

**FLSA-559**

April 5, 1991

This is in reply to your letters concerning the application of the Fair Labor Standards Act (FLSA) to restaurants that require their waiters and waitresses to wear uniforms. You state that restaurant employees frequently fail to return their uniforms upon termination of employment. You ask whether an employer may require, as a condition of employment, an employee to deposit with the employer a sum not to exceed the cost of the uniform as security for the return of the uniform.

As you know, FLSA requires that all covered and nonexempt employees be paid not less than the minimum wage of \$4.25 an hour for all hours worked, and not less than one and one-half times his or her regular rate of pay for all hours worked in excess of 40 in a workweek. Under certain conditions, employers can take a tip credit towards their minimum wage obligations for tipped employees (those who regularly receive more than \$30 a month in tips). The maximum tip credit is now 50 percent of the minimum wage of \$4.25 an hour, or \$2.125.

The general principle implicit in section 6(a) of FLSA, expressed specifically in section 531.35 of the Department's Interpretative Bulletin, 29 CFR Part 531, is that wages cannot be considered to have been paid by the employer and received by the employee unless they are paid finally and unconditionally, or "free and clear." Thus, deductions which result in receipt of less than the minimum wage, or which cut into any overtime pay required by FLSA, generally violate the Act. In addition, tipped employees cannot be required to pay for uniforms from their tips, since tips belong to the employee.

Where restaurant employers require that tipped employees wear uniforms, the uniform is primarily for the benefit of the employer. The uniform is part of the employer's overhead, and any recoupment of the cost of the uniform, either by payroll deduction or, as you propose, from a security deposit, would not comply with FLSA if it would reduce the employee's wage below the applicable minimum wage or overtime pay due the employee. That the deposit is made as a condition of employment would not affect our opinion in this matter.

We trust that the above is responsive to your inquiry, and regret our delay in responding to your initial letter.

Sincerely,

John R. Fraser  
Acting Administrator