

April 1, 1999

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This is in response to your letter concerning permissible deductions under 29 C.F.R. §541.118. We regret the delay in responding to your letter.

You indicate that a practice exists for the handling of cash received from restaurant patrons. The cash is counted and verified as to the amount by both the manager and the waitstaff person. The manager then transfers the cash to a locked bank bag with a daily report showing the amount. The manager is the only person in the restaurant to have a key to the bank bag. The locked bank bag is placed in a locked safe in a locked office overnight.

The following day the manager takes the locked bank bag from the safe and transports the bag to the bank for deposit. The bank bag is opened by the bank representative in the presence of the manager and counted and deposited at that time. Any discrepancy between the amount counted by the bank representative and the amount recorded on the daily report is verified by the manager and the bank representative.

You state that the manager in question is paid a salary in excess of the amount required by 29 C.F.R. §541.117. You ask that we assume that all other salary and duty requirements to qualify as an exempt employee under the Fair Labor Standards Act (FLSA) exist.

Your client has a policy that assuming no breakage in the bank bag has occurred, any shortage difference identified by the bank representative when the money is counted in the presence of the manager and the amount previously attested to and verified by the manager is deducted from the next paycheck of the manager. You ask if this policy conflicts with the salary requirement for exempt employees under the FLSA such that an otherwise exempt employee will lose his or her exempt status.

One of the requirements which must be met by an executive or administrative employee in order to qualify for the exemption provided under §13(a)(1) of the FLSA is payment on a salary basis as set forth in the Regulations, Part 541. An employee will be considered to be paid "on a salary basis" if under his employment agreement he regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of his compensation, which is not subject to reduction because of variations in the quality or quantity of work performed. Deductions may be made from the employee's salary when an employee absents himself from work for a day or more for personal reasons, other than sickness or accident; for absences of a day or more occasioned by sickness or disability if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for lost salary occasioned by both sickness and disability – either prior to the employee qualifying for the plan or after exhausting the leave allowance; or as a penalty imposed in good faith for infractions of safety rules of major significance.

Based on the information contained in your letter and the Division's interpretation of §541.118, it is my opinion that your client's policy of docking a manager for bank bag shortages would not be a permissible deduction and therefore, the manager would not be paid on a "salary basis" as required by the FLSA. Therefore, the exemption would be lost for such an employee.

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 that 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.

I trust this is responsive to your inquiry.

Sincerely,

John R. Fraser
Deputy Administrator