

Quick Quiz Answer: Recovering Losses From Non-Exempt Employees

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The answer to our March 14 Quick Quiz is "\$110". The federal Fair Labor Standards Act does not prohibit the employer from recouping some of the loss in that workweek, but it *does* restrict the amount.

So What Are The Limits?

The employer may not require or allow Alex to restore the loss to the extent that this would (1) cut into the required minimum-wage rate for his first 40 hours worked in the workweek, or (2) cut into any of the time-and-one-half overtime pay due for his hours worked over 40 in the workweek. These limitations apply even though the employer published a policy in advance, and even though Alex signed something saying that he would make the payment. Furthermore, it makes no difference whether he pays in cash, or by check, through payroll deduction, or in some other way.

Therefore, the maximum his employer can recover that workweek under the FLSA is $[(\$10 - \$7.25) \times 40 \text{ hrs.}] = \110 . Alex must be paid the *full* $[(\$10 \times 1.5) \times 5 \text{ OT hrs.}] = \75 for his overtime work; *none* of that amount can be deducted or otherwise directly or indirectly turned over to the employer in that workweek. The balance of $(\$150 - \$110) = \$40$ may only be recouped in one or more future workweeks, subject to the same restrictions.

These FLSA rules also apply to many other kinds of deductions, payments, or repayments affecting non-exempt employees. For example, Alex's employer could neither deduct nor accept payment from Alex for bank fees or charges relating to the dishonored check to the extent that this cuts into his FLSA-required pay. Other illustrations include cash shortages, damage to or loss of the employer's tools or equipment, the costs of required uniforms, and unreturned employer property.

USDOL Says There Are Additional Requirements

In a June 2000 enforcement policy ([link below](#)), and in a February 2001 [opinion letter](#), the U.S. Labor Department sought to impose further conditions and restrictions upon overtime-workweek deductions even to the narrow extent discussed above. Among them are that:

- ◆ There must be an advance agreement or understanding (to which the employee affirmatively agrees or assents) specifically covering the items for which deductions will be made and how the amounts will be determined.
- ◆ The deductions must be bona fide and "legitimate" ones, including that they must fall within the agreement or understanding and must not be prohibited by federal, state, or local law.

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- ◆ Permissible deductions may not cut into the highest applicable minimum wage (such as where a state's minimum is greater than the FLSA's).
- ◆ The deductions may not otherwise evade the FLSA's overtime requirements (such as if the deductions were made only in overtime workweeks, or if the deduction amount was increased in overtime workweeks).

One may question whether DOL is empowered to adopt or enforce a number of the edicts in these detailed advisory materials, but nonetheless its positions are what they are.

Don't Forget About *Other* Laws

Applicable state or local laws might further limit what an employer is permitted to do, or they might even prohibit these kinds of deductions or payments altogether. The parameters could also be different under specialized federal or state wage-hour laws that might apply to public construction, to providing services to government entities, to certain government supply contracts, or to other publicly-funded work.