



North Carolina Law Life

Thinking On the Dock of the Pay

By: Donna Ray Chmura. *This was posted Thursday, February 25th, 2010*

I have already [blogged](#) once about [Undercover Boss](#), but I thought it would be helpful to flesh out just why the pay-docking incident in the first episode stuck in my head. In that episode a (well-meaning?) manager of [Waste Management, Inc.](#) docked employee pay two minutes for every minute of late arrival after lunch.

Payroll docking violates most state payroll laws (it is considered an unlawful forfeiture), including North Carolina. [Here](#), deductions in pay must be agreed to (in writing) in advance.

If the amount of deduction is known, the employer must get a written authorization from the employee on or before payday stating the reason for the deduction and the amount to be deducted.

If the amount is unknown at the time the employee authorized deductions generally, the employer must give written notice before payday that there is going to be a deduction, the amount, and the reason. The employee must have opportunity to withdraw authorization.

In addition, the docking must not result in the employee's pay dipping under minimum wage.

The practice also has some potentially serious consequences under the [Fair Labor Standards Act](#). If the employee was an [exempt](#) employee (a salaried employee who is exempt from overtime), docking the pay cancels the exemption, and the employee would be converted to an hourly employee who is now deserving of overtime.

In addition, the company needs to make sure even if it correctly docking *pay*, it is not docking *hours worked*. In the Undercover Boss example, the employee was one minute late returning from lunch, but the company can only exclude that one minute from the number of hours she worked that week — it can't exclude the "penalty minute" if she actually worked that minute.

Thus, all the time the employee actually works must be used to calculate whether she worked 40 hours and whether she is entitled to overtime compensation. It is unclear whether Waste Management docked just pay, or time as well.

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We often joke internally that the FLSA is so complex that no company is ever in complete violation, but violations are significant.

The Department of Labor, which enforces the Fair Labor Standards Act, can go back three years to look for payroll violations, willful violations, and assess a civil penalty of up to \$1,100 per employee.

An [attorney](#) review of your employment practices can be worth every penny.

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