U.S. Department of Labor

Wage and Hour Division
Washington, D.C. 20210

WHD-OL-1962-NNNN

June 4, 1962

NAME*

This is in reply to your letter of May 11 to Mr. **NAME*** of my staff.

You state that an employer of a newly covered employee pays him $1.00 an hour for a 40-hour workweek. No overtime is worked. The employer, a lumber dealer, personally owns rental property and rents a house to the employee on the same basis that he rents houses to other tenants who do not work for him. The employee lives there entirely by his own choice. The dealer sells coal by the bag to the general public and/or to this employees for $1.00 a bag. You wish to know if the employer may deduct the weekly rent of the house and any coal the employee purchases from the employee's weekly paycheck when such deductions will bring the amount of the paycheck below the $40 statutory minimum.

The Fair Labor Standards Act does not prohibit deductions from the wages of employees for board, lodging, or other facilities customarily furnished by an employer to his employees. "Other facilities" including housing, rented or sold, merchandise, including food, clothing and household effects, and fuel sold to employees. Section 3(m) of the Act provides that an employer may, in computing the minimum wage or overtime compensation due his employees, make deductions from their wage for the reasonable cost of such facilities. A copy of the regulations applicable to such deductions, together with an interpretative bulletin, is enclosed for your information. Your attention is particularly directed to sections 777.8, 777.10 and 777.11 of the interpretative bulletin. You will note that the reasonable cost to the employer of furnishing facilities does not include a profit to the employer or to any affiliated person. If facilities are furnished the employee at a profit, the profit may not reduce the employee's wages below the minimum wage and overtime requirements of the Act.

The restrictions on profit when an employer furnishes facilities to his employees apply in those situations where the employer makes deductions for such facilities from the employees' wages. The Act does not prevent an employer from making a profit on rentals or sales to his employees on a cash basis, if these transactions are made voluntarily, at arms-length, and collections are not made from their wages, either directly or indirectly. Whether in cash or in facilities, "wages" are not considered to have been paid by the employer and received by the employee unless they are paid finally and unconditionally or "free and clear".

It would appear that since in the example given the employer is dealing with the employee on the same basis that he deals with members of the general public who rent houses or purchase coal,

the employer makes the same profit on the transactions with the employee that he does on transactions with others. To the extent that this profit reduces the employee's wage below the appropriate minimum, payroll deductions of rent or coal would be in violation of the Act. As you will note in section 777.8(b) on "affiliated persons," in the enclosed bulletin, this conclusion is not changed if the dealer as an individual is the landlord, and his company is the employer.

Although it is planned to issue a revision of the regulations and the bulletin shortly to include changes and additions required by the 1961 amendments, it is not contemplated that there will be any change in the principles applicable to the situation you have described.

Sincerely,

Clarence T. Lundquist
Administrator

Enclosures

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