

FLSA-826

June 26, 1981

Thank you for your letter of June 10, 1981, asking whether an employer may, under the Fair Labor Standards Act (FLSA), recover cash amounts from employee wages he or she expended for the purchase of employee uniforms.

You ask us to assume that a collective bargaining agreement specifies that a straight-time cash wage of \$2.50 an hour is to be paid to bona fide tipped employees. The employer will claim a tip credit of 85 cents per hour for these employees. You also ask us to assume that the employer wishes to recover 10 cents per hour from an employee's wages for the uniform furnished him or her and that 10 cents of the hourly wage will be designated for uniform maintenance expenses incurred by the employee. Accordingly, if the employer reduces the claimed tip credit from 85 cents to 65 cents per hour causing the cash wage paid to increase to \$2.70 per hour, could the employer recover the cost of uniform procurement from employee wages and require employees to cover their own uniform maintenance expenses without violating the FLSA.

In determining whether a tipped employees is being paid in compliance with the Act consideration is given to the sum of the cash wage paid by the employer and the tip credit claimed. Thus in the situation you present the tipped employee is paid only \$3.35 an hour, the Federal minimum wage. Hence, neither the 10 cent per hour deduction for uniform purchase, nor the 10 cent per hour allotment for uniform maintenance can be made because such amounts reduce the hourly wage paid below the required minimum. For such deductions to be valid under the Act the employee must be paid a wage which is in excess of the minimum wage. For example, were a tipped employee paid \$2.50 an hour in cash and the employer to claim a tip credit of \$1.05 an hour such deductions could be made. Of course when such employee works more than 40 hours in a workweek he or she would be due not less than one and one-half times \$3.35 (the regular rate of pay) for each hour worked over 40.

Sincerely

Henry T. White, Jr.
Deputy Administrator