



In The Trenches

By Lisa Bohman

Practical Answers to Your HR Questions

Q *I would like to deduct the wages of employees with cash shortages. What state or federal restrictions are in place limiting an employer's ability to deduct cash shortages from an employee's wages?*

A Under certain circumstances, an employer may want to deduct an employee's wages as a result of shortages in the amount of cash in the employee's control. Such situations are usually associated with employees who operate cash registers or who are responsible for cash in some other setting. Although employers in Utah may deduct cash shortages from an employee's wages, their ability to do so is subject to two significant restrictions.

The first restriction is the federal Fair Labor and Standards Act ("FLSA"). The FLSA prevents disciplinary deductions that "reduce the earnings to an average below the applicable minimum wage or cut into any part of the overtime compensation due the employee." As a result, an employer may not deduct cash shortages if the deductions would result in a wage that falls below the minimum wage or affects the employee's overtime pay.

The second restriction is Utah's Payment of Wages statute and the administrative rules promulgated under the statute by the Utah Labor Commission. With respect to the deduction of employee wages for cash shortages, these rules have four primary provisions. First, the Labor Commission's rules require an employer to provide an employee with written notice if the employee's wages will be reduced as a result of a shortage. The employee must acknowledge this notice in writing. Second, the employee's register or the amount of cash in the employee's control must be verified at the beginning of the employee's work period in the employee's presence. The employee must give a written acknowledgment of this verification as well. Third, the amount of cash must be verified at the end of the employee's work period in the presence of the employee. Once again, the employee must provide a written acknowledgment of this verification. Fourth, the Labor Commission's rules require that the employee be the sole user with exclusive access to the register or the cash during the work period.

Employers who deduct shortages from their employees' wages are advised to develop a comprehensive policy regarding such deductions, and to keep accurate records reflecting notices to and acknowledgments by employees, as required by Labor Commission's rules, as well as to monitor employees' compensation to ensure that employees' wages do not drop below the statutory minimum wage or that their overtime pay is not affected.

Q *I have several employees who work from home. Do OSHA regulations apply to these telecommuters?*

A The Occupational Safety and Health Administration (OSHA) is not presently enforcing health and safety regulations for telecommuters working from home offices. However, many believe that OSHA has the statutory authority to do so and such enforcement remains a possibility.

In 1999, this issue got the attention of many employers with employees who telecommute, when then-Secretary of Labor Alexis Herman issued an OSHA compliance interpretation letter taking the position that OSHA regulations applied to employees working from home. The letter was met with outrage from employers, as well as from congressional representatives. OSHA quickly withdrew the letter and assured employers that it did not intend to visit the homes of their telecommuters to conduct inspections and investigations.

Nonetheless, the letter clearly indicates that, at some point in the future, OSHA may again attempt to apply its safety and health regulations to telecommuters. This possibility arises from the fact that the Occupational Safety and Health Act, from which OSHA draws its authority, is not limited to particular work sites. Rather, the Act requires employers to provide places of employment that are free from hazards. This broad mandate could be interpreted as applying to home offices used by telecommuters. In fact, OSHA has visited private homes at least twice in the past, and it also has announced that it will conduct investigations into home workspaces if it receives complaints or referrals. Consequently, some businesses provide telecommuters with information on establishing ergonomically correct and safe workspaces in their homes. Others go so far as to inspect the home offices of their telecommuters. In light of the Act's broad mandate and OSHA's steps in this direction to date, employers may be wise to conduct some type of self-inspection of the workspaces of their telecommuter-employees. ■



In the Trenches is provided courtesy of the Labor and Employment Law Group of Van Cott, Bagley, Cornwall & McCarthy, P.C., and is authored this month by Lisa Bohman, who is a member of Van Cott's Labor and Employment Law Group. You can reach Ms. Bohman at 801.532.3333.

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