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## Coates' Canons Blog: Deductions for the Cost of Training under the FLSA

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Few things are as aggravating to local government employers as paying for the cost of an expensive training program only to have the employee leave immediately to go to work for another local government employer. The new employer gets the benefit of the training for which the old employer paid. Small and rural cities and counties commonly suffer this loss among their entry-level law enforcement and firefighter ranks. Can local governments recoup the cost of training from employees who leave soon afterward? It seems only fair. But is it lawful?

### Background

The federal Fair Labor Standards Act governs the payment of wages to local government employees. Generally, money may not be deducted from the wages of exempt employees (who are paid on a salaried basis and do not get paid overtime) without destroying the exemption. Amounts may not be deducted from the wages of nonexempt employees if the amount deducted would bring the employee's pay below the minimum wage or cut into their overtime pay.

There are, however, exceptions to these generally stated rules. Take, for example, the overpayment of wages. When an employer has accidentally paid more than it owes an employee in wages, it may deduct the amount of overpayment from the employee's wages either in a lump sum or over time. This will not destroy the exemption of an exempt employee. For nonexempt employees, the U.S. Department of Labor has said in a Wage and Hour Opinion Letter, "the principal may be deducted from the employee's earnings even if such deduction cuts into the minimum wage or overtime pay due the employee under the FLSA." A decision to advance wages to an employee is treated in the same way.

Isn't paying the cost of an employee's specialized training analogous to an overpayment or advance on wages? Many local governments seem to think so. They have adopted policies requiring police officers or firefighters to repay a portion of their training costs if they voluntarily leave before completing a specified number of years of service.

### Deducting the Cost of Training Appears to Be Lawful

Given how frequently this issue arises here in North Carolina, I have been surprised to find no regulatory guidance and very few judicial decisions that address the lawfulness of deducting the cost of training. Neither the U.S. Department of Labor's FLSA regulations nor any federal Fourth Circuit Court of Appeals or North Carolina federal district court cases address deductions for the cost of training. Two cases from other circuits, however, provide a rationale for allowing such a practice.

### *Viewing Payment of the Cost of Training as a Loan*

In the 2002 federal Seventh Circuit Court of Appeals case *Heder v. City of Two Rivers, Wisconsin*, the city funded its firefighters' mandatory paramedic training but required a firefighter to reimburse the city for the costs of training if the firefighter left before completing three years of service. The Seventh Circuit upheld the reimbursement agreement, comparing it to a loan; the cost of the training was a loan the city made to its firefighters, repayment of which was forgiven after three years. If, however, a firefighter left before three years of service, the loan became due. The court held that as long as the city paid departing firefighters at least the statutory minimum wage, it could deduct the training costs from wages.

In a 2010 decision from the federal Ninth Circuit Court of Appeals, *Gordon v. City of Oakland*, the Ninth Circuit adopted

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similar reasoning in holding that a city's deduction of the cost of training from an employee's final paycheck was lawful. The court noted that the city could choose to require applicants to obtain their police training independently prior to beginning employment, which the city could do by hiring only individuals already possessing law enforcement certification. Instead, the city elected to make what was essentially a loan to police officer trainees of the cost of their police academy training. In this case, the conditional offer the plaintiff signed explained that the city would forgive her repayment obligation at a specified rate and that she would owe nothing after five years of service. Because the plaintiff chose not to serve the five years necessary to secure complete loan forgiveness, the city was the plaintiff's creditor. Because it satisfied the FLSA's requirements by paying her at least minimum wage for her final week of work, it did not violate the law.

### **Conclusion**

Based on the Heder and Gordon decisions, it appears that the deduction of the cost of an employee's training from his or her paychecks is permissible so long as employees are advised of the policy at the outset of employment and the deduction does not bring the employee's regular rate of pay below minimum wage.

For more on deductions from employee wages, see Bob Joyce's January 4, 2011 post *Public Employer Withholding from Last Paycheck* at <http://canons.sog.unc.edu/?p=3750> .

### **Links**

- [www.dol.gov/whd/opinion/FLSANA/2004/2004\\_10\\_08\\_19FLSA\\_NA\\_recoup.pdf](http://www.dol.gov/whd/opinion/FLSANA/2004/2004_10_08_19FLSA_NA_recoup.pdf)
- [media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2002/D07-10/C:01-4118:J:\\_:aut:T:op:N:0:S:0](http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2002/D07-10/C:01-4118:J:_:aut:T:op:N:0:S:0)
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