

FLSA-828

July 19, 1976

This is in reply to your letter of July 7, 1976, regarding deductions from pay under the Fair Labor Standards Act for expenses incurred by employees on behalf of their employer in the purchase, replacement, and maintenance of uniforms required by the employer or by the nature of the work to be performed. At various parts of your letter, questions regarding uniform purchase, maintenance, and replacement are asked and our reply to them is in the same order as presented.

You ask "How does the Wage-Hour Division suggest the company determine when an employee buys a replacement uniform?" When an employee pays from his or her pocket expenses on behalf of an employer, it would be unusual if the employee would not make this known to the employer and request reimbursement. We have no information to the effect that employees are in collusion with uniform suppliers for the purposes of defrauding the employer by submitting false sales slips. In any event, the determination as to the bona fides of uniform purchases is a managerial responsibility.

You also ask "Is it permissible to pay an employee so many extra cents per hour to cover the cost of future (emphasis added) purchases of uniforms. It is assumed the employee has a uniform, not purchased on behalf of the employer, at the time of employment. If in fact an employee is paid at least the applicable minimum wage rate and proper overtime pay and there is a clear understanding between the employer and the employee that so much per hour will be paid in addition to the minimum wage rate for the sole purpose of replacing an existing uniform, and the amount so paid is sufficient to purchase a replacement uniform, no violation of the Act would occur. As you know from our statement on Uniform Maintenance, from which you quote, the cost of maintaining a uniform may not be allocated on an hourly basis unless the hourly amount has been negotiated under a bona fide collective bargaining agreement. Incidentally, this statement has been provided to the staff of all our field offices to insure that the principles enunciated therein are applied uniformly throughout the country.

Reimbursement to an employee for expenses incurred on behalf of an employer does not constitute "wages" and consequently would not become part of the regular rate of pay for purposes of computing overtime. In this connection, see section 778.217 of the enclosed copy of 29 CFR Part 778.

If an employee is paid in excess of the applicable minimum wage rate and proper overtime compensation, an employer may recapture the cost of a uniform supplied by him to the employee so long as the minimum wage rate and proper overtime pay is not cut into.

We do not believe it would be appropriate for us to suggest the ways management is to perform its managerial duties regarding the purchase, replacement, and maintenance of uniforms. We reiterate, however, that irrespective of methods employed by management

regarding the purchase, replacement, and maintenance of uniforms, an employer may not pay an employee less than the applicable minimum wage rate and proper overtime pay by deducting from wages expenses incurred by an employee on behalf of an employer.

Sincerely,

Ronald J. James
Administrator
Wage and Hour Division

Enclosure