

**FLSA-838**

August 2, 1979

This is in reply to your letter of June 20, 1979, requesting an opinion regarding whose responsibility it is (employer or employee) to pay required fees for Guard Card Registration and Firearms Cards as well as renewals of both, required by State Law.

We have considered your comments under the provisions of the Fair Labor Standards Act which is the Federal law of most general application concerning wages and hours of work. The major highlights of this law concerning additions to or deductions from pay are contained in the enclosed copy of Regulations, 29 CFR Part 531.

☞ Deductions from wages that do not result in an employee receiving less than the applicable minimum wage (currently \$2.90 an hour) and proper overtime compensation are not violative of the monetary requirements of the Act. However, any deductions which would bring a covered and nonexempt employee's wages below these standards would be illegal.

On the basis of the information contained in your letter, it is our opinion that an employer must bear the cost of the fees (i.e., guard card registration and firearms cards) in the same manner an employer must bear the cost of necessary tools, equipment and uniforms. Deductions may not be made from the wages of an employee for these items if such deductions reduce the wages of an employee below the applicable minimum wage or reduce the amount of overtime compensation which may be due under the Act.

If an employee is required to purchase a uniform, gun, badge, emblem, and credentials before receiving wages (rather than paying for such items through payroll deductions) such would not affect a different result. If such were not the case, the protections offered by the Act could be avoided by the simple device of requiring an employee to come equipped with uniform, gun, badge, emblem, and any necessary credentials, thus eliminating any periodic deductions from the wages to pay for such items.

Moreover, it is our opinion that in situations where a firm is required, by its contractual agreement with a government agency, to ensure that all of its employees who will perform on the contract have necessary qualifications and credentials, such items as firearms cards and current guard cards are considered a condition of employment and primarily for the benefit or convenience of the employer. Therefore, the cost of fee charges is properly a business expense to be borne by the employer, since the employer can fulfill the contract only by employing such specifically qualified employees. This is further explained in section 531.3 of Part 531. The cost of furnishing "facilities" primarily for the benefit or convenience of the employer will not be recognized as reasonable and may not therefore be included in computing wages.

We have enclosed, pursuant to your request, several of the most frequently requested WH Publications which discuss various aspects of the Act. We trust this will serve your purpose.


If you should have any further questions concerning the application of this law, you may wish to contact our office located at 211 Main Street, Room 341, San Francisco, California 94105, telephone: 556-6815. The staff there will be pleased to assist you in any way possible.

Sincerely,

C. Lamar Johnson  
Deputy Administrator

Enclosures

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 Minimum wage has been increased by later amendments to the Act.