

FLSA-515

October 9, 1991

This is in response to your inquiry requesting an opinion as to whether deductions due to cash shortages from the weekly pay or bonus due exempt employees pursuant to the employees' agreement, but not below \$250 per week, affect the salary basis as contemplated by 29 CFR Part 541.118. We regret the delay in responding to your inquiry.

The Wage and Hour Division of the Department of Labor administers and enforces the Fair Labor Standards Act (FLSA), the Federal law of most general application concerning wages and hours of work. Effective April 1, this law requires that all covered and nonexempt employees must be paid a minimum wage of \$4.25 an hour and not less than one and one-half times their regular rates of pay for all hours worked over 40 in a workweek. Prior to April 1, 1991, the minimum wage was \$3.80 an hour.

As stated in section 541.118(a) of Regulations, Part 541, an employee will be considered to be paid "on a salary basis" if he/she regularly receives each pay period a predetermined amount constituting all or part of his or her compensation, which amount is not subject to reduction because of variations in the quantity or quality of work. Deductions from the guaranteed salary of an exempt employee for loss, damage, or destruction of company funds or property due to the employee's failure to properly carry out his or her duties would result in the loss of the exemption because the salary would not be "guaranteed" or "free and clear" as required by section 541.118 of Regulations, Part 541. It is our opinion that deductions from an employee's predetermined salary because of shortages would be inconsistent with the "salary basis" of payment under the regulations.

However, deductions from a bona fide bonus, that is not part of the employee's "guaranteed" salary, would be permissible under the regulations, provided that the bonus is not designed to evade payment of the "guaranteed" salary as discussed in section 541.118(b). "The test of payment on a salary basis will not be met, however, if the salary is divided into two parts for the purpose of circumventing the requirement of payment "on a salary basis". For example, a salary of \$200 in each week in which any work is performed, and an additional \$50 which is made subject to deductions which are not permitted under paragraph (a) of this section."

Finally, you raise the issue of an agreement providing that the employee accepts responsibility for all money transactions. It is well settled that employee's FLSA rights cannot be waived by agreement. United States v. Klinghoffer Brothers Realty Corporation, 285 F.2d 487, 491 (2d Cir. 1960) and Brooklyn Savings Bank v. O'Neil, 324 U.S. 697, 707 (1945).

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances which would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein. You have also represented that this opinion is not sought on behalf of a client which is under investigation by the Wage and Hour Division, or which is in litigation with respect to, or subject to the terms of any agreement or order applying, or requiring compliance with, the provisions of FLSA.

Sincerely,

Samuel D. Walker

Acting Administrator