**PROPERTY RETURN SECURITY DEPOSIT AGREEMENT**

A common problem for employers is how to deal with costs associated with loss or unusual damage to equipment issued to employees in connection with their jobs. Going to court against the employees would generally be prohibitively expensive in terms of time, trouble, and expense when measured against the expected return. If an employee causes a loss during employment, it is easy enough to have the employee repay the loss in installments from future paychecks, as long as the deductions do not take the employee below minimum wage and are made with the employee's written authorization. However, the solution is not so easy when the loss first becomes apparent at the time the employee leaves the company. There would be no series of future paychecks from which installment payments could be made. Although a properly-worded wage deduction authorization agreement would make it possible to deduct a loss from the final paycheck in a lump sum, such a deduction could not take the final paycheck below what would amount to minimum wage, and if there were a balance remaining, the employer might well have to absorb it. For those reasons, some employers utilize what is sometimes called a "property return security deposit", which amounts to a type of fund in which money is held in escrow against the possibility that it might be needed to pay for the reasonable cost of repairing or replacing lost or damaged items that were checked out to the employee in connection with the employee's work. Such a security deposit is normally composed of money contributed each pay period by the employee. It would be entirely within the bounds of the [FLSA](http://www.dol.gov/whd/flsa/index.htm) and the [Texas Payday Law](http://www.twc.state.tx.us/news/efte/tpl_basic_issues.html) to deduct a specified amount from an employee's pay each pay period, as long as the deduction met the following two requirements:

1. the deduction does not take the employee below minimum wage (see 29 C.F.R. 531.3(d); Field Operations Handbook Section 30c03(a) and 30c04(7) (1988)); and
2. the deduction is authorized in writing by the employee (see Texas Labor Code § 61.018(3) and 40 T.A.C. § 821.28(b)).

For maximum protection from the risk of a [Texas Payday Law](http://www.twc.state.tx.us/news/efte/tpl_basic_issues.html) wage claim, it would be advisable to cover the property return security deposit in three different places: 1) a separate policy regarding the deposit in the employee handbook (have the employee initial or sign such a section); 2) a standalone agreement wherein a) the employee agrees to the necessary deductions, and b) the conditions for use of the deposit by the employer and/or the return of all or a portion thereof to the employee are covered; and 3) within the list of deductions covered in the general wage deduction authorization agreement that every employer should utilize with employees.

Employers should keep in mind that a property return security deposit should not be used as a means of getting employees to pay for what should be considered normal business costs. For example, employers should not take normal wear and tear out of such a deposit. That happens to equipment all the time and is a normal cost of doing business that should not be passed on to employees. (For more on legal risks associated with deductions for out-of-pocket business expenses, see ["Deductions for Other Costs to the Employer"](http://www.twc.state.tx.us/news/efte/deduction_problems_under_tpl.html#deductionsothercosts).) Similarly, loss of an item should not be viewed as an opportunity for an upgrade. If a particular type of cell phone or pager is lost, replace the item that was lost - do not purchase a better model at a higher price and effectively force the employee to finance the company's equipment improvements. Deductions like this work as long as both parties act reasonably and maintain a proper sense of balance. In short, do not take advantage - take only what is needed to make the company whole.

***Important disclaimer:*** The form available below is only a sample and is furnished only as an illustration of its category. It is not meant to be taken and used without consultation with a licensed employment law attorney. If you are in need of a form for a particular situation, you should keep in mind that any sample form such as the one available here would need to be reviewed, and possibly modified, by an employment law attorney in order to fit your situation and to comply with the laws of your state. Downloading, printing, reproducing, or using this or any of the other forms in this book in any manner constitutes your agreement that you understand this disclaimer and that you will not use the form for your company or individual situation without first having it approved and, if necessary, modified by an employment law attorney of your choice. Comments about certain provisions of the agreement (highlighted or marked as notes or comments), are notes only for the employer's attention and should, of course, not be included in the form to be signed by the employees.

**SAMPLE PROPERTY RETURN SECURITY DEPOSIT AGREEMENT**

I understand and agree that my employer, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the Company), may deduct $ \_\_\_\_\_\_ from my pay each pay period for the purpose of paying it into a property return security deposit that will be held in my name. I understand that no such deduction will reduce my pay below minimum wage for the pay period in question. I further understand that if I return all company-owned property issued to me in connection with my employment in good shape, notwithstanding normal wear and tear, the full amount of the property return security deposit will be paid to me within \_\_\_\_ days of the date that the last of such items have been returned to the Company, and that if I fail to return an item, or if an item I return must be repaired to be usable by another employee or to restore it to its condition before I damaged it, the Company may deduct the reasonable cost of replacing or repairing the item from the amount of the property return security deposit and pay any remaining balance to me within \_\_\_\_ days of the date such deduction is made.

I give my permission for the Company to deduct $ \_\_\_\_\_\_ from my pay each pay period for the above purpose.

\_\_\_\_\_\_\_\_\_\_\_\_\_    \_\_\_\_\_\_\_\_\_\_\_\_\_  
/s/ (Employee)        Date

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Employee's Name - Printed

\_\_\_\_\_\_\_\_\_\_\_\_\_    \_\_\_\_\_\_\_\_\_\_\_\_\_  
/s/ (Employer)         Date

To cover the issue of deductions toward the property return security deposit, the wage deduction authorization agreement (a sample form is at <http://www.twc.state.tx.us/news/efte/wage_deduction_authorization_agreement.html>) could have an item like this:

(#) Amounts paid into the Property Return Security Deposit under the agreement of the same name, a copy of which I have separately received and signed;

*Note for the employer (do not include this note in the actual form to be signed by employees): deductions for a property return security deposit may not take an employee below minimum wage under the FLSA.*