

## PAYMENT OF WAGES ACT, 1991 – SECTION 5

5.—(1) An employer shall not make a deduction from the wages of an employee (or receive any payment from an employee) unless—

(a) the deduction (or payment) is required or authorised to be made by virtue of any statute or any instrument made under statute,

(b) the deduction (or payment) is required or authorised to be made by virtue of a term of the employee's contract of employment included in the contract before, and in force at the time of, the deduction or payment, or

(c) in the case of a deduction, the employee has given his prior consent in writing to it.

(2) An employer shall not make a deduction from the wages of an employee in respect of—

(a) any act or omission of the employee, or

(b) any goods or services supplied to or provided for the employee by the employer the supply or provision of which is necessary to the employment,

unless—

(i) the deduction is required or authorised to be made by virtue of a term (whether express or implied and, if express, whether oral or in writing) of the contract of employment made between the employer and the employee, and

(ii) the deduction is of an amount that is fair and reasonable having regard to all the circumstances (including the amount of the wages of the employee), and

(iii) before the time of the act or omission or the provision of the goods or services, the employee has been furnished with—

(I) in case the term referred to in subparagraph (i) is in writing, a copy thereof,

(II) in any other case, notice in writing of the existence and effect of the term,

and

(iv) in case the deduction is in respect of an act or omission of the employee, the employee has been furnished, at least one week before the making of the deduction, with particulars in writing of the act or omission and the amount of the deduction, and

(v) in case the deduction is in respect of compensation for loss or damage sustained by the employer as a result of an act or omission of the employee, the deduction is of an amount not exceeding the amount of the loss or the cost of the damage, and

(vi) in case the deduction is in respect of goods or services supplied or provided as aforesaid, the deduction is of an amount not exceeding the cost to the employer of the goods or services, and

(vii) the deduction or, if the total amount payable to the employer by the employee in respect of the act or omission or the goods or services is to be so paid by means of more than one deduction from the wages of the employee, the first such deduction is made not

later than 6 months after the act or omission becomes known to the employer or, as the case may be, after the provision of the goods or services.

(3) (a) An employer shall not receive a payment from an employee in respect of a matter referred to in subsection (2) unless, if the payment were a deduction, it would comply with that subsection.

(b) Where an employer receives a payment in accordance with paragraph (a) he shall forthwith give a receipt for the payment to the employee.

(4) A term of a contract of employment or other agreement whereby goods or services are supplied to or provided for an employee by an employer in consideration of the making of a deduction by the employer from the wages of the employee or the making of a payment to the employer by the employee shall not be enforceable by the employer unless the supply or provision and the deduction or payment complies with subsection (2).

(5) Nothing in this section applies to—

(a) a deduction made by an employer from the wages of an employee, or any payment received from an employee by an employer, where—

(i) the purpose of the deduction or payment is the reimbursement of the employer in respect of—

(I) any overpayment of wages, or

(II) any overpayment in respect of expenses incurred by the employee in carrying out his employment,

made (for any reason) by the employer to the employee, and

(ii) the amount of the deduction or payment does not exceed the amount of the overpayment,

or

(b) a deduction made by an employer from the wages of an employee, or any payment received from an employee by an employer, in consequence of any disciplinary proceedings if those proceedings were held by virtue of a statutory provision, or

(c) a deduction made by an employer from the wages of an employee in pursuance of a requirement imposed on the employer by virtue of any statutory provision to deduct and pay to a public authority, being a Minister of the Government, the Revenue Commissioners or a local authority for the purposes of the Local Government Act, 1941, amounts determined by that authority as being due to it from the employee, if the deduction is made in accordance with the relevant determination of that authority, or

(d) a deduction made by an employer from the wages of an employee in pursuance of any arrangements—

(i) which are in accordance with a term of a contract made between the employer and the employee to whose inclusion in the contract the employee has given his prior consent in writing, or

(ii) to which the employee has otherwise given his prior consent in writing,

and under which the employer deducts and pays to a third person amounts, being amounts in relation to which he has received a notice in writing from that person stating that they are amounts due to him from the employee, if the deduction is made in accordance with the notice and the amount thereof is paid to the third person not later than the date on which it is required by the notice to be so paid, or

(e) a deduction made by an employer from the wages of an employee, or any payment received from an employee by his employer, where the employee has taken part in a strike or other industrial action and the deduction is made or the payment has been required by the employer on account of the employee's having taken part in that strike or other industrial action, or

(f) a deduction made by an employer from the wages of an employee with his prior consent in writing, or any payment received from an employee by an employer, where the purpose of the deduction or payment is the satisfaction (whether wholly or in part) of an order of a court or tribunal requiring the payment of any amount by the employee to the employer, or

(g) a deduction made by an employer from the wages of an employee where the purpose of the deduction is the satisfaction (whether wholly or in part) of an order of a court or tribunal requiring the payment of any amount by the employer to the court or tribunal or a third party out of the wages of the employee.