

WHAT CAN YOU GET FOR \$535?

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An expensive lawsuit.

Let's say you have a service advisor who is paid \$525 per week, plus commissions. The service advisor makes a blatant and careless mistake on a customer invoice, costing your dealership \$535. The service advisor refuses to reimburse the dealership for the money, so you terminate him for poor performance and deduct the amount owed from his final paycheck. Are you even?

Well, according to a federal court in Pennsylvania, not quite. The judge in a recent case refused to dismiss identical claims against a dealership on the basis that they could violate both the Fair Labor Standards Act (FLSA) and comparable state law. As Judge Richard Caputo noted, such deductions may be impermissible if they reduce an employee's wages for the workweeks in question to below the minimum wage. And although the service advisor in that case received more than \$3,000 in commissions on top of his wages for work performed during the same pay period, the judge agreed that the service advisor's allegations that he received less than minimum wage warranted additional litigation.

The court directed the parties to take discovery – which entails exchanging written interrogatories, document production, and sworn depositions – to determine exactly how much the service advisor made in wages during the workweeks in question and whether it was enough to satisfy minimum wage requirements. The dealership may (and, in our opinion, likely will) ultimately prevail on the service advisor's claims for unpaid minimum wage. However, it will

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only do so after prolonged and costly litigation and a significant expenditure of attorneys' fees. At that point, any savings created from recouping the initial \$535 will have long been lost.

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