



October 8, 2004

FLSA2004-19NA

Dear **Name***,

This letter is in response to your request for an opinion as the application of the Fair Labor Standards Act (FLSA) to reductions from an employee's pay to recoup overpaid money. Your client, a city fire fighting department, paid for 75 hours of vacation one pay period when the employee in fact had only 32 hours available. You also ask if "payroll by exception" violates the FLSA, and specifically if the deduction of overpaid hours is permissible in the pay by exception system.

Here are your questions and our response:

- Q1)** Does the FLSA prohibit an employer from deducting compensation from an employee's paycheck (without the employee's permission) in order to reimburse itself for an overpayment inadvertently made to the employee in a previous pay check? The employee requested 75 hours of vacation in pay period one and was paid for them. The employee in fact had only 32 hours available and reported it to the department. When the employee was paid for the next pay period, 43 hours pay were deducted.
- A1)** It has been our longstanding position that where an employer makes a loan or an advance of wages to an employee, the principal may be deducted from the employee's earnings even if such deduction cuts into the minimum wage or overtime pay due the employee under the FLSA. An employer may not, however, make an assessment for administrative costs or charge any interest payment that brings the employee below the minimum wage. See Field Operations Handbook, 30c10; opinion letters dated March 20, 1998, and November 16, 1977 (enclosed). Thus the amount the department chooses to recoup in the next pay period is at the department's discretion. It does not matter whether the deduction was made in the next pay period or several pay periods later.
- Q2)** Does the employer's use of a Payroll by exception system violate any FLSA regulations? You state that under the payroll by exception policy, the compensation for additional hours worked in one pay period is actually paid in the subsequent pay period, and deductions from pay for hours not worked (e.g., leave without pay) are made in the pay period following the one in which hours were missed.
- A2)** Payment of both minimum wage and overtime compensation due an employee must ordinarily be made at the regular payday for the work week, or when the pay period covers more than a single week, at the regular payday for the period in which the particular work week ends. However, when it is not possible to ascertain the number of overtime hours worked prior to preparing the payroll, the requirements of the FLSA will be satisfied if the employer pays the overtime compensation as soon after the regular pay day as is practicable. Such payment should not be delayed for a period longer than is reasonably necessary for the employer to compute and arrange for the payment of the amounts due, but in any event, not later than the next payday after such computation can be made. 29 CFR 778.106.
- Q3)** Was the deduction for the overpayment permissible if made under the payroll by exception system?
- A3)** Yes. The deduction is permissible, and the system is permissible, as described above.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances which would be pertinent to our consideration of the question presented.



U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein. You have represented that this opinion is not sought by a party to pending litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust that the above is responsive to your inquiry. If we can be of further assistance, please do not hesitate to contact us.

Sincerely,

Barbara Relerford
Office of Enforcement Policy
Fair Labor Standards Team

Enclosures

** Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. 552 (b)(7).*