

## Can You Recoup Losses Due to an Employee's Sticky Fingers?

Bonnie, a long-time manager at 2Fast-4You Burgers, is being terminated for theft.

Yesterday, Clyde, the owner, noticed that last week's daily cash deposits had a net deficit of over \$500 compared with sales for shifts where Bonnie was the manager on duty. After reviewing the surveillance footage for that week, Clyde saw several occasions where Bonnie pocketed cash from the safe. There is no question that she took the money.

While Bonnie's termination is inevitable, Clyde also wants to recoup his losses by withholding the stolen monies from her final paycheck. Can Clyde deduct the money from Bonnie's final pay?



- A. Clyde may deduct the entire amount. Under the Federal Fair Labor Standards Act ("FLSA"), deductions for employee theft are permissible because employers are entitled to make themselves whole following employee wrongdoing. The location of the business does not matter.
- B. Clyde's ability to deduct from Bonnie's wages may be limited. Under the FLSA, an employer can make deductions from employee wages, but the deduction cannot take the employee under minimum wage. The location of the business does not matter.
- C. The location of the business does not matter. Clyde cannot make any deduction. Such a deduction is prohibited under the FLSA.
- D. It depends on the location of the business. Before making any deduction, Clyde should check the laws in his state to see if such a deduction is permissible.

### The correct answer is D:

#### Explanation

While employers may believe they have the power to deduct from an employee's wages to recover stolen monies (or the value of damaged or stolen property), whether an employer is actually allowed to make that deduction is governed by state, and in some cases, federal law.

In many states, employers are strictly prohibited from making a deduction from an employee's wages to recover monies lost due to employee theft (or to recover the value of lost/damaged equipment). In those states, an employer's only recourse is to attempt to recover the stolen monies from the employee is through the Court system.

In other states, employers are only allowed to deduct from an employee's wages to compensate for an employee's theft if (1) a report has been filed with the proper legal authorities or (2) the employee has authorized the deduction in writing or (3) the employee has been given advanced notice of the deduction.

Other states do not have laws governing the deduction from employee wages. In those states (and in states where deductions are permissible), FLSA-covered employers must follow the FLSA guidelines.

Under the FLSA, employers are permitted to deduct from an employee's paycheck for theft provided that the deduction will not reduce the employee's wages below the required minimum wage or overtime compensation and provided that the employee has voluntarily authorized the deduction. It is recommended that employers obtain the authorization in writing.