

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENTSanta Rosa Legal Section
50 D Street, Suite 360
Santa Rosa, CA 95404
(707) 576-6788H. THOMAS CADELL, *Of Counsel*

January 30, 2003

Roger Glade, President
Fay's Foods Inc.
10650 Burbank Blvd.
North Hollywood, CA 91601Re: **Apparent Contradiction Between Code Sections** (00201)

Dear Mr. Glade:

Your letter to Anne Stevason, Chief Counsel of the Division of Labor Standards Enforcement, has been assigned to this office for response.

You ask for clarification of the apparent contradiction between Labor Code Section 2928 which provides:

"No deduction from the wages of an employee on account of his coming late to work shall be made in excess of the proportionate wage which would have been earned during the time actually lost, but for a loss of time less than thirty minutes, a half hour's wage may be deducted."

and the provisions of the Labor Code¹ which require that employees be paid for all hours (time) worked.

Labor Code § 2928 has been part of the Labor Code since

¹Actually, in your letter you refer to Labor Code § 1198; but that section does not specifically address deductions from wages though it does prohibit payment of less than the minimums required by the IWC Orders which may be impacted if deductions are made pursuant to Labor Code § 2928 from the wages due a minimum wage employee. We direct your attention to Labor Code §§ 221, 222, 224 and various sections requiring the payment for all hours worked at the agreed upon wage (and in no event less than the minimum required by law).

2003.01.30

codification in 1937. Prior to that the language appeared in one form or another in the Civil Code.

It is a settled rule of statutory construction that when it is impossible to reconcile an apparent conflict between two statutes, the courts will examine the statutes in their context and with other legislation on the same subject. If they conflict on a central element, the courts strive to harmonize them so as to give effect to each. (*Collection Bureau of San Jose v. Rumsey* (2000) 24 Cal.4th 301, 310)

The Labor Commissioner, using established rules of statutory construction, has historically interpreted the section very narrowly since it is an exception. While Labor Code § 2928 is consistent with the general requirement that employees must be paid all wages they earn (inasmuch as the statute generally forbids a deduction except for the actual time lost), the Legislature added the final clause which provides that "for a loss of time less than thirty minutes, a half hour's wage may be deducted". Clearly, the Legislature intended to provide a limited exception to the firmly established general rule which requires that employees be paid for all hours (time) worked and that they receive their wages in full.

The limited exception in Section 2928 only applies in situations where the employee's loss of time is less than thirty minutes. The time from which the deduction may be made must be calculated by subtracting the time of tardy arrival from the scheduled starting time. Thus, in the event the employee reports for work after the scheduled time for starting and before the expiration of thirty minutes the loss of time would be less than thirty minutes and the employer may deduct a full thirty minutes from any wage earned in that initial half-hour period of time.

Use of the section, however, has its drawbacks. Experience has shown that employers who adopt a policy which employs the deduction find that employees - knowing they will not be paid for any time within the first thirty minutes after the scheduled starting time - will not appear until the thirty minutes has elapsed, thus not performing any work for which they will not be paid. This result springs from the first part of § 2928 which provides that, generally, no deduction may be made except for the proportionate wage which would have been earned during the time lost. Employers have found that such a policy does not address the real problem: having the employee available for work on time.

Roger Glade
January 30, 2003
Page 3

The employer may, of course, discipline employees for not following reasonable company policies; and, of course, reporting to work on time is a reasonable policy. However, in California, aside from the limited exception found in Labor Code § 2928, the employer may not deduct from the employee's wages as part of that discipline.

We hope this has adequately addressed the issue you raised in your letter. Thank you for your interest in California labor law.

Yours truly,

H. THOMAS CADELL, JR.
Attorney for the Labor Commissioner

c.c. Arthur Lujan, State Labor Commissioner
Tom Grogan, Chief Deputy Labor Commissioner
Anne Stevason, Chief Counsel
Assistant Labor Commissioners
Regional Managers

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