

Ask the Attorney: Who is permitted to complete a W-4 form? and more

Our expert lawyer, Nancy Delogu, answers a few HR professionals' employment law questions.

Who is permitted to complete a W-4 form?

Q: "Is it illegal for payroll to complete the W-4 for an employee as long as the employee signs the form? I am looking for a regulation, publication or opinion letter saying yes or no to this." - Lisa, Texas

A: Form W-4 is for the employee, not the employer, to complete. Although it is likely that your payroll department could assist employees in completing the form, you necessarily need to complete the form only as the employee directed, and cannot complete a form for an employee who refuses.

I'm not sure why or what you are seeking to accomplish by having Payroll complete the form, since each employee may decide (for example) how many exemptions to claim depending on personal financial circumstances beyond simply how many exemptions may be available. Since this is the case, beyond helping explain the form to the employee, you may be reluctant to do more. (If you are concerned that employees *will not* complete the form, the IRS rules have a different approach for the employer to take, as described by my colleague William Weissman [here](#).)

How long can we withhold a final paycheck for uniform costs?

Q: "Our employees are allowed to 'rent' uniforms, but they are not required to wear them. If an employee leaves and does not turn in their uniform, the uniform company charges us for each item on a future bill. Because the uniform company only comes around once a week, sometimes we do not know what the unreturned uniforms are worth by the time the final paycheck is calculated. The owner of the company wants to withhold the final paycheck until either all uniforms are turned in or we receive the bill for unreturned uniforms. This could be a delay of up to three weeks. Can we indefinitely withhold the final paycheck of earned income beyond the normal payday?" - Donna, North Carolina

A: No. North Carolina's Department of Labor says, "Employees whose employment is discontinued for any reason shall be paid all wages due on or before the next regular payday either through the regular pay channels or by mail if requested by the employee." There are limits on what you can deduct from wages regardless of whether the check is for final pay, too.

Aside from federal and state-mandated withholding, an employer can take deductions from wages if "the amount of a proposed deduction is known and agreed upon in advance and the written authorization is: (a) signed on or before the pay day in which the deduction will be made, (b) includes the reason for the deduction, and (c) states the actual dollar amount or percentage of wages that are to be withheld."

You could also seek to obtain a blanket authorization for a deduction—for example, at the time the individual first orders a uniform—but in order to actually take the deduction, you would need to know and communicate the exact amount to be withheld prior to the final paycheck, for the employee to review and approve.

Your explanation makes it clear that you will not have this information timely. Therefore, your proposal to withhold a certain amount of pay from final wages will not work, even pursuant to a signed agreement, unless you can find some way to more quickly identify the value of the unreturned uniforms. It might be possible to have the individual agree in advance that you withhold a certain amount—a flat rate, for example—until the final debt can be calculated, and then refund any overage.

Finally, employers are also limited by law from taking any deduction from wages to benefit the employer from a guaranteed salary paid to overtime exempt workers, and North Carolina and federal law prohibit you from making certain deductions that will take an employee's compensation below minimum wage or impact his or her overtime earnings. You can read more at the N.C Department of Labor website [here](#).