

RESOLUTION 04-06-2018

DIGEST

Wage Deduction: Limited to the Amount of Work Time Actually Lost

Amends Labor Code section 2928 to prohibit employers from deducting wages in excess of the amount of work time actually lost.

STATEMENT OF REASONS

The Problem: California law currently permits an employer to dock an employee that shows up less than thirty minutes late to work for a full half hour’s wage. This is problematic because even if an employee arrives to his or her employer before the first thirty minutes has elapsed, the employer can deduct the employee’s pay for the full first half hour. Since employers may deduct for a full thirty minutes even if the employee is a couple of minutes late, employees who are late have no incentive to begin work before thirty minutes have lapsed.

For example: Jane starts work at her employer at 8:00 AM. Jane arrives to her employer at 8:10 AM. Jane’s employer docks their employees their full half hour’s wage whenever their employees arrive less than thirty minutes late to work. Since Jane knows that her employer will dock her for the full first thirty minutes, she decides to wait in her car until 8:30 AM. As a result, Jane’s employer operated without Jane present for an additional twenty minutes because Jane knew she was not going to be paid for twenty minutes of her time worked.

The Solution: Labor Code section 2928 does not allow for an employer to deduct an employee in excess of the proportionate wage that would have been earned during the time actually lost, for any time worked after the first thirty minutes. This resolution will ensure that even during the first thirty minutes of an employee’s shift, the employee is docked only for the actual time of work missed. In other words, this resolution will guarantee that an employee earns the proportionate wage for any time actually worked.

Further, this resolution can help employers avoid the possibility of being understaffed for the full first thirty minutes of their employees’ shift. Employees that are going to be late may intentionally avoid showing up to work until the full first thirty minutes of their shift has elapsed because they know that they will not be paid for their actual time worked until after the first thirty minutes of their shift.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Labor Code section 2928 as follows:

- 1 § 2928
- 2 No deduction from the wages of an employee on account of his or her coming late to
- 3 work shall be made in excess of the proportionate wage which would have been earned during
- 4 the time actually lost, ~~but for a loss of time less than thirty minutes, a half hour's wage may be~~
- 5 ~~deducted.~~

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Bernardino County Bar Association

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

AUTHOR AND/OR PERMANENT CONTACT: Jack B. Osborn, Partner at Brown White & Osborn, 300 E. State Street, Suite 300, Redlands, California 92373, 909-798-6179, josborn@brownwhitelaw.com. Matthew B. Neufeld, Law Clerk at Brown White & Osborn, 300 E. State Street, Suite 300, Redlands, California 92373, 909-798-6179, mneufeld@brownwhitelaw.com.

RESPONSIBLE FLOOR DELEGATE: Jack Osborn and Matthew Neufeld

* * * * *

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Labor Code section 2928 to prohibit employers from deducting wages in excess of the amount of work time actually lost. This resolution should be approved in principle because it will help keep businesses appropriately staffed and ensure that employees receive appropriate wages for their time worked.

Under the current law, if an employee arrives a minute or two late to their scheduled shift, the employer may deduct a full half hour's wage from that employee's paycheck. Consequently, an employee who is running late has little incentive to begin work before that half hour elapses. As a result, the employer will be understaffed, or will have to pay overtime to other employees for that half hour. This situation does not benefit the employer or the employee.

The resolution provides that if an employee is late to work, then the employer may still deduct the employee's wages, but in an amount proportionate to the time, and work, actually lost by the late arrival. This will encourage employees who are running late to arrive at work as soon as possible, and help limit an employer's unexpected understaffing from such circumstances.