



## Not All Deductions Are "Uniform" Under The FLSA

Insights

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The federal Fair Labor Standards Act (FLSA) establishes minimum wage and overtime requirements, period. The FLSA does not explicitly require that employers cover all work-related costs, nor, does it do so by specifically prohibiting employers from imposing work-related costs on employees. Indeed, the FLSA permits an employer to impose these costs in their entirety on non-exempt employees. In other words, at least for FLSA purposes, it is not a matter of whether the employer *can* impose a cost, but the extent to which it can be imposed *at one time* depending on an employee's wages.

As with many aspects of the FLSA though, the devil is in the details when it comes to compliance. With respect to non-exempt employees, an employer violates the FLSA to the extent that true work-related costs *directly or indirectly* cut into the minimum wage or any part of the overtime wages, collectively, the FLSA-protected wages due. Without careful consideration of the specific facts at hand, employers are at risk of committing inadvertent FLSA violations when it comes to passing certain costs on to an employee. Making deductions from an employee's pay, whether through payroll or indirectly, for a required "uniform" is a good example of this issue.

### Are There FLSA-Implications? Beware of Over Simplifying Categories

Employers often need to conduct an item-by-item analysis to determine which costs can cut into FLSA-protected wages. Some prohibited costs are fairly obvious, such as the typical "uniform" shirt with the company's logo. However, the same cannot be said for other articles of clothing commonly referred to as uniforms.

Indeed, the U.S. Department of Labor (USDOL) has long maintained that certain clothing, while required by the employer, is of such a character that it may be reasonably worn outside the context of work and therefore does not constitute a "uniform". As USDOL's internal Field Operations Handbook notes at [Section 30c12](#):

If an employer merely prescribes a general type of ordinary basic street clothing to be worn while working and permits variations in details of dress, the garments chosen by the employees would not

be considered to be uniforms.

Applying this principle, USDOL has opined that "white shirts", "white blouses", "shirts that do not bear any logo", and "trousers of a dark color," among other types of clothing, do not constitute a uniform and instead constitute "basic street clothing." The same principles apply with respect to required footwear. USDOL has concluded that slip-resistant, "dark-colored" shoes were a "general type of ordinary foot wear" and not a "uniform". Conversely, USDOL will find clothing to be a "uniform" if the employer "does prescribe a specific type and style of clothing to be worn at work, *e.g.*, where a restaurant...requires a tuxedo or a skirt and blouse or jacket of a specific or distinctive style, color, or quality."

Even so, other factors must be considered during this inquiry. The cost of the clothing can be important, particularly if the employer specifies a certain vendor. If the vendor charges a fee for a "white shirt" that is substantially greater than what the employee might pay elsewhere for a similar shirt, the shirt may no longer be deemed "ordinary basic street clothing."

Each of these tedious distinctions is significant because, if the particular clothing item does not constitute a "uniform", federal law does not prohibit imposing the cost (as distinguished from any fee or profit directly or indirectly to the employer) of that item on the employee, *notwithstanding that the employee might receive less than the minimum wage or even no wages*.

### **Are You Willing To Do the Math? Computations Not Conducive to Auto Pilot**

Continuing with the "uniform" example, if the FLSA is implicated, then an employer cannot deduct for the cost of or deposit on the uniform to the extent that this directly or indirectly cuts into the FLSA-protected wages due a non-exempt employee. This necessitates yet another fact-specific analysis.

USDOL provides the following computation in [Fact Sheet #16](#):

If an employee who is subject to the statutory minimum wage of \$7.25 per hour (effective July 24, 2009) is paid an hourly wage of \$7.25, the employer may not make any deduction from the employee's wages for the cost of the uniform nor may the employer require the employee to purchase the uniform on his/her own. However, if the employee were paid \$7.75 per hour and worked 30 hours in the workweek, the maximum amount the employer could legally deduct from the employee's wages would be \$15.00 (\$0.50 X 30 hours).

The computation is somewhat more complicated in an overtime workweek. Indeed, no such cost can be imposed past the first 40 hours, and the USDOL's position is that even this is prohibited in an

overtime workweek unless certain prerequisites are met. An employer might well find that it needs to spread the deductions over a number of workweeks due to the FLSA's limitations.

Thus, again, the best practice is for an employer to evaluate these matters on a case-by-case, and even on-going, basis; but it is possible to do so and avoid FLSA violations.

## The Bottom Line

In many circumstances employers may require that employees provide, reimburse, or otherwise cover the cost of items that are work-related; a non-exempt employee's uniform is just one example (for instance, a different analysis is necessary for most exempt employees). Whether an item has FLSA implications is a fact-specific inquiry and not always a straight-forward one. Of course once the FLSA is implicated, the employer can either opt not to impose the costs and chalk it up as a business expense, or opt to tackle the math. As far as the FLSA is concerned though, this is the employer's prerogative.

Finally, employers always should be mindful of state and local laws which might contain different principles: some of which require an employer's careful analysis to determine whether it restricts the employer *more or less* than the FLSA with respect to a *particular* cost imposed on *particular* employee in a *particular* workweek.

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**Ted Boehm**  
Partner  
404.240.4286  
[Email](#)