

# Livingston County Michigan Human Resources Policy Manual

<b>Section:</b>	<b>Compensation</b>
<b>Subject:</b>	<b>Recovery of Compensation Overpayments and Restitution of Underpayments</b>

**A. POLICY**

1. PURPOSE:

To provide for the recovery of wage overpayments and restitution of underpayments to County employees.

2. POLICY STATEMENT:

Human Resources and the County Clerk/Payroll will make every effort to ensure that employees are paid correctly. However, in cases of improper overpayment, even where the error was not the fault of the employee, employees are expected to promptly repay the County the amount of the overpayment. Repayment arrangements will be made through Human Resources. The County in all cases reserves the right to pursue collection of remaining overpayments through court proceedings if recovery efforts under this policy have failed.

If an employee was not paid at all, the department head/elected official may request that a special check be issued. If an employee received partial pay, but not all that was due, then whenever possible, the balance due will be corrected on the next payroll check.

3. APPLICABILITY:

Applies to all county employees.

4. DEFINITIONS:

Nominal overpayment – An erroneous overpayment of one hundred dollars (\$100.00) or less.

Significant overpayment – An overpayment that is greater than one hundred dollars (\$100.00).

5. REFERENCE AND LEGAL AUTHORITY:

Fair Labor Standards Act (FLSA)  
Internal Revenue Service  
1978 PA 390, MCL 408.471 et. Seq; MSA 17.277(1) et. Seq. Payment of Wages and Fringe Benefits Act, as amended

6. SEE ALSO:

Form: Personnel Action Request  
Form: Voluntary Repayment Agreement

7. SUPERSEDES:

n/a

8. APPROVED BY:  
Personnel Committee: Approved 07/19/06  
Finance Committee: Approved 07/27/06  
Livingston Board of Commissioners: 08/10/06

9. RESOLUTION: No. 2006-08-258

10. REVIEW HISTORY:

**B. PROCEDURE**

All employees should routinely examine each paycheck received in a timely manner to ensure that proper payment has been made. If an employee believes an improper overpayment has been made, he/she should immediately contact his/her supervisor, department head/elected official Human Resources or payroll.

Once notified, Human Resources will work with the department and payroll to determine the reason for the overpayment and to correct the employee's compensation records or to issue a new PAR to prevent future overpayment errors.

Payroll will then calculate an overpayment summary to determine the amount overpaid. Based on the overpayment amount, Human Resources will determine whether the overpayment will be collected on the employee's next regular payday (if nominal) or whether the employee shall be offered the Voluntary Repayment Agreement for Payroll Overpayment form (see template form at the end of this policy and procedure).

The following describes the repayment schedule to be used when the amount owed is more than a nominal amount.

Nominal overpayment – An erroneous overpayment that is one hundred dollars (\$100.00) or less shall be deducted from the employee's next paycheck.

Significant overpayment – An overpayment that is greater than one hundred dollars (\$100.00) shall be allowed to be paid through a written repayment plan pursuant to a signed "Voluntary Repayment Agreement for Payroll Overpayment."

For purposes of this policy, overpayments include wage and salary payments, voluntary and involuntary deductions for insurance programs or other deductions elected through the County Choices program, i.e., purchased or sold vacation time.

**Collection of Overpayment**

**Active Employees -**

Once an overpayment is identified, Human Resources shall notify the employee in writing that an overpayment has occurred. A copy of this notification will be sent to the employee's department and payroll. Human Resources will meet with the employee, department head/elected official and/or union representative. Human Resources will explain how the overpayment occurred and discuss a repayment schedule

An employee shall have thirty (30) days in which to respond to the notice. If an employee does not respond by the deadline indicated on the notification letter, the employee has waived the opportunity to respond. Recovery of the overpayment may proceed. If the employee responds to the notification letter but (a) disagrees with the overpayment amount, and/or (b) refuses to sign an authorization for repayment, then before repayment deductions begin, the employee has the right to an immediate pre-decision meeting with the Human Resource Director.

**Automatic Repayment of Wages -**

Per the Payment of Wages and Fringe Benefit Act 390 of 1978, the County may take deductions for a wage or fringe benefit overpayment within six (6) months of making the overpayment of wages or fringe benefits that are paid directly to an employee without the written consent of an employee – provided the following specific requires are met. To be allowed without written consent by the employee, the deduction must meet all the following criteria.

1. The cumulative amount of the deductions shall not reduce the gross wages paid to a rate less than the minimum rate as defined in the minimum wage law of 1964, Act No. 154 of the Public Acts of 1964.
2. The overpayment resulted from a mathematical miscalculation, typographical error, clerical error, or misprint in the processing of the employee’s regularly scheduled wages or fringe benefits.
3. The miscalculation, error, or misprint described in subdivision (2) was made by the employer, the employee, or a representative of the employer or employee.
4. The employer provides the employer with a written explanation of the deduction at least one (1) pay period before the wage payment affected by the deduction is made.
5. The deduction is not greater than 15% of the gross wages earned in the pay period in which the deduction is made.
6. The deduction is made after the employer has made all deductions expressly permitted or required by law or a collective bargaining agreement, and after any employee-authorized deduction.

If an active employee enters into an unpaid status, a letter will be sent to collect remaining payment(s) or to set up a repayment plan pursuant to a Voluntary Repayment Agreement for Payroll Overpayment. If the employee does not respond a second notice will be sent and the employee will be given two (2) weeks to remit payment.

**Terminated Employees -**

Once an overpayment is identified, Human Resources shall notify the former employee in writing that an overpayment has occurred along with the total amount owed. A copy of this notification will be sent to the employee’s department and payroll. Payment is to be recovered within 30 days, unless a payment plan is agreed to in writing by both the County and the former employee.

If repayment is not recovered or the payment plan is not followed by the former employee, Human Resources will send a second letter to the former employee with a copy going to their former department. Payment is to be submitted within two (2) weeks to avoid collection of monies owed through court proceedings.

If requested by a former employee, a payment schedule may be established that does not exceed a single tax year. If the repayment schedule crosses tax years, the total gross amount of overpayment must be recovered following the established payment schedule.

A personal check made out to the County of Livingston must be submitted to the County Clerk in all cases involving repayment that is not collected through payroll deduction.

**Repayment of Current Year Wages**

For repayment of wages paid during a prior quarter in the current year, the County Clerk/Payroll will report the adjustments on IRS Form 941 to recover income tax, withholding and Social Security and Medicare taxes. The County Clerk/Payroll will initiate the adjustments on IRS Form 941 for the quarter during which the repayment occurred.

**Repayment of Prior Year Wages**

For repayment of wages paid during a prior year, the County Clerk/Payroll will report the adjustment on IRS Form 941 for the quarter during which the repayment was made to recover Social Security and Medicare taxes. An adjustment will not be made for income tax withholding because the wages were paid during the prior year.

**Anti-retaliation Statement –**

Retaliation directed against anyone merely because he/she has lodged a complaint under this policy is strictly prohibited and will be grounds for disciplinary action, up to and including termination of employment. Any employee who feels he/she has been subjected to retaliation in violation of this policy should immediately contact his/her supervisor, department director/elected official, or Human Resources.

**In all cases, the County reserves the right to enforce collection of the remaining unpaid amount owed through applicable court proceedings.**

## VOLUNTARY REPAYMENT AGREEMENT FOR PAYROLL OVERPAYMENT

I, \_\_\_\_\_, agree to repay Livingston County for an overpayment that occurred in my pay in the total amount of \$\_\_\_\_\_.

I understand that I have the two (2) options with which to reimburse the County through payroll deduction. I choose the following repayment plan (Check one):

LUMP SUM OPTION:

\_\_\_\_\_ 1. Deduct from my salary the total amount \$\_\_\_\_\_ in pay period ending \_\_\_\_\_, being paid on \_\_\_\_\_.

PAYMENT PLAN:

\_\_\_\_\_ 2. Deduct \$\_\_\_\_\_ from each pay check beginning \_\_\_\_\_, **20**\_\_ and ending \_\_\_\_\_, **20**\_\_. (When the repayment amount is paid in full.

I agree that if my employment is terminated either voluntarily or involuntarily before payment is made in full, the remaining amount I owe may be deducted from any amounts owed to me by the County.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Witnessed by: \_\_\_\_\_

Date: \_\_\_\_\_