Quick Quiz Answer: Recovering Loans Or Advances

Insights
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The best answer to our January 9 Quick Quiz is, "$200". In declining percentage order, the responses were:

"$200": (45.1%)

"None": (25.3%)

"$33.75": (19.8%)

"$30": (9.8%)

It is not necessary to restrict the sum recovered to 45 hours times the ($8.00 – $7.25) = 75-cent "cushion" over the federal Fair Labor Standards Act's minimum wage (the rationale leading to the "$33.75" answer) or to 40 hours times that "cushion" (the rationale leading to the "$30" answer). Neither does the FLSA prohibit Gloria's employer from recouping any of the loan.

Why Isn't There A Limit?
The U.S. Labor Department has long said that, where an employer has made a *bona fide* loan or wage advance to an employee (such as the one in our Quick Quiz), the full amount of the principal may be deducted from the employee's wages, even if this deduction cuts-into the FLSA minimum wages or overtime compensation that would otherwise be required for the workweek. One way to think of it is that there is no "deduction" being made in the usual sense of the word: Gloria's employer is instead simply taking credit for the wages it paid to her before they were due.

However, this concept does not extend to any employer add-ons like interest payments or administrative costs such as "processing fees", "bookkeeping costs" or similar sums over and above the principal amount of the loan or advance. Amounts like these cannot be deducted (or otherwise paid by the employee) to the extent that they cut into the FLSA-required minimum-wage or overtime compensation.

Furthermore, deductions or other employee payments that the FLSA otherwise constrains do not become lawful just by calling them "loans" or "advances". For example, an employer may not circumvent FLSA-related limitations upon the costs or financial burdens imposed upon a worker for

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required uniforms, tools or equipment required to do the work, or cash or inventory shortages simply by saying that it will "loan" the employee the necessary amount.

There is no FLSA requirement that the existence of the loan or advance or the repayment arrangements be reduced to writing. Nevertheless, it is advisable to prepare a written understanding or agreement of some kind in order to head-off potential disputes about the nature of what was done.

There Could Be *Non-FLSA* Restrictions

Keep in mind that state or local provisions might impose prohibitions, limitations, or requirements in this area that the FLSA does not.

For instance, until recently, New York did not permit employers to recover any portion of a loan or advance from a worker's wages. Even now, these undertakings are to be handled subject to restrictions on the timing, frequency, duration, method, and periodic amount of repayments and must meet a host of other requirements and procedures.

Employers must be certain that they know about, understand, and comply with ***ALL*** potentially-applicable requirements and limitations where employee loans or advances are concerned.

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