

A-Z Guide

Child Support Deductions



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## Overview

1. Where you are served with a Child Support Deduction Notice you are obliged to deduct child support payments from the employee's wages or salary at the amount specified, unless to do so would mean that the employee did not receive 60% of their net pay.
2. Child support deductions take priority over all other deductions after PAYE has been deducted.
3. An employer is required to keep an employee's child support obligations confidential, failing to do so can result in a fine.
4. Child support deductions are administered through the PAYE system and are regarded by the tax laws as tax; the Tax Administration Act 1994 prescribes fines up to \$50,000 for offences involving child support deductions.

## Introduction

Under the Child Support Act 1991 (and its amendments), employees who have financial obligations with respect to the care of children can have deductions for child support payments taken from their wages or salary. This Act was introduced for the purpose of determining the amounts and forms of collection of money from parents who do not live with their children and the custodial parent receives a Work and Income New Zealand "WINZ" benefit under the Social Security Act 2018, or has applied to the Court for maintenance order under the Family Proceedings Act 1980.

It is possible for an employee to be paying for child support to both WINZ and the IRD at the same time. WINZ collects some money owed to it under previous schemes. If you as the employer are making such deductions (and paying them to WINZ), do not stop doing so on receipt of a Child Support Deduction Notice from the Child Support Agency (the Agency). WINZ will advise you when those payments should stop.

The Child Support Agency part of Inland Revenue assesses and collects child support payments. The payments are administered through the PAYE system. The payments the Agency collects are paid directly to the parent who has care of the child or to the government if the parent is receiving a benefit.

Employees who make private arrangements for the provision of child support may ask you as their employer to make deductions payable to the Agency in the same way as mandatory deductions. Where the employee wishes to change or stop that deduction they are required to provide notice to the IRD of that.

Child support has priority over any other deductions from an employee's net pay. This means that other than PAYE, employers must deduct child support before anything else, such as student loan repayments, insurances, superannuation and union fees. Child support must be deducted from final pay and holiday pay on the termination of employment.

It is possible for employers to be asked to make deductions for child support from contractors and commission agents (non-employees).

## Protected Net Earnings

Any employee whose pay is subject to deductions for child support payments is entitled to have 60% of their take-home pay **after** child support has been deducted. This is the protected net earnings that the employee lives on, subject to other deductions such as student loan repayments, insurances and union fees. Any other deductions must be taken from an employee's pay where it drops below 60%.

Protected net earnings are **only** applicable to deductions for child support payments; it is only when an employee's net pay would drop below 60% that you must not deduct the full amount of child support. If the full amount of child support cannot be deducted because of the protected net earnings, then you must record a variation code on the variation schedule that is returned with the payments to the Agency. The Agency will then seek the payment of the arrears directly from the employee.



## Employer's Obligations

The first indication that you will get about the need to deduct child support payments will usually be a request for information from the Child Support Agency. It will ask in respect of an employee how often their wages are paid and their next regular pay day or pay period.

You must provide this information when it is requested (to do so does not breach the Privacy Act 2020). Once the Agency has received the information and assessed how much the employee should be paying for child support it will send you a Child Support Deduction Notice. This will show:

- The employee's name and IRD number; and
- The pay day or pay period on which the employer must start deducting child support; and
- The amount to deduct from each pay.

Once this notice is issued you must make the required deductions together with PAYE from the date specified in the notice. The deductions must continue until further notice to change or stop the deductions is received.

The IRD will provide a variation schedule for you to complete and return with the payment of deductions. If you cannot or did not deduct the amount required by the Agency for any given pay period or pay day (for example: it was paid in the prior period because that pay was paid in advance; or the employee's net protected earnings would be deducted from) then you must note that you did not make the deduction by using a variation code. The variation schedule must be returned whether or not there are any variations recorded on it. Child support payment is due on the same date as PAYE and other deductions.

Child support details must be completed and provided to the IRD and records of the child support deductions kept along with the wage records for 7 years.

The information provided to you by the Child Support Agency is personal information about an identifiable person that must remain private. Often that information is very sensitive. This Act expressly requires employers to protect their employees' privacy by not giving out any information about their child support obligations unless it is to the Agency or IRD investigators (auditors).

## Enforcement

If you breach the disclosure of information provisions of the Act you are liable on conviction in the District Court for a fine up to \$15,000 on the first occasion and a fine up to \$25,000 on every subsequent occasion for offences against this Act.

Under this Act it is an offence for you to discriminate against an employee or potential employee because of the obligation to deduct child support payments. An employer who dismisses or prejudicially treats an employee under this Act, in addition to the remedies and penalties under the personal grievance provisions of the Employment Relations Act 2000, may be ordered by the District Court to pay the employee compensation and to take other action to remedy the situation.

This Act makes it an offence for an employer to:

- Fail to keep records; or
- Fail to notify the IRD of changes to an employee's living arrangements, address, employment status; or
- Provide false documents, statements or declarations knowing them to be false or being reckless as to their truth or with intent to mislead; or
- Knowingly falsify records; or
- Making a deduction which reduces the employee's income in any week to below 60% of what remains after deduction of PAYE; or
- Obstruct an officer of the IRD in the exercise of their duties under the Act; or
- Aid, abet, incite or conspire with someone to commit an offence against the Act.



The fines upon conviction in the District Court for these offences are up to \$2,000 for the first offence, \$4,000 for the second offence and \$6,000 for any subsequent offence. The fine for aiding and abetting is up to \$6,000 on any occasion.

Under the Tax Administration Act 1994 it is an offence to knowingly not make a child support deduction or to use child support deductions for any purpose other than payment to the Agency (IRD).

An employer who knowingly fails to make a child support deduction can be liable on conviction in the District Court to a fine up to \$25,000 on the first occasion and a fine up to \$50,000 on every subsequent occasion for offences against this Act. An employer who uses child deductions for any other purpose can be liable on conviction in the District Court to a fine up to \$50,000 and/or imprisonment for a term up to 5 years for an offence against the Act.

## Remember

- Always call AdviceLine to check you have the latest guide
- Never hesitate to ask AdviceLine for help in interpreting and applying this guide to your fact situation.
- Use our AdviceLine employment advisors as a sounding board to test your views.
- Get one of our consultants to draft an agreement template that's tailor-made for your business.

This guide is not comprehensive and should not be used as a substitute for professional advice.

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