

FLSA-834

October 11, 1984

This is in further reply to your letter of May 15 in which you request an opinion under section 3(m) of the Fair Labor Standards Act (FLSA) regarding conditions under which an employer may make deductions from an employee's wages.

You describe four situations wherein an employer makes loans or cash advances to employees. In all cases, the employee quits or is terminated before the loan or advance is repaid and the employer wishes to recoup some or all of the advanced monies from the employee by making deductions from his/her final paycheck. No interest or administrative expenses are assessed in connection with any of these transactions.

We will discuss the four situations in the order presented in your letter.

(1) An hourly paid employee requests an advance of \$50 against future earnings. The employee agrees to repay the loan by allowing the employer to deduct \$5.00 per week from his/her paycheck. When \$40 has been repaid, the employee quits, owing the employer \$10. You ask whether the employer may withhold the \$10 owed from the employee's final paycheck when the deduction would cut into the minimum wage required by FLSA. You also ask if a written agreement is required before the employer may make such a recoupment.

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 a deduction cuts into the minimum wage or overtime pay due the employee under FLSA. Although you indicate that such is not the case here, we wish to point out that deductions for interest or administrative expenses incidental to the making of such loans or advances would be illegal to the extent that they cut into the minimum wage or overtime pay due. While there is no requirement that a repayment agreement be in writing, such an agreement would be desirable since the loan's existence and its terms would be difficult to prove absent such an agreement.

(2) An employer has a policy to pay an employee's tuition for courses which may or may not be related to the employee's work. The employer advances the cost of the tuition to the employee who pays the school at the beginning of the course. The employer will not seek repayment as long as the individual remains an employee until completion of the course and attains a grade of "C" or better. You ask if the employer may recoup the tuition advance if the employee fails to meet either of these two requirements, if such recoupment cuts into the minimum wage required by the Act.

It is our opinion that an employer may recoup tuition monies advanced to an employee in the circumstances you describe without violating FLSA, provided that the employee clearly understands the terms of the employer's tuition payment policy prior to accepting the payment.

In connection with this situation, we call your attention to section 785.27 of 29 CFR Part 785, copy enclosed, which outlines the criteria that must be met so that time spent by employees in taking courses need not be counted as compensable hours of work under the Act. Although your letter indicates that the third criterion may not always be met, we would not assert that time spent in taking courses must be compensated if the criteria in section 785.30 or 785.31 are met.

(3) An employer has a policy to pay his/her employees a child care allowance. This money is paid at the beginning of each month for that month's care. An employee who has received a child care advance quits his/her job before the month is over. You ask if the employer may recover the child care cost for the remainder of the month if it would cut into the minimum wage required by FLSA.

It is our opinion that an employer may recover a child care allowance advanced to an employee in the circumstances you describe without violating FLSA, provided that the employee clearly understands, before acceptance of the allowance, that such recoupment will be made in the event (s)he quits or is terminated.

1. An employer has a policy that employees do not earn a vacation until the anniversary date of their employment. An employee is granted vacation pay prior to his/her anniversary date, with the understanding that such pay constitutes an advance of pay. You ask if the employer may deduct the amount of the advance from the employee's final paycheck if the employee quits or is terminated before his/her anniversary date, where such deduction would cut into the minimum wage required by the Act.

It is our opinion that an employer may recoup the advanced vacation pay in the circumstances you describe without violating the Act.

We trust the above is responsive to your inquiry. If you have any further questions, please do not hesitate to contact us again.

Sincerely,

William M. Otter
Administrator

Enclosure