

**FLSA-755**

December 29, 1978

This is in reply to your letter of November 27, 1978, regarding disciplinary deductions made from the pay of an employee compensated on a fluctuating hours of work basis under the Fair Labor Standards Act. This method of compensation is discussed in section 778.114 of 29 CFR Part 778, copy enclosed.

Generally an employee paid under the fluctuating workweek method receives his or her full salary in any workweek in which he or she performs any work. The making of deductions for excused absences, even for personal reasons (such as time off to visit a relative who is ill) would be inconsistent with such a method of compensation. However, disciplinary deductions which do not cut into the required minimum wage or overtime compensation may be made for willful absences or tardiness or, for example, where an employee is sent home from work because of intoxication. However, if these deductions are made frequently or consistently, the practice would raise serious questions as to the bona fides of the plan.

If you would like further information as to the application of the Act to any particular situation, you may wish to contact our office at Room 1100, Citizens' Trust Building, 75 Piedmont Avenue, N.E., Atlanta, Georgia 30303 (telephone (404) 526-6396. The people there will be pleased to assist you in any way they can.

Sincerely,

HJC

Xavier M. Vela  
Administrator

Enclosure