

Making Deductions from Exempt Employees

On March 10, 2006, the Wage and Hour Division of the U.S. Department of Labor issued an opinion letter that may change how employers recoup money owed to the company by exempt employees. According to the opinion letter, employers who deduct money from an exempt employee's salary or require the exempt employee to reimburse the company for damages to or loss of company equipment may jeopardize the employee's exempt status because such deductions or requirements would violate the Fair Labor Standards Act's salary basis requirements.

In reaching this conclusion, the DOL relied on federal regulations that state that an exempt employee must be paid "a predetermined amount . . . not subject to reduction because of variations in the quality or quantity of the work performed." The opinion letter states "an exempt employee must actually receive the full predetermined salary for any week in which the employee performs any work unless one of the specific regulatory exceptions is met." It does not matter whether the employer makes deductions from the employee's salary or requires the employee to make an out-of-pocket reimbursement from compensation already received. Either method would result in employees not receiving their predetermined salaries and would allow impermissible reductions in compensation because of the quality of the work performed, a violation of federal regulations.

Nonexempt employees are not subject to the FLSA's salary basis requirement, so deductions from their pay are not affected. However, the opinion letter reminds employers that they may not make deductions from the pay of nonexempt employees if those deductions will bring the employees' pay below any required minimum wage or overtime premium.

While DOL opinion letters do not carry the weight of law, they provide guidance to employers about the likely interpretation of the law by the Department of Labor. Therefore, employers are well advised to follow their guidance. Employers are cautioned to use great care in determining when and under what circumstances they can legally make deductions from the pay of exempt employees.