Labor Relations Bureau.

Before collecting an overpayment from an employee's paycheck, you must get their written consent.

The collection of overpayments is subject to garnishment limits as outlined in M.S. 571.922 unless there is a signed repayment schedule to the contrary or the collection is coming from the proceeds of severance payoffs, vacation payoffs or compensatory time balance payoffs.

If an employee will not voluntarily consent to the collection of the overpayment, the agency must send a certified letter to the employee's home address notifying the employee that the agency intends to setoff the employee’s wages in accordance with M.S. 16D.16.

An employee has thirty days from the date of the certified letter to request a contested case hearing.

Immediately upon receipt of the request for a contested case hearing, the agency must consult with the Employment Law Division of the Attorney General's Office and the DOER, Labor Relations Bureau. The options to schedule a hearing through the Office of Administrative Hearings (OAH), file a claim in conciliation court or withdraw from the process will be discussed. It is critical that this notification happens immediately. Otherwise, the state could forfeit its ability to collect.

In most cases, payroll adjustments should be processed to correct overpayments. See Operating Policy and Procedures PAY0023 and/or PAY0025. Personal checks will be accepted only when an employee is no longer on the payroll.

Procedures

Current Employee - Current Calendar Year - Too Many Hours Paid
Current Employee - Current Calendar Year - Incorrect Pay Rate
Current Employee - Prior Calendar Year
Former Employee - Current Calendar Year
Former Employee - Prior Calendar Year

Forms:

FI-00605 Consent to Payroll Collection

Sample Notice to Employee of Overpayment (Letter A)
Sample Setoff Notice for Wage Collections (Letter B)

References:

M.S. 16D.16
M.S. 571.922

Current Employee, Current Calendar Year, Too Many Hours Paid

Agency Payroll and Personnel Unit

1. Monday morning after payroll processing, review the Payroll Register (FIHR2062) on-line via InfoPac to identify any overpayments. For large overpayments (more than half the total gross) or overpayments representing the entire payment, refer to PAY0034, Payroll Warrant Reversal. For smaller overpayments, continue with this procedure.

2. Take corrective action to prevent an overpayment in the future.

3. Talk to the employee about the overpayment.

    - If the employee verbally consents to the collection of the overpayment obtain their consent in writing. Acceptable written consent may be a written notice such as Letter A, an E-mail message or a time sheet or screen print signed by the employee. If a repayment plan is necessary, a signed copy of the form Consent to Payroll Collection (FI-00605) may be used. If a repayment plan is not necessary, collect the overpayment in one pay period if possible.

    - If the employee does not verbally consent to the collection of the overpayment, send Letter A. Give the employee a deadline in which to respond. Agencies may use their discretion based on the circumstances surrounding the overpayment.

4. If the employee does not consent to voluntary repayment after reviewing Letter A or does not respond to Letter A within the given time frame, send Letter B to the employee. Letter B should be sent via certified and first class mail to the employee's home address. Letter B informs the employee that the employer intends to setoff their wages and notifies them of their right to request a contested case hearing. A copy of this letter must be sent to the Office of the Legislative Auditor and to the DOER, Labor Relations Bureau.

5. The employee must respond, in writing to the employer, within thirty days of the date of the certified letter, if a contested case hearing is desired.

    - If the employee does not respond to the letter or does not request a hearing, begin collection of the overpayment until the overpayment is satisfied. Send a memo to the Office of the Legislative Auditor and the DOER, Labor Relations Bureau, notifying them that the agency intends to pursue collection based on the response (or non-response) of the employee.

    - If the employee responds to the letter and requests a hearing, immediately consult with the DOER, Labor Relations Bureau and the Employment Law Division, Attorney General’s Office. Be prepared to discuss the following options:

        a. Schedule a hearing through the Office of Administrative Hearings (OAH), or
        b. File a claim in conciliation court as a less expensive recourse, or
        c. Withdraw from the collection process based on the cost to pursue the overpayment, among other factors.

        Do not collect any funds from the employee unless later collection would be deemed difficult, i.e. employee is leaving state service or it is recommended by DOER or the Attorney General’s Office.

All court costs are the responsibility of the agency. If the agency withdraws from the process but DOER pursues the collection of the overpayment, DOER will charge the agency for any costs associated with the collection.

6. Once a hearing or court decision has been received, notify the Office of the Legislative Auditor and DOER, Labor Relations Bureau of the outcome. If the court decides that:

    - The overpayment may not be collected, return any collected funds to the employee.
    - The overpayment may be collected, continue the collection or begin collection of the overpayment.

Agency Payroll Unit

7. If OAH or conciliation court determines the overpayment may be collected, collect the overpayment by processing a prior period adjustment on the next on-cycle. Overpayment collection is subject to the garnishment limits of M.S. 571.922. Collections made from the proceeds of severance payoffs, vacation payoffs or compensatory time balances are NOT subject to garnishment limits. If necessary, split the adjustment over several pay periods.

Current Employee, Current Calendar Year, Incorrect Pay Rate Overpayment

Agency Payroll and Personnel Unit

1. Monday morning after payroll processing, review the Payroll Register (FIHR2062) on-line via InfoPac to identify any overpayments. For large overpayments (more than half the total gross) or overpayments representing the entire payment, refer to PAY0034, Payroll Warrant Reversal. For smaller overpayments, continue with this procedure.

2. Take corrective action to prevent an overpayment in the future.

3. Talk to the employee about the overpayment.

    - If the employee verbally consents to the collection of the overpayment obtain their onsent in writing. Acceptable written consent may be a written notice such as Letter A, an E-mail message or a time sheet or screen print signed by the employee. If a repayment plan is necessary, a signed copy of the form Consent to Payroll Collection (FI-00605) may be used. If a repayment plan is not necessary, collect the overpayment in one pay period if possible.

    - If the employee does not verbally consent to the collection of the overpayment, send Letter A. Give the employee a deadline in which to respond. Agencies may use their discretion based on the circumstances surrounding the overpayment.

4. If the employee does not consent to voluntary repayment after reviewing Letter A or does not respond to Letter A within the given timeframe, send Letter B to the employee. Letter B should be sent via certified and first class mail to the employee's home address. Letter B informs the employee that the employer intends to setoff their wages and notifies them of their right to request a contested case hearing. A copy of this letter must be sent to the Office of the Legislative Auditor and to the DOER, Labor Relations Bureau.

5. The employee must respond, in writing to the employer, within thirty days of the date of the certified letter, if a contested case hearing is desired.

    - If the employee does not respond to the letter or does not request a hearing, begin collection of the overpayment until the overpayment is satisfied. Send a memo to the Office of the Legislative Auditor and the DOER, Labor Relations Bureau, notifying them that the agency intends to pursue collection based on the response (or non-response) of the employee.

    - If the employee responds to the letter and requests a hearing, immediately consult with the DOER, Labor Relations Bureau and the Employment Law Division, Attorney General’s Office. Be prepared to discuss the following options:

        a. Schedule a hearing through the Office of Administrative Hearings (OAH), or
        b. File a claim in conciliation court as a less expensive recourse, or
        c. Withdraw from the collection process based on the cost to pursue the overpayment, among other factors.

Do not collect any funds from the employee unless later collection would be deemed difficult, i.e. employee is leaving state service or it is recommended by DOER or the Attorney General’s Office.

All court costs are the responsibility of the agency. If the agency withdraws from the process but DOER pursues the collection of the overpayment, DOER will charge the agency for any costs associated with the collection.

6. Once a hearing or court decision has been received, notify the Office of the Legislative Auditor and DOER, Labor Relations Bureau of the outcome. If the court decides that:

- The overpayment may not be collected, return any collected funds to the employee.
- The overpayment may be collected, continue the collection or begin collection of the overpayment.

Agency Payroll Unit

7. If OAH or conciliation court determines the overpayment may be collected and the overpayment occurred due to an incorrect pay rate, process an individual retroactive adjustment on the next on-cycle, provided that the job record has been updated with the correct pay rate. Overpayment collection is subject to the garnishment limits of M.S. 571.922. Collections made from the proceeds of severance payoffs, vacation payoffs or compensatory time balances are NOT subject to garnishment limits. If necessary, split the adjustment over several pay periods.

Current Employee, Prior Calendar Year Overpayment

Agency Payroll and Personnel Unit

1. Monday morning after payroll processing, review the Payroll Register (FIHR2062) on-line via InfoPac to identify any overpayments. For large overpayments (more than half the total gross) or overpayments representing the entire payment, refer to PAY0034, Payroll Warrant Reversal. For smaller overpayments, continue with this procedure.

2. Take corrective action to prevent an overpayment in the future.

3. Talk to the employee about the overpayment.

    - If the employee verbally consents to the collection of the overpayment obtain their onsent in writing. Acceptable written consent may be a written notice such as Letter A, an E-mail message or a time sheet or screen print signed by the employee. If a repayment plan is necessary, a signed copy of the form Consent to Payroll Collection (FI-00605) may be used. If a repayment plan is not necessary, collect the overpayment in one pay period if possible.

    - If the employee does not verbally consent to the collection of the overpayment, send Letter A. Give the employee a deadline in which to respond. Agencies may use their discretion based on the circumstances surrounding the overpayment.

4. If the employee does not consent to voluntary repayment after reviewing Letter A or does not respond to Letter A within the given timeframe, send Letter B to the employee. Letter B should be sent via certified and first class mail to the employee's home address. Letter B informs the employee that the employer intends to setoff their wages and notifies them of their right to request a contested case hearing. A copy of this letter must be sent to the Office of the Legislative Auditor and to the DOER, Labor Relations Bureau.

5. The employee must respond, in writing to the employer, within thirty days of the date of the certified letter, if a contested case hearing is desired.

    - If the employee does not respond to the letter or does not request a hearing, begin collection of the overpayment until the overpayment is satisfied. Send a memo to the Office of the Legislative Auditor and the DOER, Labor Relations Bureau, notifying them that the agency intends to pursue collection based on the response (or non-response) of the employee.

    - If the employee responds to the letter and requests a hearing, immediately consult with the DOER, Labor Relations Bureau and the Employment Law Division, Attorney General’s Office. Be prepared to discuss the following options:

        a. Schedule a hearing through the Office of Administrative Hearings (OAH), or
        b. File a claim in conciliation court as a less expensive recourse, or
        c. Withdraw from the collection process based on the cost to pursue the overpayment, among other factors.

Do not collect any funds from the employee unless later collection would be deemed difficult, i.e. employee is leaving state service or it is recommended by DOER or the Attorney General’s Office.

All court costs are the responsibility of the agency. If the agency withdraws from the process but DOER pursues the collection of the overpayment, DOER will charge the agency for any costs associated with the collection.

6. Once a hearing or court decision has been received, notify the Office of the Legislative Auditor and DOER, Labor Relations Bureau of the outcome. If the court decides that:

- The overpayment may not be collected, return any collected funds to the employee.
- The overpayment may be collected, continue the collection or begin collection of the overpayment.

Follow the steps below for prior year overpayments of too many hours and incorrect pay rates.

Agency Payroll Unit

7. Determine if the employee's gross wages during the current year exceed the amount of the overpayment.

To process the prior year correction of overpayment for a current employee either one of the following MUST be true:

A. Gross wages in the current year exceed the gross amount of the prior calendar year overpayment.

B. Gross wages over the next several pay periods in the current year will exceed the amount of the prior calendar year overpayment.

8. Process whichever is appropriate, prior period adjustment or earn codes on mass time entry. Overpayment collection is subject to the garnishment limits of M.S. 571.922. Collections made from the proceeds of severance payoffs, vacation payoffs or compensatory time balances are NOT subject to garnishment limits. If necessary, split the adjustment over several pay periods.

Former Employee, Current Calendar Year Overpayment

Agency Payroll or Personnel Unit

1. Determine if an overpayment has occurred.

   Determine the following about the overpayment:

   - What pay period(s) it was for
   - If the overpayment was for the whole check or for a partial amount
   - If for a partial amount, the gross amount, net amount, and deductions taken

2. Notify the employee of the overpayment. Request the employee to return the original warrant(s) OR return a personal check, bank draft or cashier's check for the net amount of the original check.

3. If the former employee is unwilling to remit payment, notify Statewide Payroll Services and contact the agency’s assigned legal counsel from the Attorney General’s Office. Notify Statewide Payroll Services of the action being taken.

4. Forward the check received in step 2 above to Statewide Payroll Services to reverse.

5. If the employee was overpaid only a partial amount, contact Statewide Payroll Services to coordinate reversing the check(s) and issuing a check for the correct amount. Agencies should not process any pay without first getting the approval of Statewide Payroll Services.

Statewide Payroll Services

6. Process a check reversal or deposit the personal check to MAPS.

Agency

7. If the employee was overpaid only a partial amount of a check(s), process a payment after the check is reversed. Contact Statewide Payroll Services for approval to process the payment.

Former Employee, Prior Calendar Year

Agency

1. Determine if an overpayment has occurred.

2. Determine the following about the overpayment:

    - What pay period(s) it was for
    - Calculate the gross amount of the overpayment

3. Notify the employee of the overpayment. Request the employee to return a personal check, bank draft, or cashiers check for the gross amount of the overpayment.

4. If the former employee is unwilling to remit payment, notify Statewide Payroll Services and contact the agency's assigned legal counsel from the Attorney General's Office. Notify Statewide Payroll Services of the action being taken.

5. Forward the check received in step 3 above to Statewide Payroll Services.

Statewide Payroll Services

6. Deposit check to MAPS.

7. Process payroll adjustments for the overpayment and/or refunds given.

8. Complete the necessary documentation to refund FICA, Medicare and retirement. Process necessary refunds.

9. Issue a corrected W-2.

Letter A

Sample Notice to Employee of Overpayment

Agency Memorandum Letterhead

To: Name of Employee
Department

Date:

Fm: Name of Agency Person
Department

Re: Notice of Overpayment and Consent to Payroll Collection

[Circumstances surrounding the overpayment, for example: "On [Month date, year], the Department of _____ discovered you were overpaid $ _____ per pay period for the period of _____, ____, through _____, ____. The overpayment stopped the pay period beginning _____, ____. This means that you were overpaid a total of $ _____.]

It was not your error that you were overpaid, nevertheless, the overpayment must be repaid to the State Treasury. You may repay the full amount at once or across several pay periods. The method used to repay the amount owed is a payroll correction, a set amount that will reduce the gross amount of your paycheck for each pay period until the full amount is paid. Enclosed is a Consent to Payroll Collection form. Please complete the enclosed form by indicating the amount to be reduced from your gross pay (to be no less than $ _____ per paycheck), sign, and return this signed form to _____ by [deadline].

Please be advised that if you do not consent to the correction of the overpayment, the State of Minnesota will initiate collection procedures, including set off of your wages pursuant to Minn. Stat. 16D.16

Again, we understand you are not at fault for this overpayment, nevertheless, you must repay this erroneous overpayment to the State. Your cooperation and assistance in this matter is appreciated.

Enclosure

cc: Office of the Legislative Auditor
Department of Finance & Employee Relations

CONSENT TO PAYROLL COLLECTION

I, _____, hereby authorize my employer, State of Minnesota,

Department of _____, to reduce my gross pay by the sum of $ _____ from each of my paychecks beginning with the _____, _____ pay period until the amount of $ _____ is repaid in full. This reduction will reimburse the State for the erroneous overpayment paid to me during the period of _____, _____ to _____, _____.

Dated: _____ _____

[Employee Signature]

Letter B
CERTIFIED AND FIRST CLASS MAIL

Sample Setoff Notice for Wage Deductions

- **For Wages**
- **For Pre-Judgment Debt**
- **Without any Prior Hearing on Debt**

Agency Letterhead

Name:

Address:

Re: **Notice of Setoff of Wages Pursuant to Minn. Stat. § 16D.16**

[Circumstances surrounding the debt, for example: "As you know, for the period of _____, _____, through _____, _____, you were overpaid $_____ per pay period, resulting in a total of $ _____ overpayment that must be returned to the State Treasury."]

Please be advised that the State of Minnesota intends to setoff the amount of debt you owe the State against future payments payable to you by the State in accordance with Minnesota Statute sec. 16D.16. Specifically, the State intends to offset your [identify type of payment, such as your future earnings or severance pay] to repay the debt you owe the State. The offset will start immediately, to be reflected on your [check date] paycheck. The deductions are subject to the wage garnishment limitations of Minn. Stat. § 571.922.

You have the right to make a written request for a contested case hearing on the validity of the debt or the right to setoff. You have 30 days from the date of this notice to make a written request for a contested case hearing. Your written request must state your reasons for contesting the debt or the right to setoff and the notice must be received by [insert deadline date] by the following:

[Name]
[State Agency]
[Address of State Agency]

Upon receipt of your request for a hearing, the State must schedule a hearing within 30 days of receipt of the request for the hearing. If you have any questions regarding this Setoff Notice, contact [_____] at [State Agency] at [phone number].

Signature Block

cc: Office of the Legislative Auditor
Department of Finance & Employee Relations